
(2019) 11 UK CK 0138
In the Uttarakhand High Court
Case No : Special Appeal No. 992 Of 2019

Savita Chaudhary

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 19-11-2019

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5

Citation : (2019) 11 UK CK 0138

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

Bench : Division Bench

Advocate : S.P.S. Panwar, Ajay Veer Pundir, Paresh Tripathi

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. S.P.S. Panwar, learned Senior Counsel appearing on behalf of the appellant-writ petitioner and Mr. Paresh Tripathi, learned Chief Standing Counsel appearing on behalf of the State of Uttarakhand-respondents and, with their consent, the Special Appeal is disposed of at the stage of admission.

2. This Special Appeal is preferred against the interlocutory order passed by the learned Single Judge in Writ Petition (M/S) No. 3433 of 2019 dated 08.11.2019 deferring hearing of the Writ Petition by two weeks to enable the respondents to file their counter-affidavit, and in directing the matter to be listed on 26.11.2019 in the daily cause list, just one week from now.

3. Mr. S.P.S. Panwar, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, would submit that the order under appeal is, in fact, an order refusing to grant the interim relief sought for in the Writ Petition; an appeal would lie against such an order; even otherwise since the appellant-writ petitioner would be deprived of her rights for all times to come, she is entitled to avail her intra-Court appellate remedy under Chapter VIII Rule 5 of the Allahabad High Court Rules; and the Special Appeal should, therefore, be

entertained. We must express our inability to agree.

4. Chapter VIII Rule 5 of the Allahabad High Court Rules, which are applicable to the Uttarakhand High Court, provides for an appeal to a Division Bench from a "judgment". Deferring hearing of the Writ Petition by two weeks, to enable the respondents to file their counter-affidavit, would not constitute a "judgment" and, consequently, an appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules would not lie.

5. With regards the second contention, urged on behalf of the appellant-writ petitioner, that the learned Single Judge has refused to grant interim order, we are of the view that deferring hearing of the Writ Petition by two weeks would not constitute refusal to grant an interim order, for the learned Single Judge, on the respondents filing their counter-affidavit within two weeks, can always, if he considers it so appropriate, pass an interim order in the Writ Petition. The apprehension of the appellant-writ petitioner regarding irretrievable injury is also misplaced since the learned Single Judge has not dismissed the Writ Petition and has, in effect, entertained the same. On the Writ Petition being entertained by the learned Single Judge, any action which is taken by the authorities concerned would, undoubtedly, be subject to further orders in the Writ Petition.

6. Viewed from any angle, we see no reason to entertain this Special Appeal. Suffice it to make it clear that it is open to Mr. Ajay Veer Pundir, learned counsel for the appellant-writ petitioner, to request the learned Single Judge to take up the matter for hearing any day on or after 26.11.2019. We have no reason to doubt that, on any such request being made, the learned Single Judge would give such a request its due consideration.

7. Subject to the aforesaid observations, the Special Appeal fails and is, accordingly, dismissed. No costs.