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2026:UHC:9999

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 3363 of 2025

Dharmendra Kumar Sharma .....Petitioner

Versus

Ashok Kumar and others ....Respondents

Present:

Mr. Vikas Bahuguna, Advocate for the petitioner.
Mr. Sagar Kothari, Advocate for the respondent no.1.
Mr. Navdeep Kumar Sharma, Advocate through video conferencing for the respondent nos. 3 and 4

Hon'ble Ravindra Maithani, J.

The challenge in this petition is made to the following:-

(i) Order dated 08.04.2025, passed in Misc. Case No. 100 of 2024, Dharmendra Kumar Sharma Vs. Ashok Kumar and others, by the court of 2nd Additional Civil Judge (Senior Division), Dehradun. ("the case"). By it, an application filed for condonation of delay in filing an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 ("the Code") filed by the petitioner has been dismissed.

(ii) Judgment and order dated 10.11.2025, passed in Misc. Civil Appeal No. 48 of 2025, Dharmendra Kumar Sharma Vs. Ashok Kumar and others by the court of 5th Additional District Judge, Dehradun ("the appeal"). By it, the order dated 08.04.2025 passed in the case has been upheld.

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

3. The respondent no.1 Ashok Kumar filed Original Suit No. 54 of 2016, Sri Ashok Kumar Sharma Vs. Sri Rakesh Kumar Sharma and others, in the court of 2nd Additional Civil Judge (Senior Division), Dehradun ("the suit"). The suit was instituted on 01.02.2016. Parties did exchange their pleadings. Thereafter, due to COVID-19 pandemic, the proceedings were stayed and again the petitioner, who was defendant no.3, in the suit was issued a notice 101A2 dated 06.01.2023 by the court. Service was found sufficient. Thereafter, the suit was proceeded *ex-parte* against the petitioner on 23.01.2023 and finally, the suit was decided *ex*-parte on 07.10.2023. The petitioner did file an application under Order 9 Rule 13 of the Code for setting aside the *ex-parte* decree passed in the suit alongwith the delay condonation application. It has been the case of the petitioner that he has never been served with the notice dated 06.01.2023. The paper no. 101A2 did not bear his signature. He did not receive any information about the suit, post 2020 lockdown. By the impugned order dated 08.04.2025, passed in the case, the court held that on notice dated 06.01.2023 i.e. Paper No. 101A2, there is a report of the process server that the petitioner met and revealed his identity, and he received notice and signed it. This fact is not rebutted by the petitioner. Moreover, it was also noted in the impugned order dated 08.04.2025 by the trial court that in the suit, the petitioner did appear on 26.08.2023 and he was told by the court that the suit is proceeding *ex-parte* against him. Accordingly, the delay condonation application was dismissed. The order dated 08.04.2025 was challenged in the appeal, which was also dismissed.

4. Learned counsel for the petitioner submits that the dispute is between the brothers. On technical grounds, the substantive right of the petitioner should not be defeated. The petitioner could not get anything by not appearing in the court. His intention was not deliberate. He is grave alcoholic and at times, referred to the rehabilitation centre also. He did not receive the court's notice dated 06.01.2023. His signatures are not there on paper no. 101A2. Therefore, it is argued that even after imposing some cost or exemplary cost on the petitioner, the application under Section 5 of the Limitation Act, 1963 ("the Limitation Act") filed by the petitioner be allowed, impugned order be quashed and the court below be directed to decide the application under Order 9 Rule 13 of the Code filed by the petitioner, in accordance with law.

5. On the other hand, learned counsel appearing for the respondent no.1 submits that in order to set aside the *ex-parte* decree, a party has to show sufficient cause for non appearance. He submits that, in fact, the petitioner is guilty of concealment of material facts.

6. First and foremost, it is argued that on 06.01.2023, a notice was issued to the petitioner, which was served on him. The report is on paper no. 101 A1 on the record of the trial court. It is he who revealed his identity that he is also known as Raju and accordingly, he signed. This fact was not rebutted by him. Moreover, it is argued that one of the most important facts that has been concealed by the petitioner is that he had appeared in the suit on 26.08.2023 and on that date, the court noted his presence and also noted in the order sheet that the suit is proceeding *ex-parte* against the petitioner and this fact is brought to the notice of the petitioner. It is argued that in his application under Section 5 of the Limitation Act, in para 11, the petitioner has written that post 2020, he did not receive any information about the suit, which it is

argued is false. It is also argued that the court below has rightly rejected the delay condonation application.

7. Undoubtedly, the substantive rights should not be defeated on the technical ground. It is also settled law that in the matter of condonation of delay, the court should adopt a very liberal approach and should avoid any pedantic approach. But then, it should not be stretched to a level that the provisions of the Limitation Act may become redundant or of no use.

8. In the instant case, in his application under Section 5 of the Limitation Act, the petitioner writes that post 2020, he did not receive any information about the suit. He denied of having received any court notice dated 06.01.2023. The trial court in its order dated 08.04.2025 had categorically noted that the process server records that it is the petitioner, who had introduced himself and also stated that he is also known as Raju. Thereafter, he received and signed the notice. The trial court noted that this fact has not been rebutted.

9. This is one part of the story.

10. Sufficiency of grounds of delay is one thing and no explanation of delay is another thing. But, there is another aspect of the matter that whether the facts are concealed.

11. It is admitted that on 26.08.2023, the petitioner appeared before the court; the court told him that the suit is proceeding *ex-parte* against him and the court records that, that fact was brought to the notice of the petitioner. It has been thoroughly concealed by the petitioner. Had he not received the notice dated 06.01.2023, how did he

appear before the court in the suit on 26.08.2023? There is no reason assigned to it. The sufficiency of reasons is far away.

12. Therefore, this Court is of the view that the court below has rightly rejected the application filed by the petitioner under Section 5 of the Limitation Act. There is no reason to make any interference with the impugned orders, Accordingly, the petition deserves to be dismissed.

13. The petition is dismissed accordingly.

(Ravindra Maithani, J.)
31.10.2026

Jitendra