HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition Misc. Single No. 3471 of 2026

M/s India Flex Industries Pvt Ltd and another .....Petitioners

Versus

M/s Virtue Rubber Tank .....Respondent

Presence:- Pranav Singh, Advocate for the petitioners.

Hon'ble Ravindra Maithani, J. (Oral)

By means of the instant petition, petitioner seeks the following reliefs:-

> "I) Issue a writ, order or direction, in the nature of certiorari quashing the impugned ex parte judgment dated 06.12.2022 passed by the learned Civil Judge (Senior Division), Roorkee, District Haridwar (contained as Annexure no.1 at Page No.12 to 20 to the writ petition).
>
> II) Issue an appropriate writ, order, or direction in the nature of Mandamus directing the learned Civil Judge (Senior Division), Roorkee, District Haridwar to expedite hear and dispose of the Application under Section 5 of the Limitation Act in Misc. Case No.07 of 2026 within a stipulated period as deemed fit by this Hon'ble Court.
>
> III) Issue a writ, order or direction, which this Hon'ble Court may deem fit and proper under the circumstances of the case.
>
> IV) Award the cost of petition."

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

3. Original Suit No.23 of 2021, M/S Virtue Rubber Tank Vs. M/S India Flex Industries Pvt. Ltd. and another, filed by the respondent was decreed *ex parte* by the court of Senior Civil Judge, Roorkee, District Haridwar on 06.12.2022 ("the case"). In its

judgment and order dated 06.12.2022, passed in the case, the court has recorded in para 3 that summons issued to the petitioners, which had been served on them, but despite that they did not appear.

4. It appears that the petitioners did file an application under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 ("the Code") along with an application under Section 5 of the Limitation Act, 1963 ("the Limitation Act") for condonation of delay, which is registered as Misc. Case No.07 of 2026, M/S India Flex Industries Pvt. Ltd. and another Vs. M/S Virtue Rubber Tank ("the misc. case").

5. Learned counsel for the petitioner restricts his prayer that directions may be issued that the application under Section 5 of the Limitation Act filed, by the petitioner, which is basis of the misc. case, may be expedited. He would submit that the decree has been transferred for execution for Mumbai, where process is underway.

6. Undoubtedly, if for setting aside an *ex parte* decree an application is filed along with delay condonation application, the proper mode would be to take a decision on that application and, thereafter proceed for execution. The grievance of the petitioner is that his application filed under Order IX Rule 13 read with Section 151 of the Code along with application under Section 5 of the Limitation Act be decided and execute the proceedings.

7. The Court requests the court in which the misc. case is pending to hear and decide the application that has been filed by

the petitioner under Section 5 of the Limitation Act, as expeditiously as possible, in accordance with law.

8. The writ petition stands disposed of accordingly.

(Ravindra Maithani, J.)
06.11.2026

Sanjay