
(2009) 11 UK CK 0029
In the Uttarakhand High Court

Swami Abhayanand Ji

APPELLANT

Vs

Swami Swaroopanand Saraswati and Others

RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (2009) 11 UK CK 0029

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Judgement

B.C. Kandpal, J.—By way of this petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 24.09.2003 passed by Civil Judge (S.D.), Chamoli, Camp at Karanprayag allowing the amendment application, filed by the plaintiff - Swami Swaroopanand Saraswati.

2. Heard Sri R.P. Nautiyal, learned Counsel for the petitioner, Sri Pankaj Purohit, learned Counsel for the respondent No. 1 and perused the order in question.

3. Brief facts of the case are that the plaintiff - Swami Swaroopanand Saraswati moved an application for amendment in the plaint and the said application was allowed by the court of Civil Judge (S.D.), Camp at Karanprayag vide order dated 24.09.2003. Against the aforesaid order, a civil revision has preferred by the defendant - Swami Abhayanand Ji before the District Judge, Chamoli, which was dismissed on the ground that the revision does not lie before this Court vide order dated 17.11.2003.

4. Having considered the submission advanced by learned Counsel for the parties, I am of the view that although the order dated 17.11.2003 passed by the District Judge, Chamoli cannot be said to be erroneous but keeping in view the situation at present, it appears that now the power to entertain the revision against the order dated 24.09.2003 passed by Civil Judge (S.D.) lies with the District Judge, in view of the amendment in the C.P.C., which has come into force on 28.02.2006 and by way of the amendment the District Judge has now power

to entertain the revision. The amendment in the C.P.C. runs as follows:

THE CODE OF CIVIL PROCEDURE

(UTTARANCHAL AMENDMENT) ACT, 2005

(UTTARANCHAL ACT No. 01 OF 2006) further to amend the Code of Civil Procedure, 1908 in its application to Uttaranchal An Act

Be it enacted by the State Assembly of Uttaranchal in the Fifty-sixth Year of the Republic of India as follows:

1. Short title, Extent and Commencement:

(1) This Act may be called the CPC (Uttaranchal Amendment) Act, 2005;

(2) It shall extend to the whole of Uttaranchal;

(3) It shall come into force on such date as the State Government may, by notification, appoint in this behalf.

2. Substitution of Section 115 of Act No. 5 of 1908 Revision:

For Section 115 of the Code of Civil Procedure, 1908, hereinafter referred to as the principal Act, the following, section shall be substituted, namely-

115 (1) A superior court may revise an order passed in a case decided in an original suit or other proceeding by a subordinate court where no appeal lies against the order and where the subordinate court has -

(a) exercise a jurisdiction not vested in it by law; or

(b) failed in exercise a jurisdiction so vested; or

(c) acted in exercise of its jurisdiction illegally or with material irregularity

(2) A revision application under Sub-section (1), when filed in the High Court, shall contain a certificate on the first page of such application, below the title of the case, to the effect that no revision in the case lies to the district court but lies only to the High Court either because of valuation or because the order sought to be revised was passed by the district court.

(3) The superior court shall not, under this section, vary or reverse any order made except where -

(i) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding; or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it is made.

(4) A revision shall not operate as a stay of suit or other proceeding before the court except where such suit or other proceeding is stayed by the superior court.

Explanation I - In this section -

(i) the expression "superior court" means -

(a) The district court, where the valuation of a case decided by a court subordinate to it does not exceed five lakh rupees;

(b) the High Court, where the order sought to be revised was passed in a case decided by the district court or where the value of the original suit or other proceedings in a case decided by a court subordinate to the district court exceed five lakh rupees;

(ii) the expression "order" includes an order deciding an issue in any original suit or other proceedings.

Explanation II, - The provisions of this section shall also be applicable to orders passed, before or after the commencement of this section, in original suits or other proceedings instituted before such commencement.

Explanation III, The provisions of this section shall not be applicable to the revisions already filed in the High Court before the commencement of this section.

5. Accordingly, in the light of the aforesaid amendment, I direct that the petitioner may file the revision before the District Judge who, after hearing learned Counsel for the parties shall decide the same on merit and in accordance with law. It is however, made clear that the limitation will not come in the way of the petitioner in filing the revision.

6. With the aforesaid observation, the petition is disposed of finally.