courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 29/08/2026

(2017) 04 UK CK 0027

In the Uttarakhand High Court

Case No : 7 of 2009

Chief Executive Officer, Uttarkashi, APPELLANT

Vs

Shri Nand Kumar Agrawal (Deceased) RESPONDENT

Date of Decision : 21-04-2017

Acts Referred:

Citation : (2017) 04 UK CK 0027

Hon'ble Judges : Servesh Kumar Gupta

Bench : Single Bench

Advocate : K.N. Joshi, Rajeev Pathak

Final Decision : Dismissed

Judgement

1. This appeal has been directed against the judgment and order dated 28.11.2008 rendered by the Additional District Judge, Haldwani, Nainital, whereby the Original Suit No. 8/1990 instituted by Mr. Nand Kumar Agrawal against Uttar Pradesh Khadi Gramodyog Board (hereinafter referred to as the ''Board'') was decreed with costs and the defendant Board was directed to pay Rs. 34,837.50 along with 9 per cent simple interest.

2. Having heard the learned Counsels of either parties, the brief facts, sans unnecessary details, are that Mr. Agrawal approached the Board to commence the small scale industry in order to produce the mustard oil by installation of the appropriate machinery known as "Power Dhania Machine" in his building. The Board sanctioned installation of machines therefor worth Rs. 42,150/- on 1.5.1982. Mr. Agrawal had to pay regular instalment of such amount which was in the shape of a loan in terms of installation of said machinery. The production could start on 3.3.1984, but eventually the machines developed some technical fault and ceased to function. Written complaint

was moved by Mr. Agrawal on 9.7.1984 which was responded by a return letter of 23.8.1984, but no care for putting the machinery in order was ever taken by the Board. Mr. Agrawal kept on sending several letters, such as dated 7.12.1984,

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chief-executive-officer-uttarkashi-...

28.4.1984, 9.3.1985, 18.5.1986 and so on. Then the Board could take some trouble and sent its invigilator Mr. Shyam Bihari to examine the veracity of the version of Mr. Agrawal. However, no mechanic was ever sent to set the machines in order, with the result Mr. Agrawal could not be benefitted with the rebate of 25 per cent on the whole amount of borrowed money for such machines. Meanwhile, he had to pay two instalments of Rs. 6050/- in addition to the interest of Rs. 1702/-. When the machines ceased to function, then Mr. Agrawal also became helpless in making the payments.

3. It has been apprised by the learned Counsel for the respondents that such machines are still in the premise of Mr. Agrawal and thus their building is unnecessarily occupied with the same.

4. With the facts as highlighted above, Original Suit No. 8/1990 was launched by Mr. Agrawal against the Board and its officers seeking the mandatory injunction for removing the entire machines installed along with all the equipments and prayed the Court to grant any other relief which may be just and proper in the facts and circumstances of the case.

5. Civil Judge (Junior Division), Haldwani dismissed the above suit on 24.7.2007, whereagainst First Appeal No. 38/2007 was preferred which was decreed by the learned Additional District Judge on 28.11.2008.

6. On preferring this Second Appeal, a coordinate Bench of this Court formulated the following two substantial questions of law:

(i) Whether the defendants/appellants were liable to maintain the machinery given to the plaintiff/respondent by the defendants/appellants?

(ii) Whether in view of the para 3 of the agreement dated 31.3.1982, the suit at all was maintainable?

7. After hearing both the parties, I feel that the substantial question of law no. (ii) is unwarranted because the deed dated 31.3.1982 is not in the shape of any agreement, but rather it is the deed of grant though under the signature of both the parties, but that tantamounts to an undertaking of Mr. Agrawal to the effect that he will use the amount of grant for the purpose wherefor it was granted. So, I struck off this second substantial question of law.

8. As regards the first substantial question of law, I feel that there are several communications starting from 3.3.1984 to 18.5.1986 by Mr. Agrawal to the Board, which inherently speak that the Board was responsible for setting the entire machines/set up in motion if any fault is developed therein. Therefore, this substantial question of law is answered in favour of the plaintiff and against the second appellants herein.

9. The judgment under appeal does not suffer with any infirmity. So, it is hereby affirmed. At the same time, it is hereby made clear that 9 per cent simple annual interest shall be exigible with effect from the date of institution of the suit. The

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chief-executive-officer-uttarkashi-…

Board is directed to remove the entire machinery/equipments from the premises of Mr. Agrawal within six weeks from today. Otherwise, the legal heirs of Mr. Agrawal shall be at liberty to dispose of such ruined/non-functional machinery/ equipments as waste material and they shall also enjoy the sale proceeds of the same. Money deposited by the appellants and the interest accrued thereon shall be released in favour of the respondents herein. Any other amount, if found due upon calculation, shall also be deposited by the appellants, failing which the same shall be recoverable from them.

10. This second appeal fails and it is hereby dismissed. Let the LCR be sent back.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chief-executive-officer-uttarkashi-…