



2024:UHC:9982

HIGH COURT OF UTTARAKHAND AT
NAINITAL

SHRI JUSTICE MANOJ KUMAR TIWARI

Writ Petition Misc. Single No. 3587 of 2024

27 December, 2024

Mahant Hiradas

--Petitioner

Versus

Hansdas Shishya Swami Gangadas & others

--Respondents

Presence:-

Mr. Neeraj Garg and Mr. Rajendra Rya, learned counsel for the petitioner.

JUDGMENT

Petitioner is plaintiff in Original Suit No. 182 of 2017, pending in the Court of First Additional Civil Judge (Senior Division), Haridwar. His opportunity to lead evidence was closed by learned Trial Court vide order dated 20.02.2024. Petitioner moved an application seeking recall of the said order. His application was rejected by learned Trial Court vide order dated 05.12.2024. These two orders have been challenged in this writ petition.



2. Heard learned counsel for the petitioner and perused the record.

3. Perusal of the impugned order dated 20.02.2024 reveals that petitioner's opportunity was closed by learned Trial Court by holding that petitioner wants to linger on the litigation, as earlier, he had made an application stating that if summon is issued to Sri Sadharam, he will appear before the Court for evidence, but, the said witness did not appear despite issuance of summons, and thereafter, petitioner moved an application for summoning the Sub Registrar, who registered the Will in question, without indicating the relevance of the said witness. The reasons assigned by learned Trial Court for closing opportunity of petitioner cannot be said to be flawed. Reasons assigned for rejecting the recall application, filed by petitioner, are also valid.

4. Learned counsel for the petitioner, however, submits that petitioner be given one last opportunity to produce Mr. Sadharam as witness and petitioner is ready to bear the cost for such opportunity. He relies upon a judgment rendered by this Court in Writ Petition (M/S) No. 2497 of 2022 reported in *2022 SCC OnLine Uttarakhand 1254*. Paragraph nos. 6, 7 & 8 of the said



judgment are extracted below:-

“6. It is well settled that Courts are meant to do substantial justice between the parties and that rules of procedure are handmaid of justice, which are meant to facilitate the course of justice and not to scuttle the same. Hon'ble Supreme Court in the case of Sangram Singh v. Election Tribunal, Kotah, AIR 1955 SC 425, held as under:

“16. Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.”

7. Although this Court does not find any infirmity or illegality in the impugned order passed by the Trial Court, as affirmed by the Revisional Court, however, with a view to ensure that the lis is decided not on the technicalities but on merits, this Court thinks that ends of justice would be met if one last opportunity is given to petitioners to cross-examine the Plaintiff Witness.

8. Accordingly, this writ petition is disposed of granting one more opportunity to petitioners to cross-examine the Plaintiff Witness. This, however, will be subject to payment of cost of rupees ten thousand, to be deposited before the Trial Court by 17.10.2022. Out of the amount of cost as imposed by this Court, 50 per cent shall go to District Legal Services Authority, Dehradun and remaining 50 per cent will go to respondents no. 1 and 2. Impugned orders are modified to the extent indicated above.”

5. Learned counsel for petitioner also relies on the judgment rendered in *Sangram Singh v. Election Tribunal, Kotah, AIR 1955 SC 425*, where it was held that procedural law is not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of



6. With a view to ensure that *lis* is decided on merits, the impugned orders dated 20.02.2024 and 05.12.2024 are set aside. Petitioner shall have last opportunity to produce Mr. Sadhu Ram (P.W.-2) for cross examination before learned Trial Court, on the next date fixed i.e. 13.01.2025, subject to payment of cost of Rs. 50,000/- payable to defendants (respondents herein). In the event of default in producing P.W.-2 as witness on the date fixed, the right of petitioner to produce P.W.-2 before the Trial Court shall stand forfeited.

MANOJ KUMAR TIWARI, J.

NAVEEN CHANDRA

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