"11) In the present case, the learned Magistrate has not conducted any inquiry so as to satisfy himself that the allegations in the complaint constitute an offence and when considered alongwith the statements recorded and the result of such inquiry. There is ground for proceedings against the petitioners under Section 204 CrPC. There is nothing on record to show that the learned Magistrate has applied his mind to arrive at a prima facie conclusion. It must be recalled that summoning of accused to appear the criminal court is a serious matter affecting the dignity self-respect and image in the society. A process of criminal court cannot be made a weapon of harassment.

(12) Learned Magistrate has passed a very cryptic order simply by saying that the statement of complainant as well as witnesses recorded under Sections 200 and 202 CrPC are perused and accused are summoned such order per se itself illegal which could not stand the test of law."

36. Thus, from the aforesaid judgements it is categorically clear that summoning of a person is a very serious matter and ought not to have been done in a routine manner. Before summoning the Magistrate must satisfy himself that there are sufficient grounds for proceeding against the person and summoning cannot be permitted to be done by a cryptic order, which do not reflect the application of mind of learned Magistrate.

37. Thus, from the perusal of the impugned order dated 06.10.2017, passed by learned Magistrate summoning the petitioners herein it is apparent that the same is a cryptic order and has been passed without categorically recording his satisfaction and assigning any reason or its satisfaction whether the offence under Section 406 is made out. Since, in the previous F.I.R. filed by the opposite party no.2 a Final Report was submitted which was protested by the opposite party no.2, which was rejected by the court concerned and after delay of more than five years, the instant complaint has been filed on the same set of facts without there being any special circumstances warranting the second complaint to be entertained. Therefore, in the considered opinion of this Court, the trial court has erred in entertaining the second complaint and further the order impugned is a very cryptic order, whereby the applicants have been summoned. Therefore, the same is not sustainable in law and the same is accordantly ***set-aside***. Consequently, the order passed by Revisional Court is also ***set-aside.***

38. The petition under Article 227 is **allowed** accordingly.

39. In view of the facts and circumstances, since the application under Section 482 Cr.P.C. has been filed with delay of more than six years without their being any explanation for the same and further as already held in the considered opinion of this Court the complainant is trying to give criminal colour to the civil dispute between the parties. In view thereof, the Application under Section 482 Cr.P.C. is ***dismissed.***

(2025) 3 ILRA 84
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.03.2025

BEFORE

THE HON'BLE NEERAJ TIWARI, J.

Matters Under Article 227 No. 8117 of 2024
(Civil)

Raj Kumar Chauturvedi ...Petitioner
Versus
U.P. Awas Evam Vikas Parishad & Ors. ...Respondents

Counsel for the Petitioner:
Sri Rahul Sahai

Counsel for the Respondents:
Sri Krishna Mohan Garg, Sri Nipun Singh, Sri Saurabh Pandey, Ms. Surabhi Pandey, Sri Suresh Chandra Pandey

Civil Law-The Constitution of India, 1950-Artcle 227 -The Code of Civil Procedure, 1908-Section 107, Order 6 Rule 17--- Once the amendment application has been rejected and the same had not been challenged, petitioner cannot be given liberty to bring very same facts again after some time by filing new application. In fact such act of petitioner is barred by the Principle of res judicata---Court has rightly rejected the amendment application by the impugned order---The appellate Court has ample power to take additional evidence or to require such evidence to be taken, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction---no illegality in the impugned order. **(Para 11, 15 & 16)**

Petition dismissed. (E-15)

List of Cases cited:

1. Ashok Kumar Srivastava Vs National Insurance Co. Ltd. & ors., AIR 1998 Supreme Court 2046

2. B. V. Nagesh & anr. Vs H. V. Sreenivasa Murthy, (2010) 13 SCC 530

(Delivered by Hon'ble Neeraj Tiwari, J.)

1. Heard Sri Rahul Sahai, learned counsel for the petitioner, Sri K. M. Garg, learned counsel for the respondent nos. 3/1, 3/3 & 3/5, Sri S. C. Pandey, learned counsel for the respondent no. 3/2 and Sri Saurabh Pandey, leanred counsel for the respondent nos. 3/4/1 to 3/4/7.

2. Present petition has been filed seeking for the following reliefs:-

" I. Issue a suitable order or direction for setting aside the impugned judgment/order dated 17.05.2024 passed by Additional District Judge Court No. 10, Mathura in Civil Appeal No. 40 of 2010 (Raj Kumar Chaturvedi and others Vs. U.P. Awas Evam Vikas Parishad and others).

II. Issue a suitable order or direction to allow the amendment application 114 ka or in the alternative to set-aside the judgment/order dated 20.07.2018, 02.02.2019 and 27.01.2019 passed by the Additional District Judge, Court No. 8, Mathura & Additional District Judge/Special Judge, Court No. 4, Mathura respectively."

3. Learned counsel for the petitioner submitted that earlier land was acquired by respondent No. 1 and suit no. 16 of 1988 for declaration and permanent injunction has been filed. Brief facts of the case are that land was acquired by respondent no.1 but later on the said proceeding has been dropped vide notification dated 07.07.2005. Later on, the said notification was recalled by the respondent no.1 by another notification dated 25.04.2008. Aggrieved that petitioner had preferred a writ petition before this Court being C.M.W.P. No.529 of 2009 which was allowed vide order dated 31.08.2010. During pendency of the aforesaid petition, the suit of the plaintiff/petitioner was itself decided vide judgement/decree dated 30.03.2010. Being aggrieved, the petitioner has preferred Civil Appeal No. 40 of 2010 before District Judge, Mathura. During pendency of the appeal as the writ petition filed earlier was allowed, petitioner has moved two amendment applications numbered as 65

Ka and 67 Kha which are based upon the judgement of the High Court dated 31.08.2010. The said amendment applications were rejected vide order dated 20.07.2018 with the finding that judgement of High Court shall be considered while deciding the appeal.

4. He next submitted that in between the respondent no.1 has filed S.L.P. © Nos. 34271 of 2010 and 34090 of 2010 which was disposed of permitting the appellant to seek a recall/review application against the order dated 31.08.2010. The recall application was filed for recalling of the order dated 31.08.2010 which was rejected by this Court vide order dated 07.04.2017. Against that respondent no.1 has filed Civil Appeal No.3025-3026 of 2022 before Hon'ble Apex Court which was dismissed vide order dated 20.04.2022.

5. He next submitted that at this stage petitioner has preferred amendment application to incorporate the above developments in the plaint, which has been rejected vide impugned order dated 17.05.2024 on the ground that earlier also the similar nature of amendment application had already been dismissed by this Court. He next submitted that in light of new development by the order of this Court as well as Hon'ble Apex court, fact are necessary to be incorporated. Therefore, the amendment application must have been allowed and for that delay cannot be a ground. So far as, the order dated 20.07.2018 is concerned, the delay cannot be a ground in case some development has taken place before the High Court. He next submitted that though legal situation at the stage of rejection of fist amendment application vide order dated 20.07.2018 is the same but factual aspect has been changed and the same must have been brought on record. He next submitted that as the suit was decided in light of the notification dated 25.04.2008 giving rights to the private respondents, re-appreciation of amendment is required. Therefore, impugned orders are liable to be set aside.

6. Per contra, Sri K. M. Garg, learned counsel for the respondent nos. 3/1, 3/3 submitted that order dated 20.07.2018 has never been challenged rather petitioner has filed application 83 Ga and 84 Ga alongwith affidavit for recalling the order dated 20.07.2018 which was rejected vide order dated 02.02.2019. Thereafter, he has filed amendment application 87 Ka and 89 Ka for amending the memo of appeal which was also rejected vide order dated 27.01.2019. The aforesaid orders passed in the applications bearing nos. 65 Ka, 67 Ka, 87 Ka and 89 Ka have never been challenged before the High Court. He firmly submitted that in light of Section 96 C.P.C., petitioner has remedy to challenge the said orders in the second appeal. He also pointed out that while rejecting the first amendment application 65 Ka trial Court has clearly held that order of High Court shall be considered at the time of disposal of the appeal. Therefore, there is no occasion for allowing the amendment application. In light of Section 107 and 96 C.P.C,, appellate Court is having all power and it may records its independent finding while deciding the appeal. Therefore, in case of new development, appellate Court may re-appreciate the evidence and give its own finding. In support of his contention, he has relied upon the judgment of Hon'ble Apex Court passed in ***B. V. Nagesh and Another Vs. H. V. Sreenivasa Murthy, (2010) 13 SCC 530.***

7. He also pointed out that as the issues involved in first amendment

application 65 Ka and 67 ka are the same which is in the present amendment application 114 ka, therefore, it is barred by issue estoppel. Therefore, Court has rightly rejected the application.

8. I have considered the submissions made by learned counsel for the parties and perused the record, provisions of law as well as judgement relied upon.

9. From perusal of record, undisputed facts of the case are that during pendency of Suit No. 16 of 1988 for declaration of permanent injunction, land in dispute earlier acquired by respondent no.1 has been dropped vide notification dated 07.07.2005, but later on said notification was recalled by respondent no.1 vide another notification dated 25.04.2008.

10. Being aggrieved, petitioner preferred writ petition i.e. C.M.W.P. No. 529 of 2009 which was allowed vide order dated 31.08.2010. During pendency of petition the Suit No. 16 of 1988 was decided vide judgment and decree dated 30.03.2010. Against that petitioner has preferred Civil Appeal No. 40 of 2000 before District Judge, Mathura as C.M.W.P. No. 529 of 2009 which was allowed vide order dated 31.08.2010. During pendency of appeal, petitioner has moved two amendment applications numbered as 65 Ka and 65 Kha. In light of judgement of High Court dated 31.08.2010, both the amendment applications have been rejected vide order dated 20.07.2018 with the finding that judgement of High Court shall be considered while deciding the appeal. In between respondent no.1 has filed S.L.P. Nos. 34271 of 2010 and 34090 of 2010, which was dismissed with permission to move recall/review application against High Court order dated 31.08.2010. Recall application was filed to recall the order dated 31.08.2010 which was rejected by this Court vide order dated 04.07.2017. Against that respondent no.1 has preferred Civil Appeal No. 3025-3026 of 2022 before Apex Court which has also been dismissed. At this stage, again the amendment applications in question have been filed to bring the facts on record, which have been rejected vide impugned order dated 17.05.2024 on the ground that earlier also similar nature of amendment application had already been dismissed by this Court. The only issue for the Court as to whether after dismissal of S.L.P., Civil Appeal No. 3025-3026 of 2022, amendment applications may have been allowed or not.

11. There is no dispute on the point that to bring the new facts after dismissal of writ petition vide judgment and order dated 31.08.2010, amendment application was filed which was rejected with the observation that aforesaid facts might be seen by the Apex Court while taking final decision. Now in second litigation after dismissal of Civil Appeal No. 3025-3026 of 2022, there is no new fact except to bring the very same facts before this Court which came into picture after allowing the C.M.W.P. No. 529 of 2009 vide order dated 31.08.2010. Therefore, once earlier the amendment application has been rejected vide order dated 20.07.2018 and had not been challenged, petitioner cannot be given liberty to bring very same facts again after some time by filing new application. In fact such act of petitioner is barred by the Principle of res judicata, therefore, Court has rightly rejected the amendment application by the impugned order.

12. This issue has also been considered by the Apex Court in the matter of ***Ashok Kumar Srivastava Vs. National Insurance Co. Ltd. And others, AIR 1998***

Supreme Court 2046. The relevant paragraph nos. 14 and 15 are being quoted as under:-

"14. Though the said explanation may not stricto sensu apply to the trial stage, the principle couched in it must gain application thereto. It is immaterial that the writ petition was filed only subsequently because the findings made therein became final as no appeal was filed against the judgement. The basic idea in the rule of res judicata has sprouted from the maxim "nemo debet bis vexari pro una at eadem causa" (no man should be vexed twice over for the same cause). In Y. B. Patil V. Y. L. Patil, (1976) 4 SCC 66: (AIR 1977 SC 392), a three-judge Bench of this Court considered the effect of a decision rendered in a writ petition at subsequent stages of the same lis. It held: "The principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be finding at the subsequent stage of that proceeding.

15. Thus, the legal position is clear and the respondent cannot now re-agitate the question regarding maintainability of the suit under Section 34 of the Act. However, learned counsel adopted an alternative contention before us that the suit is in effect one for specific enforcement of a contract and such a suit is not conceived under Section 14 of the Act and hence it is not maintainable. According to the learned counsel, the reliefs claimed in the suit, if granted, would result in specific enforcement of a contract of employment. Section 14 (1) (a) of the Act makes it clear that a contract of employment is not specifically enforceable since non performance of it can be compensated by money, contended the counsel."

13. As per Section 107 of C.P.C.,appellate Court is having all power to take additional evidence. Section 107 C.P.C. is being quoted here-in-below-

"107. Powers of Appellate Court- (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power- (a) to determine a case finally; (b) to remand a case; (c) to frame issues and refer them for trial; (d) to take additional evidence or to require such evidence to be taken. (2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein."

14. Power of Appellate Court also considered by the Apex Court in the matter of ***B. V. Nagesh and Another Vs. H. V. Sreenivasa Murthy, (2010) 13 SCC 530*** and Apex Court has held that while deciding the appeal it is duty of the High Court to deal with all the issues and evidence led by the parties before recording finding. Relevant paragraph nos.3 and 4 are being quoted here-in-below-

"3. How the regular first appeal is to be disposed of by the appellate Court/High Court has been considered by this Court in various decisions. Order 41 of C.P.C. deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate Court shall state:

(a) the points for determination;

(b) the decision thereon;

(c) reasons for the decision; and –

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put-forth and pressed by the parties for decision of the appellate Court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings."

15. From perusal of 107 C.P.C. as well as judgment of Hon'ble Apex Court in ***B. V. Nagesh(Supra),*** it is apparent that appellate Court has ample power to take additional evidence or to require such evidence to be taken, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction. Therefore, there is no illegality in the impugned order dated 17.05.2024.

16. Therefore, in light of facts of the case, provisions of CPC and law laid down by the Hon'ble Apex Court in ***B. V. Nagesh(Supra),*** I found no infirmity in the impugned order dated 17.05.2024. Petition lacks merits and is accordingly, ***dismissed.***

17. No order as to costs.

(2025) 3 ILRA 89
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.03.2025

BEFORE

THE HON'BLE PIYUSH AGRAWAL, J.

Matters Under Article 227 No. 8387 of 2024

M/s LR Print Solutions ...Petitioner
Versus
M/s Exflo Sanitation Pvt. Ltd. & Ors. ...Respondents

Counsel for the Petitioner:
Mr. Abhishek Kumar, Mr. Ishwar Kumar Upadhyay

Counsel for the Respondents:
Mr. Ishir Sripat

Civil Law-The Constitution of India, 1950-Artcle 227 - The Arbitration & Conciliation Act, 1996-Sections 34 & 37- Payment of mense profit for not complying the award in its letter and spirit- Petitioner has not vacated the premises in question within 30 days from the date of passing the award and further the petitioner has not brought any material on record to show that the award was stayed by any of the competent Court--- The arbitral award was not stayed or any material was brought on record otherwise and ultimately the award has been affirmed by the Apex Court and no proceedings are pending thereafter---the contesting respondent no. 1 is entitled for mesne profits as the award was not complied with in its letter and spiri. **(Para 22 & 25)**

Petition lacks merit, dismissed. (E-15)

List of Cases cited: