

**Court No. - 3**

Case :- MATTERS UNDER ARTICLE 227 No. - 1190 of 2020

Petitioner :- Syed Shahabuddin

Respondent :- Civil Judge (Senior Division) Gorakhpur And 4 Others

Counsel for Petitioner :- Adya Prasad Tewari, Sheo Shankar Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Ajay Bhanot, J.

Learned counsel for the petitioner is permitted to delete the respondent No.1 from the array of the parties to the petition during the course of the day.

The registry is directed to ensure that the judicial officers are not impleaded as parties in application under Article 227 of the Constitution of India.

The petitioner brought civil proceedings against the respondents No. 2 to 5, who are the defendants in the suit, to injunct them from interfering in the possession of the petitioner on the disputed premises. The suit instituting the Original Suit No.85 of 2020 (Syed Shahabuddin Vs. State of U.P. and others) was accompanied by an application for interim injunction which came to be registered as Application 7-C. The learned trial court issued notices to the State respondents and posted the matter for hearing on 2nd March, 2020. The prayer for grant of ex parte injunction did not find favour with the learned trial court at this stage.

Sri Adya Prasad Tiwari, learned counsel for the petitioner submits that the petitioner is in settled possession of the disputed premises. He has fully proprietary rights over the same which are supported by documents of title and undisputed revenue entries. Ingress and egress of the

petitioner is being restrained by the defendants to the suit. The disputed premise is his residential house. This is emergent situation where the petitioner is being prevented from the freely accessing his residential premises. The learned trial court ought to have accepted the prayer for grant of temporary injunction.

The grant of temporary injunction is a discretion which is vested in the learned trial court. This Court in the first instance is not inclined to transpose itself in the place of the learned trial court or to grant an interim injunction.

However, there is merit in the submission of the learned counsel for the petitioner that the urgency of the matter cannot be overlooked by the learned trial court. The delay in deciding the injunction application would defeat its very purpose. Faced with emergent situation, it is bounden duty of the learned courts below to apply their judicial mind to the facts and circumstances of the case and rule accordingly. Prevaricating or delaying the proceedings for no good reason will certainly lead to a miscarriage of justice.

The respondents No. 2 to 5, who are the defendants in the suit, are the State authorities. The respondents No. 2 to 5 are directed to put in appearance forthwith through their counsel before the learned trial court.

The learned Chief Standing Counsel is directed to communicate a copy of this order for compliance to the State respondents on or before 20th February, 2020.

The learned trial court shall thereafter make all endeavours to decide the application for interim

injunction, preferably, within a period of three weeks from 20th February, 2020.

In case any other emergent situation arises, it is open to the plaintiff / petitioner to file an application before the learned trial court which shall be considered in accordance with law.

The petition is disposed of.

Order Date :- 13.2.2020
Ashish Tripathi