

Judgment Reserved on : 11.05.2023  
Judgment Delivered on: 26.05.2023

**IN THE HIGH COURT OF UTTARAKHAND AT  
NAINITAL**

**Writ Petition No.1110 of 2022 (M/S)**

Jan Shiksha Prasar Samiti ....Petitioner

Vs.

Gunanand Dhani ...Respondent

Mr. Anil Kumar Joshi, Advocate for the petitioner.  
Mrs. Prabha Naithani, Advocate for the respondent.

**Hon'ble Pankaj Purohit, J.**

The instant writ petition has been filed by the petitioner/defendant with the following reliefs:-

“(i) Issue an order or direction setting aside the impugned judgment and order dated 07.04.2022 passed by District Judge, Dehradun in Civil Revision No.26 of 2022 and order dated 12.01.2022 passed by the II<sup>nd</sup> Additional Civil Judge (Senior Division) Dehradun in Regular Suit No.735 of 2007 and allow the application Paper No.109C2 dated 03.01.2022 filed under Order 11 Rule 21 of the Code of Civil Procedure and dismissed the Suit No.735 of 2007 pending in the court of II<sup>nd</sup> Additional Civil Judge (Senior Division) Dehradun.

(ii) Issue any other or further writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstance of the case.

(iii) To award the cost of the petition in favour of the petitioner.”

2. An original suit has been filed by the respondent/plaintiff bearing Original Suit No.735 of 2007, Gunanand Dhyani vs. Jan Shiksha Samiti in the court of II<sup>nd</sup> Additional Civil Judge (Jr.

Div.), Dehradun for a mandatory injunction to demolish the illegal construction made by the petitioner/defendant over the land in question and to hand over the vacant and actual possession to the respondent/plaintiff.

3. The suit was filed by the respondent/plaintiff with the averments that he is the owner in possession of the land in question situated at Khasra No.2320 of Khata No.263 measuring 0.0810 hectares, situated at Mauja Mehuwala Mafi, Pargana Kendriya Doon Tehsil, District Dehradun. It is the case of the respondent/plaintiff that the aforesaid land was purchased by him through a registered sale deed dated 08.01.1999 from its owner through Shri Devi Singh, Son of Shri Ratan Singh and the sale deed was registered in the office of the Registrar on 08.01.1999.

4. It is submitted that in the year 1994, the petitioner society was incorporated with the help of other respectable persons of the area; the land was purchased in the year 1994. Over the said land Doon Modern High School was established. It is the contention of the respondent/plaintiff that he was the Secretary of the society in the beginning and worked as Manager. Later on, hatching a conspiracy the respondent/plaintiff was ousted from the Committee of Management and owing to his worsened financial condition he shifted to his native village in the year 2005 after selling his house in Dehradun.

5. It is further contended by the respondent/plaintiff that there is a land of the respondent/plaintiff at the East side of the Doon Modern School and respondent has nothing to do with the land

which is in dispute in the suit. He is the sole owner of land. It is further alleged that some construction has been raised over the said land without his consent and for this reason he has filed the original suit for a mandatory injunction for demolishing the construction raised by the petitioner/defendant.

6. The petitioner/defendant moved an application i.e. Application No.93C(2) dated 21.05.2018 in the Original Suit No.735 of 2017 under Order 11 Rule 14 of C.P.C. and prayed the learned trial court to direct the respondent/plaintiff to produce following documents so that petitioner/defendant may put up their case properly:-

- “1. Original copy of the gift deed executed by Devi Singh in favour of the school.
- 2. Original copy of Registration letter of Society and Rules.
- 3. Original copy of the Will executed by Deen Mohammed.
- 4. Original copy of balance sheet till the year 1994-2002.
- 5. Original copy of recognition letter, Senior Basic School.
- 6. Original copy of the letter of grant-in-aid.
- 7. Original file of High School recognition alongwith map.”

7. The respondent/plaintiff filed objection to the said application on 04.07.2018 in which it has not been stated that these documents, required by the petitioner/defendant were not in the possession and power of the respondent/plaintiff but it was submitted that these documents has no connection with the suit

and even the petitioner/defendant have not shown any reason as to why those documents were required by them.

8. Learned trial court vide its order dated 14.08.2018 allowed the Application No.93C(2) and directed the respondent/plaintiff to file these documents on the next date fixed in the matter. The matter was taken by the respondent/plaintiff before the court of Additional District Judge IV<sup>th</sup>, Dehradun by filing a Civil Revision No.192 of 2018 by challenging the order dated 14.08.2018 by which he was directed to file documents before the court. The learned Additional District Judge IV<sup>th</sup> Dehradun dismissed the civil revision and affirmed the order dated 14.08.2018 passed by the learned trial court vide judgment and order dated 25.09.2021.

9. Despite dismissal of the revision filed by the respondent/plaintiff, he has not complied with the order passed by the learned trial court to file the documents rather he filed an affidavit on 07.12.2021 wherein it has been stated by him that the documents, directed to be filed before the court vide order dated 14.08.2018, are not in his possession. Whatever documents were there in his possession, had already been filed by him and he cannot file these documents as directed by the learned trial court. It appears from the record that on 03.01.2022 the petitioner/defendant has moved an application under Order 11 Rule 21 read with Section 151 of CPC in the suit wherein it has been prayed that since respondent/plaintiff has not complied with the order dated 14.08.2018 passed by the learned trial court, in view of the invoking provisions of Order 11 Rule 21 read with

Section 151 of CPC, the suit of the respondent/plaintiff is liable to be dismissed for want of prosecution.

10. On 12.01.2022 the application dated 03.01.2022 i.e. Paper No.109 C(2) was taken up by the learned trial court for disposal. Learned trial court taking note of the fact that in the affidavit filed by the respondent/plaintiff, in which it is stated that the documents which were directed to be filed by him, were not in his possession, rejected the application No.109C(2) of the petitioner/defendant. Petitioner/defendant challenged the order dated 12.01.2022 in the court of District Judge, Dehradun by filing a Civil Revision No.26 of 2022 which came to be dismissed by the learned District Judge, Dehradun vide order dated 07.04.2022.

11. The order passed by the learned District Judge, Dehradun dated 07.04.2022 has now been challenged alongwith the order dated 12.01.2022 passed by the learned II<sup>nd</sup> Additional Civil Judge (Sr. Div), Dehradun by filing the present petition.

12. Heard learned counsel for the parties and perused the impugned orders passed by the courts below.

13. Learned courts below failed to take note of the fact that in response to the application filed under Order 11, Rule 12 and 14 of CPC, the respondent/plaintiff has nowhere stated that he was not in custody, power and possession of the documents required to be filed by the petitioner/defendant in the original suit. It is

only after the respondent/plaintiff lost in revision filed by him against the order dated 14.08.2018, vide an affidavit dated 07.12.2021 for the first time, he came up with a new case that the documents required by the learned trial court were not in his possession. This appears to be a change in the stand of the respondent/plaintiff only for the purpose to circumvent the orders passed by the learned trial court dated 14.08.2018. In these circumstances both the courts below failed to appreciate the provision of Order 11 Rule 21 of CPC in its true intent.

14. It appears from the perusal of the order passed by the revisional court that the court has failed to appreciate the controversy involved, when it says that no order could be passed under Order 11 Rule 14 of CPC. The order under Order 11 Rule 14 of CPC has already been passed, which has been affirmed in the revision and now the respondent/plaintiff has no option but to comply with the order. If he says that he is not in possession of the documents, after a period of more than three years, it is nothing but a trick to make the order passed by the learned trial court, a toothless order.

15. From the conduct and the pleadings submitted on behalf of the respondent/plaintiff in the opinion of this Court, it is clear non compliance of the order dated 14.08.2018 passed by the learned trial court. Now the effect of this non-compliance is to be looked into by this Court. The provisions of Order 11 Rule 21 of CPC is quoted hereunder:-

**“21. Non-compliance with order for discovery-**  
(1) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have

his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and [an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard].

(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.]”

16. From the bare perusal of the provisions of Order 11 Rule 21 of CPC, it is evidently clear that the failure to comply with the order passed by the trial court for discovery of the documents, the respondent/plaintiff shall have to face the consequences of this non compliance by dismissal of his suit for want of prosecution.

17. This Court is conscious of the fact that the provision under Order 11 Rule 21 of C.P.C. is very stringent and the same shall be used very sparingly as held by Hon’ble the Apex Court in **Babbar Sewing Machine Company vs. Trilok Nath Mahajan reported in 1978 (4) SCC 188** but in the case in hand the documents which have been asked by the petitioner/defendant to be filed by the respondent/plaintiff invoking the provision of Order 11 Rule 14 of CPC go to the root of the matter to decide the controversy involved in the original suit and, therefore, the learned trial court directed the respondent/plaintiff to file these documents, which order has been affirmed by the revisional court; but still taking a new plea, the documents are not being filed by the respondent/plaintiff. The court has to balance equities as well as the majesty of the Court’s order. Once the order has been passed which has been affirmed by the revisional court,

instead of taking a new ground, of not having these documents in his power, possession and custody is nothing but a kind of an attempt to circumvent the order passed by the learned trial court. In the opinion of this Court, in order to give effect to the provision of the law, the stringent action is required so that the orders passed by the courts may not be trifled with by the unscrupulous parties to the litigation.

18. In view of the aforesaid, the impugned orders dated 12.01.2022 passed by the II<sup>nd</sup> Additional Civil Judge (Sr. Div.), Dehradun in Regular Suit No.735 of 2007 and order dated 07.04.2022 passed by the District Judge, Dehradun in Civil Revision No.26 of 2022 are hereby quashed. The application Paper No.109C(2) dated 03.01.2022 filed under Order 11 Rule 21 of CPC is hereby allowed and consequently the Original Suit No.735 of 2007 Gunanand Dhyani vs. Jan Shiksha Samiti pending in the court of II<sup>nd</sup> Additional Civil Judge (Sr. Div.), Dehradun is hereby dismissed for want of prosecution for not complying the order dated 14.08.2018 passed by the learned trial court.

19. Since this Court has taken a stringent action against the respondent/plaintiff by dismissing his original suit for want of prosecution for not complying the order dated 14.08.2018 passed by the learned trial court, invoking the provisions of Order 11 Rule 21 of CPC, an opportunity is given to the respondent/plaintiff once again that if he submits the documents directed to be filed by the learned trial court vide order dated 14.08.2018, enumerated in the application 93C(2), the Original Suit No.735 of 2007 Gunanand Dhani vs. Jan Shiksh Prasar

Samiti shall be deemed to have been restored to its original number in the file of II<sup>nd</sup> Additional Civil Judge (Sr. Div.), Dehradun.

20. Accordingly, the writ petition is disposed of. No order as to cost.

**(Pankaj Purohit, J.)**  
**26.05.2023**

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