

In the High Court of Uttarakhand at Nainital.

F.A. No. 49/2001.

Bhola Nath Shukla S/o Ram Chandra R/o Pathak Market, Sahasdhara Road City, Dehradun	..	Appellant.
Vs.		
Smt. Shanti Devi and another	..	Respondents.

Date: 31-8-2004.

Hon'ble Rajesh Tandon, J.

The appellant has challenged the order dated 14.2.2001 by which the suit of the plaintiff-appellant has been dismissed under Order 7 Rule 11 C.P.C.

Briefly stated the facts of the case are that original suit No. 628/1996 was filed by the plaintiff for mandatory injunction. Counsel for the appellant has submitted that the suit was to be listed on 15.2.2001 as will appear from the order sheet dated 7.12.2000. In the absence of the counsel for the plaintiff an application for change of date was moved on 24.1.2001 in place of 15.2.2001 to 14.2.2001 and on 14.2.2001 ex parte order was passed dismissing the plaintiff's suit under Order 7 Rule 11 C.P.C.

According to the order passed by the court below it will appear that since the plaintiff has failed to comply the order passed on 18.11.98 by paying the deficit court fee, according to the report of the Munsarim therefore the suit was dismissed under Order 7 Rule 11 C.P.C.

A perusal of the order shows that no opportunity was given to the appellant before dismissing the suit under Order 7 Rule 11 C.P.C.

First of all the appellant should have been afforded an opportunity to contest the report of the Munsarim and thereafter still court fee remains payable by the plaintiff, he has a right to file an appeal against the said order.

Order 7 Rule 11 C.P.C. cannot be used as a weapon against the plaintiff on account of any deficiency which can be cured if proper time is afforded to the plaintiff.

In view of the aforesaid, liberty is given to the appellant to apply before the court below for recalling the order dated 15.2.2001 and the objections and contest the report of the Munsarim. The order dated 15.2.2001 shall not come in the way of the appellant in moving the application. The application shall be decided on merits after giving opportunity to contest the Munsarim report and in case it is found that the court fee has not been properly paid it shall be open for the appellant to challenge the same in appropriate proceedings.

Subject to the aforesaid observation, the appeal is disposed of. No order as to costs.

(Rajesh Tandon, J.)

ISB