

**Court No. - 3**

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 456 of 2025

**Appellant :-** Kesar Singh

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Appellant :-** Ajay Mishra, Shri Krishna Mishra

**Counsel for Respondent:-** Abhishek Kumar Pandey, Bhagwan Das, C.S.C., Mohammad Zunaid Khan, Ranjana

**Hon'ble Shekhar B. Saraf.J.**

**Hon'ble Praveen Kumar Giri.J.**

(Judgment dictated in open Court by Shekhar B. Saraf, J.)

**Order on Delay Condonation Application**

1. Heard Mr. Shri Krishna Mishra, learned counsel appearing on behalf of appellant and learned standing counsel appearing on behalf of State.
2. This special appeal is reported to be beyond time by 10 days.
3. We have perused the delay condonation application and the affidavit filed in support thereof. Cause shown is sufficient. Delay in filing the special appeal is condoned. Application stands allowed.

**Order on Special Appeal**

4. This special appeal has been filed against the order dated May 26, 2025 passed by learned Single Judge in Public Interest Litigation (P.I.L.) No. 1375 of 2025.
5. The impugned order is a brief order and we are accordingly reproducing the same hereinbelow:

*"When this matter has come up for admission, Mr. V.C. Srivastava, Advocate says that the petitioner may be permitted to withdraw this*

*petition with liberty to file a fresh petition. Mr. Irfan Ali, Advocate holding brief of Mr. Abhishek Kumar Pandey, learned counsel for the petitioner, who have filed this petition along with Mr. Alok Singh and Mr. Mohd. Zunaid Khan, Advocates, submits that this prayer for withdrawal is a result of pressure brought upon the petitioner by respondent no. 5, Kesar Singh, who is an ill reputed land Mafia with a criminal history of 16 cases registered against him in district Fatehpur, He has invited the attention of the Court to the criminal history of respondent no. 5 summarized at page no. 66 of the paper book. The offences there are under the Gunda Act, more than one cases of attempt to murder, mischief, ublic property and criminal intimidation. Mr. Irfan Ali submits that it is on account of the threats extended by respondent no. 5 that the petitioner is attempting to withdraw this petition through Mr. V.C. Srivastava, Advocate.*

*Be that as it may, this Public Interest Litigation and the petitioner does not have an indefeasible right for withdrawing a PIL. Once a public cause is brought to this Court's notice, the petitioner if he abandons it, leaves the Court with the option to direct the petitioner to be substituted by some other public spirited person ready and willing to espouse the cause or the matter may be converted Suo Motu Into action. Let the Secretary (Home), Government of U.P., Lucknow and the Director General of Police, Government of U.P., Lucknow be made parties to this petition during the course of the day.*

*What has been brought to the notice of this Court is that respondent no. 5 has encroached into the land comprising Gata No. 276, Gata No. 294 and 308 besides Gata Nos. 292, 298 and 299 as also Gata Nos. 295 and 296, all situate in Village Rakshapalpur, Pargana Ekhlā and Tehsil Khaga, District Fatehpur. These plots are all public utility land and recorded as Khalihan, Manure Pit besides Banjar which is Goon Sabha land.*

*Let the Collector, Fatehpur and the Sub Divisional Officer, Khaga, District Fatehpur submit a report on or before 29.05.2025, if the plot numbers aforesaid are indeed Gaon Sabha land or public utility land encroached by respondent no. 5.*

*Notice on behalf of respondent no. 5, who is present in Court, is accepted by Mr. Sharad Chand Rai, Advocate. He will file a counter affidavit by the next date fixed. He will explain his criminal history also and categorically explain the case that has been put forward by Mr. Irfan Ali that the petitioner has been threatened into withdrawing the PIL.*

*Lay as fresh on 29.05.2025.*

*Let this order be communicated to the Collector, Fatehpur and the Sub Divisional Officer, Khaga, District Fatehpur through the Chief Judicial Magistrate, Fatehpur by the Registrar (Compliance) within 24 hours."*

6. Shri Krishna Mishra, Advocate appearing on behalf of the appellant herein (respondent no. 5 in the Public Interest Litigation) submits that the learned Single Judge exceeded his jurisdiction by passing the orders in the the said petition when the petitioner himself wanted to withdraw the petition. He further submits that learned Single Judge has granted certain reliefs to the petitioner that would have a negative impact upon his valuable rights.

7. The question that arises before this Court is primarily whether the Special Appeal is maintainable against an order passed by the learned Single Judge that merely directs certain officers to submit a report with regard to the Public Interest Litigation that has been filed and directed the appellant herein to file a counter affidavit.

8. Before delving into the issue, it is pertinent to look into the provision of Special Appeal in the Allahabad High Court Rules, 1952 (hereinafter referred to as the 'Rules').

#### **Chapter VIII Rule 5:**

**“5. Special appeal :-** *An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction [or in the exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award--(a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.]”*

9. The present special appeal is directed against a Public Interest Litigation which in its essence is a writ petition filed under Article 226 of the Constitution of India for the protection of fundamental rights of the public at large.

10. From the perusal of Chapter VIII Rule 5 of the Rules a special appeal shall lie before this Court from the judgment passed by single Judge of the Court. However, such special appeal will not lie in the following circumstances:

(i) the judgment passed by one Judge in the exercise of appellate jurisdiction, in respect of a decree or order made by a Court subject to the Superintendence of the Court;

(ii) the order made by one Judge in the exercise of revisional jurisdiction;

(iii) the order made by one Judge in the exercise of the power of Superintendence of the High Court;

(iv) the order made by one Judge in the exercise of criminal jurisdiction;

(v) the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution of India in respect of any judgment, order or award by

(a) the tribunal,

(b) Court or

(c) statutory arbitrator

made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India;

(vi) the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or 227 of the Constitution of India in respect of any judgment, order or award of

(a) the Government or

(b) any officer or

(c) authority,

made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act, i.e. under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India.”

11. Upon perusal of the order, it is clear that the learned Single Judge was of the view that the petitioner has been intimidated in some manner and was accordingly seeking to withdraw the writ petition. Furthermore, the Hon'ble Single Judge held that there is no indefeasible right for a petitioner to withdraw a Public Interest Litigation once the same has been brought to the knowledge of the Court.

12. In view of the same, the learned Single Judge has passed certain orders seeking report from the Collector, Fatehpur and the Sub Divisional Officer, Khaga, District Fatehpur with regard to the plot numbers (that was supposedly encroached) as to whether certain plot numbers are Gaon Sabha Land or public utility land. Direction has also been given to the respondent no.5 (appellant herein) to explain his criminal history, by way of filing a counter affidavit.

13. The Supreme Court in **Shah Babulal Khimji v. Jayaben D. Kania**, reported in (1981) 4 SCC 8 has laid down various principles as to when a ‘judgment’ would be appealable under letters patent appeal and also delineated the interlocutory order which would be appealable. The relevant paragraphs of the judgment are quoted hereinafter:

*“120. Thus, these are some of the principles which might guide a Division Bench in deciding whether an order passed by the trial Judge amounts to a judgment within the meaning of the letters patent. We might, however, at the risk of repetition give illustrations of interlocutory orders which may be treated as judgments:*

*(1) An order granting leave to amend the plaint by introducing a new cause of action which completely alters the nature of the suit and takes away a vested right of limitation or any other valuable right accrued to the defendant.*

*(2) An order rejecting the plaint.*

*(3) An order refusing leave to defend the suit in an action under Order 37, of the Code of Civil Procedure.*

*(4) An order rescinding leave of the trial Judge granted by him under clause 12 of the letters patent.*

*(5) An order deciding a preliminary objection to the maintainability of the suit on the ground of limitation, absence of notice under Section 80, bar against competency of the suit against the defendant even though the suit is kept alive.*

*(6) An order rejecting an application for a judgment on admission under Order 12 Rule 6.*

*(7) An order refusing to add necessary parties in a suit under Section 92 of the Code of Civil Procedure.*

*(8) An order varying or amending a decree.*

*(9) An order refusing leave to sue in forma pauperis.*

*(10) An order granting review.*

*(11) An order allowing withdrawal of the suit with liberty to file a fresh one.*

*(12) An order holding that the defendants are not agriculturists within the meaning of the special law.*

*(13) An order staying or refusing to stay a suit under Section 10 of the Code of Civil Procedure.*

*(14) An order granting or refusing to stay execution of the decree.*

*(15) An order deciding payment of court fees against the plaintiff.”*

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*151. An order which is appealable under the Code or under any other statute becomes appealable as the statute confers a right on the litigant to prefer an appeal against such an order. Such an order may or may not be appealable as “judgment” under clause 15 of the letters patent. An order which may be appealable under clause 15 of the letters patent as a “judgment” becomes appealable as letters patent confers on the litigant a right of appeal against such an order as “judgment”. An order appealable under the letters patent may or may not be appealable under the Code. A right of appeal is a creature of statute. A litigant does not have an inherent*

*right to prefer an appeal against an order unless such a right is conferred on the litigant by law. Certain orders become appealable under the Code, as the Code makes such orders appealable. Other statutes may confer a right of appeal in respect of any order under the statute. The letters patent by clause 15 also confers a right to prefer an appeal against a “judgment”. An order which satisfies the requirements of ‘judgment’ within the meaning of clause 15 becomes appealable under the letters patent. What kind of an order will constitute a judgment within the meaning of clause 15 of the letters patent and will become appealable as such must necessarily depend on the facts and circumstances of each case and on the nature and character of the order passed. The question whether a particular order constitutes a judgment within the meaning of clause 15 of the letters patent to be appealable under the provisions thereof has come up for consideration before the various courts in a number of decisions. Very many decisions have been cited in the present case and they have been considered by my learned brother, Fazal Ali, J. in his judgment. The question indeed, is not free from difficulties and divergent views have been expressed by different courts and by various learned judges. This Court had also the occasion to consider as to what may constitute a judgment within the meaning of clause 15 of the letters patent in certain cases. In the case of *Shanti Kumar R. Canji v. The Home Insurance Co. of New York* [(1974) 2 SCC 387 : AIR 1974 SC 1719 : (1975) 1 SCR 550] this Court referring to the earlier decision of this Court in the case of *Asrumati Devi v. Kumar Rupendra Deb Raikot* [(1953) 1 SCC 333 : AIR 1953 SC 198 : 1953 SCR 1159] observed at p. 550:”*

14. The Division Bench of this Court in **Sandeep Agarwal and others v. Adarsh Chaddha and others** reported in 2002 (4) AWC 3083 has categorically held that if an order of the Court is in the nature of a final order, it could be appealable and not otherwise. The Division Bench of this Court has also held in **Society Madarasa Mazahir Uloom Mubarak Shah, Saharanpur v. Muzaffar Hussain** reported in (1994) 1 AWC 55 that when an order is passed by the Court affects valuable rights which amounts to pre-hearing of the judgment, it could be appealable.

15. The Full Bench judgment of this Court penned by the then Chief Justice Hon’ble D.Y. Chandrachud in **Ashutosh Shrotiya and Others v. Vice-Chancellor, Dr B R Ambedkar University & Others** reported in (2015) 6 All LJ 383 after considering the judgment of Supreme Court in **Shah Babulal Khimji** (supra) specifically dealt with the issue of maintainability of a

Special Appeal and culled out principles as to what constitute ‘judgments’. The relevant paragraphs of the judgment are quoted hereinbelow:

*“30. We now formulate the governing principles:*

*(i) The expression 'judgment' was advisedly not defined in the Letters Patents of various High Courts which conferred a right of appeal against a judgment of a Single Judge to a Division Bench of that Court;*

*(ii) The expression 'judgment' is not to be construed in the narrower sense in which the expression 'judgment', 'decree' or 'order' is defined in the CPC, but must receive a broad and liberal construction;*

*(iii) Every order passed by a trial Judge on the Original side of a High Court exercising original jurisdiction or, for that matter, by a learned Single Judge exercising the writ jurisdiction, would not amount to a judgment. If every order were construed to be a judgment, that would result in opening a flood of appeals and there would be no end to the number of orders which could be appealable under the Letters Patent;*

*(iv) Any interlocutory order to constitute a judgment, must possess the characteristic of finality in the sense that it must adversely affect a valuable right of a party or decide an important aspect of the trial in an ancillary proceeding. In order to constitute a 'judgment', the adverse effect on a party must be direct and immediate and not indirect or remote;*

*(v) In order to constitute a judgment, an interlocutory order must: (a) decide a matter of moment; or (b) affect vital and valuable rights of the parties and must also work serious injustice to the party concerned:*

*(vi) On the other hand, orders passed in the course of the proceedings of a routine nature, would not constitute a judgment even if they result in some element of inconvenience or hardship to one party or the other. Routine orders which are passed by a Single Judge to facilitate the progress of a case may cause some element of inconvenience or prejudice to a party but do not constitute a 'judgment' because they do not finally determine the rights or obligations of the parties. Procedural orders in aid of the progression of a case or to facilitate a decision are not judgments.*

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*44. In view of the aforesaid discussions, we answer the question of law referred to the Full Bench by holding that, an order of a learned Single Judge upon a petition under Articles 226 or 227 of the Constitution only calling for counter and rejoinder affidavits is merely a procedural order in aid of the progression of the case. An order of this nature which is purely of a procedural nature in aid of the progression of the case and to enable the*



*Court to form a considered view after a counter affidavit and a rejoinder are filed would not be amenable to a special appeal under Chapter VIII Rule 5. Such an order does not decide anything nor does it have the trappings of finality. If a party to the proceedings seeks to press an application for ad interim relief of a protective nature even before a counter affidavit is filed, on the ground that a situation of irretrievable injustice may result or that its substantive rights would be adversely affected in the meantime, such an argument must be addressed before the Single Judge. If such an argument is urged, it should be dealt with however briefly, consistent with the stage of the case, by the Single Judge. It is for the Division Bench hearing the special appeal to consider whether the order decides matters of moment or is of such a nature that would affect the vital and valuable rights of the parties and causes serious injustice to the concerned party.”*

(Emphasis added)

16. From the perusal of the above judgments, the ratio is crystal clear that unless an order has the trappings of a final order and/ or affects the valuable rights of a party causing serious injustice to a party, no appeal would lie before the Division Bench from the order passed by a Single Judge of this Court. The Full Bench in **Ashutosh Shrotiya (supra)** has categorically concuded as follows:

*“31. Now, it is in the background of these principles that we need to deal with the issue as to whether an order of a Single Judge, in the exercise of writ jurisdiction, calling for the filing of a counter affidavit and a rejoinder, must in all circumstances without exception be treated as orders merely facilitating the progress of the case and not constituting a judgment. Where a judge requires the filing of a counter affidavit by the respondent and a rejoinder by the petitioner in response, this is in the nature of a procedural direction to enable the Court to have a full disclosure of the underlying facts and issues so as to facilitate a decision. The object of such a direction is to enable the Single Judge to be apprised of facts relevant and material to arriving at a considered view. Such a direction is in aid of the progression of the case. It does not decide the matter or issue in controversy. The lis continues to remain pending before the Single Judge. The Court would apply its mind to the merits of the controversy, for the purpose of deciding an application for interim relief and eventually for the final disposal of the writ proceedings after affidavits are filed. This is a procedural order and not a judgment.”*

(Emphasis added)

17. Applying the ratio of the above discussed judgments, it is patently clear that an interlocutory order to be appealable under Chapter VIII Rule 5 of the Rules must adversely affect the valuable right of a party or decide an important aspect. In order to constitute 'appealable order', the adverse effect on a party must be direct and immediate and not indirect or remote. Furthermore, routine orders passed by Single Judge of seeking reports and/or directing affidavits to be exchanged that would facilitate the progress of a case even though may cause some element of inconvenience or prejudice to a party would not constitute a judgment as the same does not finally determine the rights and obligations of the parties.

18. From a perusal of the order passed, it appears that it is neither an interim nor a final order affecting the interest of any party. The learned single judge has simpliciter sought for reports to determine the truthfulness of the allegations made in the Public Interest Litigation. Under no circumstances, such directions can be termed as judgment and/or an interim order that decides the vital and valuable rights of any of the parties.

19. It is to be noted that the issue of maintainability of the writ petition was never raised by the appellant herein before the learned Single Judge. The only ground raised was that the petitioner in the said petition wanted to withdraw the said petition (Public Interest Litigation) which was rejected by the Hon'ble Judge. Such a rejection order does not in any manner impact any valuable rights of the appellant herein. The appellant shall be at liberty to raise the point of maintainability as a preliminary issue before the Hon'ble Single Judge.

20. It is to be further noted that the present appeal has not been filed by the petitioner who had wished to withdraw the petition, but has been filed by the respondent no. 5 in the writ petition against whom several allegations have been made by the writ petitioner. This itself raises questions on the maintainability of the special appeal.

21. Learned Counsel for the appellant has referred to the judgment of Supreme Court in **State of Uttaranchal v. Balwant Singh Chauhal and Others**

reported in (2010) 3 SCC 402 emphasizing the point that the Court must encourage only genuine and bonafide Public Interest Litigation and effectively discourage the Public Interest Litigation filed for extraneous consideration. He relies upon paragraph 181 of the said judgment to buttress the argument that the Public Interest Litigation which has been sought to be withdrawn by the petitioner itself is an abuse of the process of Court.

22. We once again emphasise that the question whether the Public Interest Litigation is a bonafide exercise or not is to be decided by the Hon'ble Single Judge as and when the issue is raised before him. Ergo, the judgment in **Balwant Singh Chaufal (supra)** is not relevant to decide the issue herein.

23. It is also to be noted that in the impugned order which is under challenge before us, no decision has been taken by the learned Single Judge with regard to the maintainability of the Public Interest Litigation not does it in any manner negatively impact the valuable rights of any party including the appellant at this stage.

24. Accordingly, the present special appeal is dismissed as not maintainable.

25. As the counter affidavit has not been filed by the appellant in the Public Interest Litigation, the time to file counter affidavit therein is extended by three weeks.

**Order Date:-1.8.2025**  
M.Tarik

(Praveen Kumar Giri.J.)      (Shekhar B. Saraf.J.)