

(2003) 07 UK CK 0004

In the Uttarakhand High Court

Case No : Writ Petition No. 634 of 2003 (M/S)

National Insurance Company Ltd.

APPELLANT

Vs

Addl. District Judge, M.A.C.T.

RESPONDENT

Date of Decision : 18-07-2003

Acts Referred:

Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 173

Citation : (2003) 07 UK CK 0004

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—Heard Sri D.S. Patni, Advocate for the Petitioner.

2. The present writ petition has been filed by the National Insurance Company Ltd; with the following prayer:

1. Issue any appropriate order or direction, directing the Respondent No. 1 to defer the case No. 242 listed on 21.7.2003 to any other date after one month.

2. Any other order or....

3. The Petitioner in the writ petition has stated that against the award dated 9.5.2002 passed by the Motor Accident Claim Tribunal, Dehradun he has preferred an appeal u/s 173 of M.V. Act, with a delay of 5 days and application u/s 5 of Limitation Act has also been filed in which notices were issued. As the record of appeal has not been transferred from Allahabad High Court in the mean time execution has started before the execution Court.

4. In my opinion the writ petition is misconceived and is liable to be rejected in as much as Article 227 of the Constitution of India cannot be used as a weapon for giving directions for postponement of execution proceedings. The Petitioner is

at the liberty to move proper application in the appeal itself before this Court or where the appeal is pending.

5. Moreover, from the facts on record it appears that the appeal was preferred along with the application u/s 5 of Limitation Act and therefore, no orders were passed on the appeal itself. The counsel for the Petitioner has also stated that there is no stay in the appeal pending before Allahabad High Court.

6. Under the aforesaid circumstances I do not find any reason in passing any order for staying the proceedings of case No. 242 of 2002 before the executing court.

7. The writ petition, therefore, is dismissed. However, if the Petitioner prays before the Execution court for time to deposit the amount, the same may be considered in accordance with law.