

Court No. - 7

Case :- SECOND APPEAL No. - 928 of 2023

Appellant :- Tufel Ahamd

Respondent :- Abu Rafat And 5 Others

Counsel for Appellant :- Priyavrat Tripathi

Hon'ble J.J. Munir,J.

To our utter shock, we find that this second appeal has been preferred from an order dated 01.11.2023, passed by the Additional District Judge, Court No.3, Azamgarh, dismissing Miscellaneous Civil Appeal No. 48 of 2023 and affirming an order dated 20.04.2023, passed by the Civil Judge (Senior Division), Azamgarh, rejecting the appellant's temporary injunction application in a pending suit.

Of the many such surprising and shocking things that are happening in Courts these days, this case is a glaring illustration. The order impugned is not at all a decree passed in appeal so as to be amenable to our jurisdiction under Section 100 of the Code of Civil Procedure. An appeal from an appellate decree and as it is popularly called a 'second appeal' lies from a decree passed by the Court in the exercise of its appellate jurisdiction, hearing an appeal from an original decree passed in a suit. Here, the suit is pending and all that the Trial Court has done is to decide the temporary injunction application.

The aggrieved plaintiff-appellant has preferred a miscellaneous civil appeal to the District Judge under Order XLIII Rule 1 (r) C.P.C. which, by the order impugned dated 01.11.2023, has been dismissed. The order dated 01.11.2023, by no means, is an appellate decree within the meaning of Section 100 C.P.C. The appellant, of course, has his remedies against the order dated 01.11.2023, but to think that a duly advised second appeal would be preferred from an order passed by the Appellate Court under Order XLIII Rule 1(r) C.P.C. is something unimaginable in a High Court. This kind of absurdity surfaces because litigants, both private and official, have the tendency of thinking small of Members of the Bar and generally engage Counsel not on the basis of their experience and expertise, but on account of personal acquaintance. They sometimes seem to think that they are extending a favour to the learned Counsel by instructing him. Little do they realize, that is to say, the litigants that what is at stake is their own interest, whether the litigant be a private

person or a State functionary.

This is one aspect of the matter which needs serious attention at all levels particularly, by those who have causes before the Court. The other is that when this appeal was presented to the Stamp Reporter, it passed the Stamp Reporter's scrutiny without objection as to maintainability. This again is a most surprising thing. This we can attribute to the fact that the newer generation of staff recruited in the Stamp Reporter have scant awareness about the law, though they may have plenty of knowhow in working with the computers, on which they enter data. A Stamp Reporter's job is paralegal and he has to be well acquainted with the procedural Codes as well as Court Rules in order to make effective reports in matters that are presented to them for scrutiny before coming up in Court. The Stamp Reporter is the first Ministerial Officer, who reports on matters like maintainability of the proceedings instituted before us, limitation, sufficiency of Court fee and a host of other similar matters. The person In-charge of the Stamp Reporters Office, or so to speak, the Stamp Reporter should be well versed in the procedural Codes and Rules of Court in order to effectively discharge his duties.

So far as this second appeal is concerned, it is **dismissed as not maintainable**.

This order will not prevent the appellant from availing such remedies, as may be advised.

Let a copy of this order be forwarded to the Stamp Reporter forthwith.

Order Date :- 1.2.2024

Vijay