

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No.760 of 2012 (M/S)

Mahant Mitra Prakash
disciple of Shri Harnam Singh
R/o Panchayati Akhara, Nirmala Sati, Ghat Kankhal,
Tehsil & District-Haridwar.

....Petitioner

Versus

Mahant Harbhajan Singh & others

... Respondents

Dated: 29.06.2012

Hon'ble V.K. Bist, J.

Heard Shri Rajendra Dobhal, Senior Counsel with Mr D.C.S. Rawat, counsel for the petitioner and Mr Siddhartha Singh, learned counsel for the respondents.

On 06.11.2001 trial court passed an order granting succession certificate in favour of Nirmala Panchayati Akhara Kankhal, Haridwar, Tehsil & District-Haridwar holding that entire money of Late Mahant Balbir Singh Shashtri amounting to ₹ 11,01,628/- which is deposited in his saving accounts would go in favour of Nirmala Panchayati Akhara Kankhal, Haridwar Tehsil and District-Haridwar. Order dated 06.11.2001 was challenged by Harbhajan Singh/respondent no.1 in Appeal No.1529 of 2001 which was decided by this Court on 06.06.2005 on the basis of compromise affidavit of Mahant Balwant Singh. However, it was mentioned in the order that order would not prejudice the

right of other parties. When the petitioner came to know about the order dated 06.06.2005, he moved an application for recall of order/restoration of appeal. The said application was dismissed on 04.03.2009. Thereafter, the respondent no.1 moved another application for succession certificate for the amount of ₹11,01,628/- and the said application was registered as Misc. Case No.48 of 2005 before the Civil Judge (Senior Division), Haridwar. Petitioner filed his objection to the said application. Trial court fixed the case for 19.01.2012 for the evidence and cross examination of D.W.1. But on 19.01.2012 respondent no.1 moved an application for adjournment on the ground that his counsel was out of station due to personal work. On that day, none appeared for the parties. The trial Court observed this fact in his order but closed the right of the petitioner to produce evidence. Trial Court fixed the date for hearing on 01.02.2012. Thereafter on 01.02.2012 an application was moved by the petitioner for recalling the order dated 19.01.2012. The Civil Judge (Senior Division), Haridwar rejected the application of the petitioner on 14.02.2012. The Civil Judge observed that since evidence of petitioner has already been closed, the petitioner cannot be given opportunity of cross examination. Petitioner/defendant again moved an application for recalling the order dated 19.01.2012 and permitting him to give evidence. But the trial court rejected the application of the petitioner on 29.03.2012 on the ground that petitioner is trying to linger on the matter. Hence this petition.

Learned Senior counsel for the petitioner submitted that since adjournment application was moved by the applicant/respondent no.1, the petitioner was under the impression that case would be adjourned and due to this reason he did not appear before the Court. He submitted that in such situation right of petitioner for filing evidence cannot be closed. He also submitted that succession certificate has already been issued in favour of Nirmala Panchayati Akhara Kankhal, Haridwar, Tehsil & District Haridwar vide order dated 06.11.2001, therefore, second application for the same property is not maintainable. On the other hand, the learned counsel for the respondent submitted that filing of adjournment application does not give exemption to the other side from appearance in the court and in view of this fact the order was rightly passed.

I have considered the submission of learned counsel for the parties. In my view, when plaintiff/respondent no.1 was not present in the Court to pursue his case, order for closing right of the defendant to give evidence should not have been passed.

Learned Senior Counsel then submitted that another prayer of the petitioner for rejecting the application for succession certificate and for quashing the proceedings of Misc. Case No.48 of 2005 be allowed. Since, petitioner has come against the order by which his opportunity to lead the evidence was closed, this Court does not think it appropriate to consider this prayer. It is always open for the parties to

raise plea of maintainability of application before the court concerned.

In view of above discussion, writ petition is allowed. Order dated 19.01.2012, 14.02.2012 and 29.03.2012 passed by Civil Judge (Senior Division), Haridwar are quashed. Since the matter is of the year 2005, it is directed that the case shall be decided expeditiously, preferably within a period of six months.

(V.K.Bist. J.)
29.06.2012

Arti

