

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 941 /2004 (M/S)

Autar Singh Rana.

vs

1- Arvind Saklani

2- Anand Mohand Saklani

3- Civil Judge

Approved for reporting

~~Not Approved for Reporting~~

Date of decision 30.9.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 941 (MS) of 2004

Autar Singh Rana,
S/o Sunder Singh Rana,
R/o Block Road, Chamba,
District Tehri Garhwal. Petitioner.

Versus

1. Arvind Saklani,
2. Anand Mohan Saklani,
Both son of Roop Mohan Saklani, resident of Mussorie
Road, Chamba, District Tehri Garhwal.
3. Civil Judge (Junior Division), New Tehri, Tehri Garhwal.

.....Respondents.

Hon'ble Mr. Rajesh Tandon J.

Heard Sri Dinesh Chauhan and Sri R.P. Singh learned Counsel for the Petitioner and Standing Counsel for the respondents.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 1st July 2004 and for permission to carry out the amendment in the plaint.

Briefly stated, the petitioner is the owner of the Hotel namely Akash Deep situate at Block Road, District Tehri Garhwal. He filed a suit for permanent injunction restraining the respondents from obstructing light and air of the

Hotel by constructing a wall over the said land of the petitioner. During the pendency of the suit, the petitioner has moved an application paper No. 37 A for leave to amend the plaint on 10.10.2001 in order to clarify the land in dispute. The said amendment was partly allowed on 27.02.2003 on payment of Rs. 150/- as cost.

A perusal of the order (Annexure 2 to the Writ Petition) shows to the following effect:-

“प्रार्थना पत्र 37 क रु0 150 / हर्जे पर एतद्वारा स्वीकार किया जाता है। इस संशोधन प्रार्थना पत्र में (घ) कम पर जो संशोधन प्रस्तावित है उसके सन्दर्भ में प्रार्थना पत्र निरस्त किया जाता है। वादी हर्जाअदा करने के उपरांत 3 दिन के भीतर प्रस्तावित संशोधन को वाद पत्र में सनहित करेगा।

प्रतिवादीगण की ओर से अतिरिक्त प्रतिवाद पत्र दिनांक 29.3.2003 तक प्रस्तुत कर सकेंगे और विवादक विरचित किये जाने हेतु पत्रावली दिनांक 2.3.2003 को पेश हो।”

Since the plaintiff could not amend the plaint within the time allowed by the Court and he has filed an application for extension of time and permission to amend the plaint.

Aforesaid application for permission to amend the plaint was rejected on 01.07.2004. The amendment was allowed on 27.02.2003. However, the application was moved on 02.04.2003 for consequential amendment. Order 6 Rule 18 of the Code of Civil Procedure provides as under:-

“Failure to amend after order:- If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for the purpose by the

order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.”

The aforesaid Order 6 Rule 18 has been substituted by the Code of Civil Procedure Amendment Act, 2002 from 01.07.2002. The same is quoted below:-

“Where any party has obtained an order to amend an the amendment is extensive, within a time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, he shall file a consolidated pleading incorporating the amendments, and he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the court.”

As will appear from Order 6 Rule 18 C.P.C. of the Code of Civil Procedure that the power has been given to the Court to extend the time.

So far as the extension is concerned, Section 148 of the Code of Civil Procedure applies to the facts of the case, where it has been mentioned that under Section 148 of the Code of Civil Procedure, there is a discretion to enlarge such period.

In view of the aforesaid fact, liberty is given to the petitioner to apply afresh by filing an application under Section 148 of the Code of Civil Procedure, if such an application is filed the same shall be considered. It is settled law that rules are

made for substantial justice between the parties but it cannot deprive the other person to take the benefit of the same.

The Writ Petition is disposed with the direction that in case the petitioner applies afresh by filing an application under Section 148 of the Code of Civil Procedure, the application shall be considered sympathetically.

Subject to the aforesaid observation, writ petition is disposed of.

30.09.2004

(RAJESH TANDON J.)

Rathour