
(2019) 11 UK CK 0005

Uttarakhand High Court

Case No: Writ Petition (M/S) No. 1970 Of 2010

Priyanwanda

APPELLANT

Vs

Tanvir Akhtar Kurashi &
Another

RESPONDENT

Date of Decision: Nov. 1, 2019

Acts Referred:

- Code Of Civil Procedure, 1908 - Order 6 Rule 17
- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Sudhanshu Dhulia, J

Bench: Single Bench

Advocate: Tapan Singh

Final Decision: Allowed

Judgement

Sudhanshu Dhulia, J

1.Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, The present writ petition has been filed by the petitioner invoking the power of superintendence of this Court under Article 226

of the Constitution of India.

2.Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, This case has a rather chequered history. Initially a suit was filed by the present petitioner for specific performance against

respondent no.2, which was dismissed by the trial court vide order dated 15.11.1994. Against the order dated 15.11.1994, an appeal was filed by the

petitioner which was allowed by the Appellate Court and the suit was decreed vide order dated 15.12.2003. The defendant thereafter preferred a

second appeal which was dismissed. Thereafter in execution, objections were raised by the defendant which were rejected by the executing court and

thereafter the defendant approached this Court by means of a writ petition being WPMS No.407 of 2006, where the order of the executing court was

stayed vide order dated 22.04.2006. Finally, the plaintiff/petitioner approached the Hon'ble Apex Court where the order of this Court was stayed

and ultimately the execution was granted and the decree was executed.

3. In sum and substance, the sale deed was to be executed in favour of the petitioner/plaintiff. The defendant, all the same, filed

another suit for cancellation of the sale deed in the year 2006 and the relief which was sought was only for the cancellation of the sale deed. There

was no relief for giving possession of the property. This relief was sought by the defendant by way of an amendment application under Order 6 Rule

17 of CPC, which was dismissed by the trial court on ground that for the additional relief, no court fees has been paid. Against the said order, no

revision was filed and therefore this order has attained the finality.

4. Nevertheless, after a period of more than 11 months, a similar application was filed by the respondent on 07.11.2009, in which

objections were made by the defendant i.e. the petitioner before this Court, inter alia, stating that the similar application of the plaintiff has already

been rejected on ground that no court fee was paid and there is no proper valuation for the relief being sought. The trial court without hearing this

objection which has already attained the finality and which had gone in favour of the defendant i.e. the petitioner, this time had allowed the amendment

application of the plaintiff vide order dated 11.10.2010 on ground that res judicata will not apply as the first application was rejected on ground of a

mere technicality and there was no adjudication or finality on that aspect by the court.

5. First and foremost, the initial dismissal of the application vide order dated 06.11.2009 is not merely a technicality but even if it is

considered to be a technicality, and the res judicata may not come in that sense, but the fact remains that the objections of the present petitioner as

defendant in the said suit have not been considered by the court at all. Moreover, it is quite apparent that there is an abuse of the process at the hands

of the plaintiff/present respondents.

6.Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, In view thereof, the impugned order dated 11.10.2010 cannot be sustained and it is hereby set aside. Writ petition is allowed.

The learned court below is directed to proceed with the matter on a day-to-day basis and conclude the same as expeditiously as possible, but definitely

within a period of six months from the date of production of a certified copy of this order.