

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
	10.04.2026		<p>WPMS No.899 of 2026</p> <p><u>Hon'ble Alok Kumar Verma, J.</u></p> <p>An auction was conducted on 14.05.1997 and confirmed by the Executing Court. A sale certificate was issued on 28.05.1997. Possession was delivered to the partner of the respondent no.1. The petitioner moved an application under Section 47 read with Rule 54, Rule 66, Rule 72, Rule 89, Rule 90 of Order XXI and Section 151 of the Code of Civil Procedure, 1908 for setting aside the sale. The Executing Court, holding that the sale was conducted through material irregularity and fraud, set aside the sale by its order dated 12.09.2024. The respondent has challenged the order dated 12.09.2024 through a Miscellaneous Civil Appeal No.83 of 2024, "M/s Himalayan Stone and Lime vs. M/s Kahan Sons Company and Others". The contention of the petitioner in the said appeal was that the appeal is not maintainable. The learned Ist Additional District Judge, Dehradun, via. the impugned</p>

order dated 09.03.2026, has held that the appeal is maintainable. Learned appellate court has fixed the appeal for final arguments. Hence, the present writ petition under Article 227 of the Constitution of India.

2. Heard Mr. Aditya Singh, learned counsel for the petitioner.

3. Mr. Aditya Singh, Advocate, has contended that the property was jointly purchased by the partner of the respondent no.1 and the attorney of the petitioner namely Gurbax Singh, who was looking after the immovable property of the petitioner. The sale of 60 acres of land for the recovery of Rs.32,000/- causes substantial injury to the petitioner. The sale was nullity. Mr. Aditya Singh, Advocate has relied upon a judgment of the Hon'ble Supreme Court in **Desh Bandhu Gupta vs. N.L. Anand & Rajinder Singh, (1994) 1 SCC 131.**

4. Mr. Aditya Singh, Advocate, further submitted that the sale was set aside by the Executing Court after taking into consideration

these facts along with other material facts. The order dated 12.09.2024 has not been passed by the Executing Court under Order XXI Rule 92 CPC, therefore, appeal against the said order dated 12.09.2024 is not maintainable under Rule 1(j) of Order XLIII CPC.

5. The contentions raised by Mr. Aditya Singh, Advocate, is fairly arguable.

6. Admit.

7. Notice is being issued to the respondents. Steps to be taken within a week.

8. List on 14.05.2026. Till then, the further proceedings of Miscellaneous Civil Appeal No.83 of 2024, "M/s Himalayan Stone & Lime vs. M/s S.K. Kahan Sons Company" are stayed.

(Alok Kumar Verma, J.)
10.04.2026

Pant/