

(2011) 10 UK CK 0030

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1061 of 2005

Gurukul Kangari Vishwavidyalaya Haridwar and another

APPELLANT

Vs

Arya Pratinidhi Sabha Punjab Guru Dutt Bhawan Jalandhar
and others

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, Order 9 Rule 4, Order 9 Rule 9
Limitation Act, 1963 — Section 5

Citation : (2011) 10 UK CK 0030

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon'ble B.S. Verma, J.—By means of this writ petition, the petitioners have sought a writ in the nature of certiorari quashing the impugned order dated 18-5-2005 passed by the Civil Judge (Junior Division) Haridwar, whereby the application moved by the petitioners to recall the order dated 17-12-2004 has been dismissed for default of the applicant-petitioners.

2. From a perusal of the record, it reveals that the petitioners filed Original Suit bearing No. 342 of 1992 against the respondents for cancellation of sale deed of the defendants. The suit was decreed ex parte by judgment and decree dated 26-9-1996 passed by the trial Court.

3. The defendants moved an application under Order 9, Rule 13 C.P.C. for setting aside ex parte decree and ultimately the ex parte decree was set aside. Subsequently, the suit was dismissed in default of the plaintiffs on 8-9-2001.

4. The plaintiff-petitioners moved an application under Order 9, Rule 9 C.P.C. for setting aside the ex parte order on 5-10-2001. The application was registered as Misc. Case No. 56 of 2001. The said case was dismissed in default by order dated 17-12-2004.

5. The plaintiffs again moved an application under Order 9, Rule 4 C.P.C. on 20-4-2005 along with an application for condonation of delay. By the impugned order dated 18-5-2005, the application of the petitioners to recall the order dated 17-12-2004 has been dismissed on the ground of delay, which gave rise to the present writ petition.

6. Learned counsel for the plaintiff-petitioners has contended that initially the suit was dismissed in default of the plaintiffs and no prejudice would be caused to the defendants if the dismissal order dated 18-5-2005 is recalled and the restoration application is decided on its own merits by the trial Court.

7. The petitioners have annexed copy of application filed u/s 5 of the Limitation Act before the trial Court in Misc. Case No. 25 of 2005 as Annexure No. 6 to the writ petition. The delay condonation application was supported by an affidavit sworn in by Mahendra Kumar, an officer of the establishment of the plaintiffs.

8. Having heard the submissions of the learned counsel for the parties and having perused the material placed before this Court coupled with the fact that when the order dated 18-5-2005, the other party/defendants were not present before the Court, I am of the view that in the interest of justice the application moved by the petitioners to recall the order dated 17-12-2004 may be allowed and the delay be condoned subject to payment of costs of Rs. 500/- payable to the defendants. The writ petition, therefore, deserves to be allowed.

9. The writ petition is allowed. The impugned order dated 18-5-2005 is set aside, subject to payment of costs of Rs. 500/- payable to the defendants within a period of one month before the trial court. The trial Court shall decide the restoration application registered as Misc. Case No. 56 of 2001, moved under Order 9, Rule 4 C.P.C. (Annexure No. 5 to the writ petition) on merits in accordance with law after hearing both the parties.