SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			WPMS/1046/2020 Amarjeet Deb --Petitioner **Versus** State Of Uttarakhand --Respondent **Hon'ble Manoj Kumar Tiwari, J** 1. Ms. Ruchika Negi, Advocate holding brief of Mr. Sandeep Kothari, learned counsel for the petitioner. 2. Mr. Ghanshyam Joshi, learned Additional C.S.C. for the State of Uttarakhand. 3. Petitioner filed civil suit for declaring civil death of his brother; the suit was, however, dismissed; petitioner filed an appeal, but later he moved an application in that appeal, seeking permission to withdraw the appeal with liberty to file civil suit afresh; the application was partly allowed; withdrawal was permitted, but liberty was given to file appeal afresh. 4. Since petitioner was denied permission to file suit afresh, therefore, he has approached this Court, challenging the order dated 22.10.2019 passed by 6th Additional District Judge, Dehradun in Civil Appeal No. 111 of 2016, Amarjeet Dev Vs. State of Uttarakhand & another. 5. Hon'ble Kerala High Court, in the case of *Ammini Kutty & others vs George Abraham, reported as 1987 SCC Online Ker 22*, while dealing with the similar

issue has held as under:-

> "5. The Rule empowers a court to permit withdrawal when it is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit. Obviously, it is for the court granting permission to get itself satisfied about the sufficiency of grounds; and what is more important is that the grounds must be relevant for institution of a fresh suit. The reference to the satisfaction of the court, the need to obtain permission from it, the circumstances under which grant of permission is contemplated, and that it is granted with liberty to institute a fresh suit, all indicate that in appropriate cases, the court will have the discretion to permit withdrawal of the suit itself, instead of compelling the plaintiff/appellant to carry his appeal to its logical conclusion. The court can grant permission when it finds that it is necessary for advancing the cause of justice; it can withhold it, in other cases."

6. In the impugned order, learned 6th Additional District Judge has not assigned any reason for not permitting the petitioner to file suit afresh. Since petitioner has sought withdrawal of appeal in order to approach the trial court afresh, but that aspect was completely overlooked by learned Appellate Court, therefore, on this ground alone, the writ petition is allowed.

7. The impugned order dated 22.10.2019 is set aside. The matter is remitted back to Appellate Court to reconsider petitioner's application, as per law, within four months from the date of presentation of certified copy of this order.

(Manoj Kumar Tiwari, J)
24.08.2026

Aswal

NITI RAJ SINGH ASWAL