

ITEM NO.12

COURT NO.7

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 19041/2017

[Arising out of impugned final judgment and order dated 31-05-2017 in WP No. 1229/2017 passed by the High Court of Uttarakhand at Nainital]

SHRI PREM NAGAR ASHRAM

Petitioner(s)

VERSUS

MUKESH AHUJA &amp; ORS.

Respondent(s)

(IA No. 150561/2019 - EXEMPTION FROM FILING O.T.

Date : 28-01-2025 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.K. MAHESHWARI  
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Petitioner(s) : Mr. Gaurav Jain, Adv.  
Ms. Abha Jain, AOR

For Respondent(s) : Mr. Ajay Kumar Srivastava, AOR  
Mr. Ashutosh Dubey, Adv.  
Ms. Jyoti Tiwary, Adv.

Mr. Chetan Shandilya, Adv.  
Ms. Pallavi Pratap, AOR

UPON hearing the counsel the Court made the following  
O R D E R

1. The facts in this case are that the compromise decree between the plaintiff and defendant was passed vide judgment and decree dated 28.06.1991, based on a settlement which formed part of the decree.

2. Alleging the violation of the terms of the compromise decree, Petitioner/Decree Holder sought its execution by filing an application on 19.09.2007, because on a portion of land as specified and demarcated in the settlement deed as ABCDA, construction has been raised, *dehors* the settlement reached between the parties. During the pendency of the execution petition, the property was sold to Respondent No. 3 on 01.12.2008 by Respondent No. 1/Judgment Debtor.

3. Learned Trial Court rejected the said execution application, recording the finding that the evidence to prove the alleged construction within the said demarcated area 'ABCDA' is not brought on record. Aggrieved, the Petitioner/Decree Holder filed Civil Revision No. 40/2015, after affording an opportunity to the parties vide order dated 29.04.2017, it was allowed. In outcome of the same, the Respondent No. 1/Judgment Debtor was punished with 3 months of civil

imprisonment while the Respondent No. 3/Subsequent Purchaser was directed to demolish the illegal structure within 35 days at their own cost.

4. On filing of Writ Petition by Respondent No.1 challenging the said order, the impugned order has been passed by the High Court without issuance of notice and disposed the same at the admission stage, interfering in civil imprisonment against Respondent No. 1. The pretext for allowing the Writ Petition was acceptance of the submission raised by the Respondent No. 1 (Petitioner therein), in particular recorded in paragraph 4 that the property in question was sold to Respondent No. 3 in the year 2008. The High Court has further noticed that Civil Suit No. 45 of 2019 was filed by the Petitioner/Decree Holder against the Respondent No. 1/Judgment Debtor, which was subsequently withdrawn and in the said suit, no prayer for demolition was made.

5. Learned counsel for the Petitioner contends that impugned order has been passed without due appreciation of facts and affording opportunity of hearing at the admission stage, without due consideration of the terms of settlement and decree by the High Court in right perspective. In such circumstances, it is argued that without advert to the evidence, merely relying on the statement of the Respondent No. 1 setting aside the direction to undergo 3 months of civil imprisonment by the High Court is not justified.

6. Having heard learned counsel for the parties, we find substance in the contention of the petitioner, in our view, while setting aside the punishment of civil prison, due opportunity has not been afforded to advert the pleadings and documents. In the facts, affording due opportunity to the parties was *sine qua non*, which has not been complied in right perspective. Therefore, we set aside the order impugned and remit the matter back to the High Court to restore the petition on its original number and pass a fresh order affording due

opportunity to the parties. It is clarified, we have not expressed any opinion on the merits of the case; however, all the contentions are left open to be raised by the parties.

7. Since, Writ Petition No. 1274 of 2014 filed by respondent No. 3/subsequent purchaser is also pending arising out of the same order dated 29.04.2017 challenging the direction of a demolition of the illegal structure, therefore, on restoration of Writ Petition No. 1229 of 2017, it be tagged with Writ Petition No. 1274 of 2014 and both the cases be decided analogously.

8. In view of the above, the Special Leave Petition is disposed of. Pending applications, if any, stand disposed of.

**(GULSHAN KUMAR ARORA)**  
**AR-CUM-PS**

**(ANJALI PANWAR)**  
**COURT MASTER**