

**HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition No.1236 (M/S) of 2026**

Smt. Suman Ahuja .....Defendant/Petitioner

Versus

Smt. Anjali Ahuja and others .....Respondents

Present:-

Mr. Ramji Srivastava, Advocate for the defendant/petitioner.

Mr. Vikas Bahuguna, Advocate for the respondents.

**Hon'ble Siddhartha Sah, J.**

The challenge in this petition is to the order dated 20.02.2026 passed by the learned Civil Judge (J.D.), Srinagar, Pauri Garhwal in Original Civil Suit No.04/2025, Anjali Ahuja vs. Suman Ahuja, whereby, the amendment application 20Ga of the plaintiff/respondent was partly allowed. The second prayer is to set aside/quash the entire proceeding of the Original Civil Suit No.04 of 2025, Anjali Ahuja vs. Suman Ahuja and others, pending in Court of learned Civil Judge (J.D.), Srinagar, Pauri Garhwal.

2. Assailing the impugned order dated 20.02.2026, learned counsel for the petitioner submitted that prior to the amendment, certain concealments were made by the plaintiff/respondent no.1. Hence an application was filed on behalf of the defendant/petitioner regarding maintainability of the civil suit.

3. Learned counsel for the defendant/petitioner further submitted that even prior to the institution of the suit for perpetual injunction an eviction order has been passed on 25.02.2025 under the provisions of the Maintenance and Welfare of Parents and Senior

Citizens Act, 2007, whereby, the eviction order was passed against the plaintiff/respondent. Concealing that particular order, the suit for permanent injunction was filed and he has particularly attracted the attention of the Court to the date of instituting the suit which was instituted on 10.03.2015.

4. Learned counsel for the petitioner further submitted that without challenging that order and without disclosing that material fact, the injunction suit was filed and interim order dated 10.03.2025 was passed by the Trial Court since the plaintiff/respondent had not disclosed about passing of the eviction order dated 25.02.2025. The learned counsel further submitted that after putting in appearance in the said suit, preliminary objection as to the maintainability of the suit was filed by virtue of an application dated 20.03.2025, wherein, it was contended that the suit is liable to be dismissed on account of the bar contained in Section 27 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. It was further contended that the said application kept pending. However, in the meantime, the plaintiff/respondent filed an amendment application to fill up the lacunae whereby seeking to incorporate certain pleas in the plaint as well as also seeking additional prayers of partition and declaration and thus made a submission that against it objections were filed by the defendant/petitioner. However, without properly appreciating the objections preferred on behalf of the defendant/petitioner, the trial court, by virtue of the impugned order, partially allowed the amendment application, whereby para numbers 26A, 26B, 26C, 26D, 26E were permitted to be incorporated along with the amendments sought in para C, D, E and F. Thus, counsel for the defendant/petitioner assailed the said order on the premise that the order allowing the amendments, bring a sea change in the nature of the suit,

and as such, the order is erroneous and also circumventing the application filed regarding the maintainability of the suit. Hence, the order impugned is erroneous and cannot be sustained.

5. Per contra, counsel for the plaintiff/respondent herein made the submissions that first of all, the trial court has only allowed the amendment partially. Learned counsel for the plaintiff/respondent further submitted that since the suit is at the pre-trial stage, hence the amendment ought to have been allowed liberally and that has been rightly done by the trial court, and thus there is no scope for interference. The counsel for the plaintiff/respondent, while referring to the judgment of the Hon'ble Supreme Court in the case of Jacky v. Tiny alias Antony & Ors., reported in (2014) 6 SCC 508, and particularly referring to paras 2, 13, 15 thereof, made the submission that the second prayer of the writ petition would not be tenable, and the writ petition for such prayer would not be maintainable. He also referred to the judgment of the Hon'ble Supreme Court in the case of P. Suresh vs. D. Kalaivani and Ors. reported in 2026 SCC online SC 143, while referring to para 2, 5.5, 6.1, 7 and 7.4 thereof, he made the submission that it was open to the petitioner to have preferred applications and order 7 Rule 11 and order 6 Rule 16 of the CPC, and such a relief for the quashing of the entire plaint by resorting to provisions under Article 227 of the Constitution of India would not be tenable. He further submitted that adding a relief will not change the nature of the suit. Those issues can be gone into in trial regarding the concealment.

6. Learned counsel for the plaintiff/respondent has also referred to the judgment of the Hon'ble Supreme Court in the case of Abdul Rehman and another versus Mohd. Ruldu and others, reported in (2012) 11 SCC 341, whereby, it has been held that a change in the

nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.

7. However, learned counsel for the defendant/petitioner submits that the judgments relied upon by the plaintiff/respondent would not be attracted and since there have been certain concealments and the lacunae has been tried to be filled up and the challenge to the amendment, that was allowed, would be very much tenable.

8. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of Raj Shri Agarwal @ Ram Shri Agarwal & Another v. Sudheer Mohan & Ors., reported in 2022 SCC online SC 1775, and referred to para 3 and 5 thereof, which are as under:-

“3. By the impugned judgment and order, the High Court has dismissed the writ petition, under Article 227 of the Constitution of India, observing that the writ petition, under Article 227 of the Constitution of India, is not maintainable as remedy by way of revision under Section 115 CPC is available to the appellants/plaintiffs. As observed by this Court in catena of decisions and even in the decisions considered by the High Court, the view taken by this Court is that where there is availability of remedy under Section 115 CPC normally “the petition under Article 227 of the Constitution of India would not lie”. That does not mean that writ petition, under Article 227 of the Constitution of India, shall not be maintainable at all. There is a difference and distinction between the entertainability and maintainability. The remedy under Article 227 of the Constitution of India available is a constitutional remedy under the Constitution of India which cannot be taken away. In a given case the Court may not exercise the power under Article 227 of the Constitution of India if the Court is of the opinion that the aggrieved party has another efficacious remedy available under the CPC. However, to say that the writ petition under Article 227 of the Constitution of India shall not be maintainable at all is not tenable.

5. In view of the above and for the reasons stated above, the present Appeal succeeds. The impugned judgment and order passed by the High Court dismissing the writ petition, under Article 227 of the Constitution of India, on the ground that the same shall not be maintainable is hereby quashed and set aside. The matter is remanded to the High Court to consider the writ petition in accordance with law and on merits for which we have not expressed anything on merits in favour of either parties.”

9. At this stage, learned counsel for the petitioner makes a statement that he is not pressing the relief number (ii) and he will be filing appropriate application under Order 7 Rule 11 of the CPC before the trial court regarding the maintainability of suit and other issues. The writ petition is thus dismissed qua relief number (ii).

10. After considering the aforesaid facts and circumstances and the case laws as cited by the learned counsel for the parties, the writ petition, so far as the legality and correctness of the order dated 20th of February, 2026, needs a deeper scrutiny.

11. Admit the petition.

12. Learned counsel for the plaintiff/respondent seeks two weeks' time to file counter affidavit. At this stage, there is no requirement to issue notice to the performa respondents 1 and 2.

13. List this case on 20.05.2026.

14. Till the next date of listing the further proceedings of Original Civil Suit No.04 of 2025, Anjali Ahuja vs. Suman Ahuja and others, pending in Court of learned Civil Judge (J.D.), Srinagar, Pauri Garhwal shall remain stayed.

15. Stay Application (IA No.1 of 2026) stands disposed of accordingly.

(Siddhartha Sah, J.)  
05.05.2026