
(2011) 07 UK CK 0014

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1198 of 2002

Smt. Hemlata Singh and Another

APPELLANT

Vs

Civil Judge (Senior Division) Pithoragarh and Others

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 3A, 100, 2(2)
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 4, 5

Citation : (2011) 07 UK CK 0014

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—Heard learned Counsel for the parties.

2. By means of this writ petition, the Petitioners have sought a writ in the nature of certiorari quashing the order dated 31-7-2000 and the order dated 1-11-2002 passed by the Respondent No. 1-Civil Judge (Junior Division) Pithoragarh and Respondent No. 2-Civil Judge (Senior Division) Pithoragarh. By the order dated 31-7-2000, the suit of the Respondent No. 4 was decreed. By the order dated 1-11-2002, the application for condonation of delay (paper No. 6-C) moved by the Petitioners u/s 5 of the Limitation Act was dismissed by the appellate court and the appeal was dismissed summarily as barred by limitation.

3. Learned Counsel for the Plaintiff-Respondent No. 4 has raised a preliminary objection with regard to the maintainability of the writ petition and has submitted that an order passed on an application for condoning the delay is an order passed on the appeal, which amount to a decree, therefore, the said order is appealable u/s 100 of the CPC and the writ petition under Article 227 of the Constitution of India is not maintainable.

4. Learned Counsel appearing for the Petitioners has submitted that the order

passed on the application u/s 5 of the Limitation Act is not an order, which would amount to a decree contemplated u/s 2(2) of the CPC and such an order is revisable and that a writ petition is maintainable.

5. Learned Counsel for the Plaintiff-Respondent No. 4, in support of his objection, has placed reliance upon the judgment of the Allahabad High Court in the case of Smt. Geeta Bala Goyal and Anr. v. Kailash Chandra and Ors. 2009 (2)A.L.J. 657 wherein it has been held that the order rejecting an application u/s 5 of the Limitation Act or an application under Order 41, Rule 3(A) of the CPC is an order on an appeal and that the said order is appealable u/s 100 of the Code of Civil Procedure.

6. In view of the fact that a final order passed in an appeal amounts to a decree, therefore, in my view the writ petition is not maintainable on the ground of alternative efficacious statutory remedy of second appeal, available to the Petitioners.

7. On the ground of alternative remedy, the writ petition is dismissed. However, liberty is given to the Petitioners to file an appeal u/s 100 CPC along with application u/s 14 and Section 5 of the Indian Limitation Act before the appropriate Court.