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**Court No. - 27**

**Case :-** TRANSFER APPLICATION (CRIMINAL) No. - 43 of 2024

**Applicant :-** Mahmood Ahmad Siddiqui

**Opposite Party :-** The Court Special Judge N.I. Act, Lko. And Another

**Counsel for Applicant :-** Avinash Pandey

### **Hon'ble Shamim Ahmed,J.**

Sri Avinash Pandey, learned counsel for the applicant at the very outset prays for and is permitted to implead the State of U.P. as opposite party no.3 during the course of the day.

Heard Sri Avinash Pandey, learned counsel for the applicant and Sri Ashok Kumar Singh, learned A.G.A.-I for the State as well as perused the material placed before this Court.

The instant application application under Section 407 Cr.P.C. has been moved on behalf of the applicant with the following main prayers:-

*"I. To issue an order or direction setting aside impugned order dated 05.10.2023 passed by the Court of Sessions Judge, Lucknow in Criminal Miscellaneous Case No.42 of 2024 (Mahmood Ahmad Siddiqui Vs. Abdul Kayyum Khan).*

*II. To issue an order or direction to transfer Complaint No.1177 of 2014 (Mahmood Ahmad Siddiqui Vs. Abdul Kayyum Khan) pending before the Court of Special Judge, N.I. Act, Lucknow to some other Competent Court in District Lucknow."*

Learned counsel for the applicant submits that he has approached this Court by filing Application under Section 482/378/407 No.1652 of 2020, wherein a co-ordinate Bench while passing the order dated 06.03.2020 had directed the learned trial court to decide the case of the applicant within three months from the date of production of certified copy of the order before it. The order dated 06.03.2020 is being reproduced hereunder:-

*"Heard learned counsel for the petitioner, learned AGA and perused the record.*

*This petition has been filed with the prayer to issue direction to Additional Judge-VI, Lucknow to decide Complaint No.1177 of 2014 (Mahmood Ahmad Siddiqui versus Abdul Kayum Khan), under Section 138 Negotiable instruments Act, 1881 expeditiously within stipulated time.*

*Learned counsel for the petitioner has submitted that a Complaint No.1177 of 2014 (Mahmood Ahmad Siddiqui versus Abdul Kayum Khan), under Section 138 Negotiable instruments Act, 1881 is at the stage of recording of statement under Section 313 Cr.P.C. but the accused is not cooperating in the trial and is not appearing for recording of his statement, as such, the court below has issued NBW against the accused.*

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*The present case is summoned trial and is pending for more than six years. It has also been submitted that ends of justice would be met if necessary direction is issued to Additional Judge-VI, Lucknow to consider and decide the aforesaid case, in accordance with law, within stipulated time, to which, learned AGA has no objection.*

*The Hon'ble Apex Court in the judgment dated 14.07.2016 rendered in Special Leave Petition (CC) No.14061 of 2016; **Gayathri vs. M. Girish** has relied upon the following:-*

*"In this context, we may profitably reproduce a passage from **Shiv Cotex v. Tirgun Auto Plast (P) Ltd.; (2011) 9 SCC 678** wherein it has been stated that it is sad, but true, that the litigants seek ? and the courts grant ?adjournments at the drop of a hat. In the cases where the Judges are little proactive and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. The court has further laid down that it is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further.*

*In **Noor Mohammed v. Jethanand; (2013) 5 SCC 202** commenting on the delay caused due to dilatory tactics adopted by the parties, the Court was compelled to say:-*

*"In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect potentiality to bring in a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach."*

*And, again:-*

*"Thus, from the aforesaid, it is clear as day that everyone involved in the system of dispensation of justice has to inspire the confidence of the common man in the effectiveness of the judicial system. Sustainance of faith has to be treated as spinal sans sympathy or indulgence. If someone considers the task to be Herculean, the same has to be performed with solemnity, for faith is the "elan vital" of our system."*

*In the case at hand, it can indubitably be stated that the defendant-petitioner has acted in a manner to cause colossal insult to justice and to the concept of speedy disposal of civil litigation. We are constrained to say the virus of seeking adjournment has to be controlled. The saying of Gita "Awake! Arise! Oh Partha" is apt here to be stated for guidance of trial*

courts."

*The speedy justice is the fundamental right of every litigant but at the same time the long pendency of old cases also cannot be ignored and no one can be permitted to linger on the proceedings unnecessarily. It has also been experienced that the lawyers also abstain from work on various counts. A counsel appearing for a litigant has to have institutional responsibility and it is expected that unnecessary adjournments should not be sought.*

*However, considering all facts and circumstances of the case, without entering into merits of the case, Additional Judge-VI, Lucknow is hereby directed to consider and decide the aforesaid case in accordance with law after affording opportunity of hearing to all parties concerned expeditiously, if possible within three months from the date of production of a certified copy of this order.*

*With the aforesaid observations and directions, the petition is disposed of finally. "*

Learned counsel for the applicant further submits that copy of the aforesaid order was submitted before the learned trial court on 01.02.2021, however, the order dated 06.03.2020 passed by co-ordinate Bench of this Court has not been complied. Thereafter, being no alternative, the applicant has approached this Court by filing Application under Section 482 Cr.P.C. No.10612 of 2023, wherein co-ordinate Bench of this Court while passing the order dated 31.10.2023 had directed the learned trial court to conclude the proceedings within three months from the date of production of certified copy of this order before it and the learned District & Sessions Judge, Lucknow was also directed to monitor the trial of the case in question. The order dated 31.10.2023 is being quoted hereunder:-

*"1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material brought on record.*

*2. This application has been filed seeking direction to the Additional Judge, Court No. 12, Lucknow to decide Complaint No. 1177 of 2014 (Mahmood Ahmad Siddiqui Vs. Abdul Kayyum Khan) within a stipulated period to be fixed by this Court.*

*3. Learned counsel for the applicant submits that aforesaid complaint case under the provisions of Negotiable Instruments Act is pending since 2014. It is further submitted that earlier an Application u/s 482 No. 1652 of 2020 was also filed for expedite disposal of the said complaint case, which was disposed of vide order dated 06.03.2020 with the direction to the court below to conclude the trial of the case in question within three months from the date of production of a certified copy of the order. It is submitted that the aforesaid order was placed before the court below, but the same has not been complied with. It is vehemently submitted that the case is being listed for cross-examining the witness and after 2nd May, 2022, only adjournments are being taken by the accused persons. It is,*

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thus, submitted that a direction may be issued to the court concerned to conclude the trial within a stipulated period.

4. Learned A.G.A. has no objection to the same.

5. Considering the arguments advanced by the learned counsel for the applicant, learned A.G.A. and going through the contents of the application as well as other relevant documents, including the order dated 06.03.2020 passed by this Court, it is evident that vide order dated 6th March, 2020, the trial court was directed to conclude the trial within three months from the date of production of the certified copy of the order. It is also evident that the said order was placed before the court concerned, but till today, the trial in question has not been concluded.

6. In view of above facts and circumstances, the present application is disposed of with the direction to the court below to conclude the trial within three months from the date of production of a certified copy of this order. It is also directed that, in case, applicant fails to cross-examine the witnesses in the meantime, then also, appropriate orders shall be passed by the court below.

District & Sessions Judge, Lucknow is directed to monitor the trial of the case in question.

7. Office is directed to communicate this order to the District & Sessions Judge, Lucknow for necessary compliance, forthwith. "

Learned counsel for the applicant further submits that copy of the aforesaid order dated 31.10.2023 was served before the learned trial court on 01.12.2023 and in spite of more than five months time, the trial court has not decided the case yet. He further submits that the trial court had fixed long dates and around five to six dates have been fixed in the matter but the case had not been decided yet in compliance of the order dated 06.03.2020 and 31.10.2023.

Learned counsel for the applicant further submits that there was specific direction to the learned District and Sessions Judge, Lucknow for monitoring the case in question vide order dated 31.10.2023, however, till date there is no monitoring done by the learned District and Sessions Judge, Lucknow and even the learned District and Sessions Judge, Lucknow had dismissed the transfer application of the applicant, which was moved by the applicant before him for transferring of the case from present presiding officer to another competent court in the same district i.e. Lucknow.

Learned counsel for the applicant further submits that the learned District and Sessions Judge, Lucknow had dismissed the transfer application in a cursory manner without considering the fact that there is already a direction issued by the Hon'ble High Court for expeditious disposal of the case. He further

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submits that the courts are available but they are not discharging their duties for the benefit of litigants and not deciding the matter expeditiously, as such, the directions issued by Hon'ble Apex Court as well as Hon'ble High Court are being violated deliberately, which is contemptuous, therefore, an explanation may be called from the learned District and Sessions Judge, Lucknow as well as from the learned Special Judge, N.I. Act, Lucknow as to explain why the delay has been caused on their part despite the orders passed by this Court dated 06.03.2020 and 31.10.2023. He further submits that the applicant is suffering from an irreparable loss, which cannot be adjusted in terms of money or any other form due to the delay on the part of concerned judge as the trial is of the year 2014.

On the other hand, Sri Ashok Kumar Singh, learned A.G.A.-I for the State submits that it is a very serious matter that the judges who are sitting in trial are not working as per guidelines issued by the Hon'ble Apex Court and Hon'ble High Court and they are not discharging their duties for the litigants. This case in question is of the year 2014, and despite two orders passed by co-ordinate Bench of this Court dated 06.03.2020 and 31.10.2023 for expeditious disposal, the trial of the case has not been concluded yet and even the learned District and Sessions Judge, Lucknow has not monitored the case in spite of direction issued by co-ordinate Bench of this Court vide order dated 31.10.2023. He further submits that an explanation may be called from the learned District and Sessions Judge, Lucknow as well as from the learned Special Judge, N.I. Act, Lucknow to explain why the orders passed by co-ordinate Bench of this Court dated 06.03.2020 and 31.10.2023 have not been complied with.

After considering the arguments as advanced by learned counsel for the applicant as well as learned A.G.A.-I for the State, this Court is also of the view that the learned trial court, before whom the trial of the present case is pending since 2014, in spite of two orders issued by co-ordinate Bench of this Court vide orders dated 06.03.2020 and 31.10.2023, had not decided the case. It is simply putting long dates to avoid the hearing and shifting its burden. The learned District and Sessions Judge, Lucknow and learned Special Judge, N.I. Act, Lucknow are also adopting a casual approach and taking the orders of co-ordinate Bench of this Court in a very casual manner. The learned District and Sessions Judge, Lucknow had not given heed to the case and had rejected the transfer application of the applicant for transferring the case from the present presiding officer to another court in the same district, which is also a very casual approach adopted by the District and Sessions Judge, Lucknow. The impugned order is under challenged in the

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present case.

This Court is also of the view that the working of the learned Special Judge, N.I. Act, Lucknow appears to be very casual and he had also avoided to decide the case. The litigants who come before this Court to get justice are facing delay tactics adopted by the learned trial courts. In the present case also, the first order was passed by co-ordinate Bench of this Court on 06.03.2020 for expeditious disposal of the case i.e. within three months, however, four years have been passed but the case has not been decided yet and the second order was also passed by co-ordinate Bench of this Court on 31.10.2023 for expeditious disposal of the case i.e. within three months, however, the case has not been decided yet. As such, both the orders have not been complied by the learned trial court in its full spirit and approach of delaying tactics have been adopted by the learned trial court just to linger on the matter and even directions to learned District and Sessions Judge, Lucknow to monitor the trial of the case has also not been done.

In view of aforesaid observations, this Court feels it necessary to call an explanation from the learned District and Sessions Judge, Lucknow to explain why he has not monitored the trial of the case in spite of order passed by co-ordinate Bench of this Court on 31.10.2023 and an explanation from the learned Special Judge, N.I. Act, Lucknow before whom the proceedings of the instant case is pending, to explain why the case has not been decided yet despite the two orders have been passed by co-ordinate Bench of this Court dated 06.03.2020 and 31.10.2023.

The aforesaid explanation of both the officers be given by personal affidavit to this Court on or before the next date of listing.

Put up this case on 29.05.2024 for further orders of this Court.

Let a copy of this order be communicated to the learned District and Sessions Judge, Lucknow as well as the learned Special Judge, N.I. Act, Lucknow through Senior Registrar of this Court for its necessary compliance.

Let a copy of this order be also provided to Sri Ashok Kumar Singh, learned A.G.A.-I for the State to forward the same before the concerned officers for its necessary compliance.

**Order Date :- 8.5.2024**

Saurabh