
(2018) 01 UK CK 0047
In the Uttarakhand High Court
Case No : 20 of 2017

Diwan Singh

APPELLANT

Vs

Sanjay Lakhotia & Another

RESPONDENT

Date of Decision : 10-01-2018

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 22 Rule 3](#), [Order 22 Rule 4](#), [Order 22 Rule 6](#) -
[Provincial Small Cause Courts Act, 1](#)

Citation : (2018) 01 UK CK 0047

Hon'ble Judges : Sharad Kumar Sharma

Bench : Single Bench

Advocate : Rajesh Joshi, ?Sudhir Kumar

Final Decision : Disposed off

Judgement

1. The revisionist/tenant has challenged the order passed by the learned District Judge while sitting in a Revision under Section 25 of Provincial

Small Causes Courts Act.

2. Brief backdrop of the case is that the respondents herein who are the successors of the Principal Landlord Late Shri Raghunandan Lakhotia

was a plaintiff in a suit filed under Section 15 of the Act registered as SCC Suit No. 12/2010 before the SCC Court Civil Judge (S.D.),

Ramnagar, District Nainital. Apparently from the record, the said suit as instituted by the predecessor of the present respondent was dismissed by

the Judge, Small Causes vide judgment dated 06.4.2015.

3. Against this judgment dismissing the suit, a revision was preferred by the predecessor of the present respondent invoking Section 25, which was

registered as SCC Revision No. 23/2015 "Raghunandan Lakhotia vs. Diwan Singh". The said revision was ultimately heard on merits and the

judgment was reserved by an order dated 05.8.2016. After the judgment was reserved, the sole revisionist Raghunandan Lakhotia met with the

sad demise on 18.8.2016. The fact about his death was brought on record by virtue of an application, which was filed before the Revisional Court

by the respondent/landlord.

4. As a matter of fact and as contemplated under law also, in view of provision contained under Order 22 Rule 6 which is quoted herein under:

No abatement by reason of death after hearing- Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or

not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment,

but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced

before the death took place.

5. If a death takes place of either of parties in a proceedings in which the arguments have already been concluded, it will have no bearing on the

proceedings itself. But, still the fact remains that after the information was supplied about the death of Mr. Raghunandan Lakhotia by an application

Paper No. 18 Ga and before the delivery of judgment could take place, the successors of the revisionist on 17.9.2016 filed the substitution

application bringing on record the heirs of the deceased Mr. Raghunandan Lakhotia.

6. This application for substitution was objected by the tenant/petitioner on the ground that no application for substitution could have been filed on

account of the legal implications flowing from Order 22 Rule 6 and coupled with the fact that at the time when the application under Order 22 Rule

3/4 was filed by the revisionist, no lis was pending consideration, but the application for substitution as submitted by the revisionist was allowed by

the order dated 04.11.2016. The operative portion of the order reads as under:

VERNACULAR MATTER OMITTED

7. By allowing the substitution, the revisionist was directed to bring on record the substituted heirs by carrying the necessary amendment in the

Revision itself.

8. The learned counsel for the writ petitioner submits that this substitution was uncalled for on account of the reasons already assigned above and

further on account of the fact that the lis stood concluded. And in a concluded lis no substitution could have been made.

9. On the other hand, Mr. Sudhir Kumar, learned counsel for the respondents, submits that filing of a substitution application was a natural

corollary, which was to be followed because of the death of the Principal Revisionist from whom they derive the rights as successors. What he tries

to interpret the order dated 04.11.2016, as if it was the order leading to a situation where the revision itself was required to be reheard. But, this

court is not in agreement with the arguments as extended by the learned counsel for the respondents, the reason being on scrutiny of the operative

portion of the order, it nowhere remarks that as a consequence of allowing the substitution application, the revision itself was directed to be

reheard, but rather it only contained a direction to the applicants to the substitution application to amend the memo of revision.

10. Furthermore, the arguments which has been extended by the learned counsel of the respondent to the effect that as a consequence if the

conclusion of the arguments on 05.8.2016, the judgment was supposed to be delivered within a period of thirty days thereafter and consequently

as a result of the impugned order dated 04.11.2016, the revision ought to be heard afresh. This argument too is not acceptable, the reason behind

it is a provision of CPC which restricts the court to deliver a judgment within a period of thirty days from the date of conclusion of arguments is not

dealing with the contingency as involved in the instant case because after the culmination of the arguments on 05.8.2016, the controversy pertaining

to the effect of substitution was still kept under dispute by filing of the present writ petition also. Hence, as a matter of fact the allowing of

substitution and bringing of respondents on record, would be meeting the intentions of Order 22 Rule 6 and denovo herein is not required to be

undertaken.

11. In that way of the matter, this court will have to carve out a way so that the lis may be decided while exercising its extra ordinary jurisdiction

under Article 227 of the Constitution of India. Thus, this writ petition is disposed of in the following manner:

(a) Since the substitution as allowed to be carried by the order dated 04.11.2016 will have no bearing on the proceedings which already

concluded by the arguments dated 05.8.2016, it will not create any impediment in rendering the judgment in pursuance to the arguments which has

concluded on 05.8.201.

(b) As already held above, since the circumstances which existed was as such which rendered the Revisional Court in a precarious situation for not

delivering the judgment is now being eradicated by the present adjudication and it is directed that the Revisional Court who has reserved the

judgment on 05.8.2016 will deliver the same within thirty days from today.

(c) As a consequence of the impugned judgment, since it does not mandate or support the arguments of the respondents, no fresh hearing is

required to be held.

12. Accordingly, writ petition stands disposed of.

13. No order as to costs.