

(2020) 01 UK CK 0056

In the Uttarakhand High Court

Case No : CLMA Exemption Application No. 288 Of 2020 CLMA Delay
Condonation Application No. 289 Of 2020 In Special Appeal No. 07 Of
2020

Girish Chandra Dictiya

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Citation : (2020) 01 UK CK 0056

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Amar Murti Shukla, B.S. Parihar, Seema Sah

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. The application, seeking condonation of delay of 151 days in preferring the appeal, is not opposed by Sri B.S. Parihar, learned Standing Counsel for the State of Uttarakhand and Ms. Seema Sah, learned Standing Counsel for the respondent-Bank, and is, therefore, ordered. The delay stands condoned.

2. The Exemption Application (CLMA No. 288 of 2020) is also not opposed by Sri B.S. Parihar, learned Standing Counsel for the State of Uttarakhand and Ms. Seema Sah, learned Standing Counsel for the respondent-Bank, and is, accordingly, ordered.

3. This Special Appeal is preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No. 933 of 2019 dated 09.07.2019

seeking a writ of mandamus, directing the Sub-Divisional Magistrate and the Tehsildar, Paati tehsil, Champawat district, to release the land of the

appellant-writ petitioner's father, as his father had paid the entire loan amount to the respondent-Bank.

4. Facts, as stated in the affidavit filed in support of the writ petition, are that the appellant-writ petitioner's father took an agricultural loan from

the respondent-Bank in the year 1966-67; because of non-payment of the loan amount, the respondent-Bank had confiscated his father's land; the

respondent-Bank had, thereafter, promulgated a Scheme called the 'Ekmukht Samadhan Yojana, 2015', in terms of which the respondent-Bank

had issued a letter to the appellant-writ petitioner's father to deposit the entire loan amount for his land to be given back to him free of

encumbrances; as the appellant-writ petitioner's father died, the appellant-writ petitioner had deposited the entire amount as a one-time settlement;

after depositing the amount, the respondent-Bank had issued a letter to the Tehsildar, Paati tehsil on 24.12.2018 stating that the appellant-writ

petitioner's father had deposited the loan amount, and the confiscated land may be deemed free from encumbrances ; the respondent-Bank had

also issued a certificate dated 24.12.2018 that the land was free from mortgage, and from the loan liability; relying on the said certificate, the

appellant-writ petitioner had submitted a representation dated 29.12.2018 to the Teshildar to release the land of his father, which was confiscated due

to non-payment of the loan amount; however, no decision was taken on the appellant-writ petitioner's representation. Aggrieved thereby, the

appellant-writ petitioner invoked the jurisdiction of this Court.

5. In the order under appeal, the learned Single Judge observed that it was an extremely old matter pertaining to 1966-67; the Court had been apprised

that, in the revenue records, the land could not be identified at this stage, nor had any identification been given by the appellant-writ petitioner; and this

aspect could not be looked into a writ petition, and that too at such a belated stage. Consequently, the writ petition was dismissed.

6. While it is, no doubt, true that the loan taken by the appellant-writ petitioner's father was during the year 1966-67, the fact remains that, if the

appellant-writ petitioner's averments in the writ affidavit are true, then the respondent-Bank had promulgated a one-time settlement scheme on

24.03.2015, pursuant to which the appellant-writ petitioner had repaid the entire loan amount borrowed by his father, and the respondent-Bank had

issued a letter to the Teshildar on 24.12.2018 to the effect that the loan taken by the appellant-writ petitioner's father had been repaid in its

entirety, and the confiscated land be treated as free from encumbrances. The appellant-writ petitioner had invoked the jurisdiction of this Court on

03.04.2019, less than four months after the date on which the respondent-Bank had issued such a certificate on 24.12.2018. The writ petition could,

therefore, not be said to be unduly belated or to suffer from unexplained delay and laches.

7. The writ petition was filed on 03.04.2019, notice was issued to the respondents on 04.04.2019, and they were granted three weeks's time to file

their respective counter-affidavits on 10.05.2019. The fact, however, remains that neither respondents 2 and 3 nor the 4th respondent have filed their

respective counter affidavits, and Writ Petition (M/S) No. 933 of 2019 was disposed of on 09.07.2019, even without counter affidavits being filed,

merely on the basis of the instructions obtained by them. In the absence of a counter affidavit, the appellant-writ petitioner was in no position to rebut

the instructions furnished by the Tehsildar to the learned Standing Counsel, and by him to the Court.

8. We are satisfied, therefore, that the order under appeal must be set aside, and the writ petition restored to file.

9. Both Sri B.S. Parihar, learned Standing Counsel for the State Government appearing on behalf of respondent nos. 1 to 3, and Ms. Seema Sah,

learned counsel for the respondent-Bank, submit that they would file their respective counter-affidavits, in the writ petition, within four weeks from

today. It is open to Sri Amar Murti Shukla, learned counsel for the appellant-writ petitioner, to request the learned Single Judge to take up the writ

petitioner either for grant of interim relief, or for final hearing, any time after 11.02.2020.

10. The Special Appeal is disposed of accordingly. No costs.