2026:UHC:10079

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No.3400 of 2026

Amit Kumar Gupta ... Petitioner.

Versus

Swargashram Trust ... Respondent.

Presence:-
Mr. D.C.S. Rawat, learned Senior Counsel assisted by Mr. Vishesh Srivastava, learned counsel for the petitioner.

Hon'ble Siddhartha Sah, J. (Oral)

By means of the present Writ Petition, the petitioner has sought quashing of the judgment and order dated 08.10.2026, passed by the Judge Small Causes / Additional District Judge, Kotdwar, Pauri Garhwal in SCC Revision No. 01 of 2026, Amit Gupta versus Swargashram Trust as well as order dated 30.07.2026, passed by Civil Judge (Senior Division) /Judge, Small Causes, Kotdwar in Small Cause Court Suit No. 01 of 2024, Swargashram Trust v. Amit Kumar Gupta, whereby the Petitioner's application (Paper Nos. 40Ka-40Ga/1) under Order VI Rule 17 CPC was rejected.

2. Brief facts for the adjudication of the present Writ Petition are as follows:

3. The plaintiff/respondent, the landlord, instituted SCC Suit No. 01 of 2024 before the Court of Civil Judge (Senior Division) / Judge, Small Cause Court, Kotdwar, seeking a decree for eviction and recovery of arrears of rent and damages against the

defendant/petitioner. The defendant/petitioner contested the aforesaid suit by filing its written statement, specifically denying the plaintiff's authority and locus standi. The defendant categorically took the defence that the suit on behalf of the trust had not been instituted by any authorized trustee and that no valid resolution existed, and that the manager lacked legal competence to represent or file a suit on behalf of the Swargashram Trust.

4. In support of its case, the plaintiff/respondent itself placed on record paper number 8Ga/1, a true copy of the registered Scheme of Administration and decree dated 19.1.1948, passed in Civil Suit No. 1 of 1947. It is the case of the petitioner, as pleaded in the writ petition, that in order to streamline its pleadings, the petitioner, herein, moved an application under Order VI Rule 17 CPC on 01.07.2026, seeking to incorporate paragraph nos.17A, 17B and 17C in the written statement to place the undisputed terms of the Scheme of Administration on record and to provide the necessary factual foundation for issue no.5. The said application was numbered as 40Ga.

5. The amendment application was opposed by the plaintiff, who filed an objection dated 17.07.2026. In the objections, it was contended by the plaintiff/respondent that the defendant has filed the written statement and cross-examined the plaintiff's witnesses, and the case is at its final stage, and the defendant has not explained why the facts were not raised earlier, and the amendment application has been

filed with the object to delay the proceedings.

6. The aforesaid amendment application came up for hearing, and the learned Judge, SCC / Civil Judge (Senior Division), Kotdwar, Garhwal, after hearing the learned counsel for the parties, after referring to the provisions of Order VI Rule 17 and proviso thereto, came to the conclusion with reference to the file that the case is at its fag end and is fixed for remaining arguments. In the past, part arguments of the parties have been heard.

7. The Judge, SCC / Civil Judge (Senior Division) also recorded a finding that the defendant had filed its written statement on 22.05.2025. The Judge, SCC / Civil Judge (Senior Division) has also recorded the finding that the defendant, in its application, has also admitted the fact that the plaintiff had provided copy of paper number 8Ga/1, from which it is evident that the defendant had the knowledge of the facts of document 8Ga/1.

8. The Judge, SCC / Civil Judge (Senior Division) also recorded a finding that no sufficient reason has been disclosed as to why the amendment application could not be filed earlier in spite of due diligence.

9. It was also a ground taken by the Judge, SCC / Civil Judge (Senior Division) that the facts which the defendant is desirous of incorporating by virtue of the amendment application in the written statement regarding the same, a point for determination no. 5 has already been framed. The defendant can very well point out the said facts which are mentioned in the application

in the context of point for determination no. 5 and thus, in view of the aforesaid findings and reasoning, the Judge, SCC / Civil Judge (Senior Division) proceeded to hold that the amendment application bearing Application No. 40Ga/1 under Order VI Rule 17 of the CPC is not tenable and deserves to be rejected, and proceeded to reject the said application vide order dated 30.07.2026.

10. Aggrieved against the aforesaid order dated 30.07.2026, the defendant/petitioner preferred a revision, which has also been dismissed by the Judge, SCC / Additional District Judge, Kotdwar, Pauri Garhwal, vide judgment and order dated 08.10.2026, rendered in SCC Revision No. 1 of 2026.

11. Aggrieved against the aforesaid impugned orders dated 30.07.2026 and 08.10.2026, learned Senior Counsel would submit that the suit was admittedly instituted by the Manager and not by the Secretary. Relying upon the document 8Ga/1, learned Senior Counsel would submit that it is only the Secretary who is authorized to institute the suit on behalf of the Trust. The learned Senior Counsel would further submit that the proposed amendment would not change the nature of the suit. The document with respect to which the amendments are being sought is already on record, and there is absolutely no need to file any document, and as such, the Judge, SCC / Civil Judge (Senior Division), Kotdwar, and the learned revisional court erred by rejecting the amendment application and dismissing the SCC revision, respectively.

12. After having heard the learned counsel for the

defendant/petitioner and after going through the record and the impugned orders, it is evident that the amendment application has been filed at the fag end of the proceedings of the SCC suit. A bare perusal of the order passed by the Judge, SCC / Civil Judge (Senior Division), Kotdwar, would reveal that a categorical finding has been recorded in its order dated 30.07.2026 that the matter is at its fag end and is fixed for remaining arguments, and partial arguments have already been heard. The written statement was filed by the defendant on 22.05.2025. The Judge, SCC / Civil Judge (Senior Division) also records a finding that the document 8Ga/1 has already been supplied to the defendant and the defendant had the knowledge of the aforesaid document. The Judge, SCC /Civil Judge (Senior Division) also categorically records a finding that the sufficient cause has not been portrayed that in spite of due diligence and the amendment application could not be filed in the past.

13. In this context, reference needs to be made to the proviso to Order VI Rule 17, which is being extracted hereunder for ready reference :-

> "**17. Amendment of pleadings. -** The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:
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> Provided that no application for amendment shall be allowed after the trial has commenced,

unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

14. The stage at which an amendment can be sought with reference to proviso to Order VI Rule 17 fell for consideration before the Hon'ble Supreme Court in the case of Ajendraprasadji N. Pandey and another vs. Swami Keshavprakeshdasji N. and others, reported in (2006) 12 SCC 1. In the said judgment, the Hon'ble Supreme Court proceeded to, inter alia, hold that under the proviso, no application for amendment shall be allowed after the trial has commenced, unless in spite of due diligence, the matter could not be raised before the commencement of trial.

15. Proviso to Order VI Rule 17 also fell for due consideration by the Hon'ble Supreme Court in a subsequent judgment in the case of Vidyabai and others vs. Padmalatha and another, reported in (2009) 2 SCC 409, and in the said case also, while following the judgment in the case of Ajendraprasadji N. Pandey (Supra), the Hon'ble Supreme Court held that Order VI Rule 17 is couched in a mandatory form. Unless the jurisdictional fact, as envisaged in the proviso to Order VI Rule 17, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the pleading. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, i.e., it must come to the conclusion that in spite of due diligence, the parties

could not have raised the matter before the commencement of the trial.

16. From the aforesaid judgments of the Hon'ble Supreme Court, the position of law is very clear with regard to an amendment after commencement of trial. Proviso to Order VI Rule 17 very clearly lays down in no uncertain terms that amendment of the pleadings will not be permitted unless due diligence is shown by a party.

17. In the present case, the document with respect to which the amendment was sought to be incorporated in the written statement by the defendant/petitioner was in the knowledge of the defendant, and in fact, the document had been supplied by the plaintiff to the defendant/petitioner. The defendant could not show any due diligence as to why, in spite of having the knowledge of the aforesaid document, the amendment could not be sought in the past.

18. It is also a very striking feature in the present case that the part arguments had already been advanced by the parties, and in between, the amendment application has been filed without compliance of the proviso to Order VI Rule 17 by the defendant.

19. In such an eventuality, the impugned order by the learned Judge, SCC / Civil Judge (Senior Division), Kotdwar, does not suffer from any jurisdictional error so as to warrant any interference in exercise of powers under Article 227 of the Constitution of India. The

Revisional Court also did not commit any error.

20. In such view of the matter, since the Trial Court as well as the Revisional Court did not commit any error by rejecting the amendment application and by dismissing the revision preferred by the defendant/petitioner respectively, no interference is called for.

21. The Writ Petition lacks merit and the same is dismissed accordingly.

22. Pending Application(s), if any, stands disposed of accordingly.

(Siddhartha Sah, J.)
03.11.2026

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