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**(1977) 07 RAJ CK 0012**

**Rajasthan High Court**

**Case No:** First Appeal No. 31 of 1977

Jagmal

APPELLANT

Vs

Ram Karan and Another

RESPONDENT

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**Date of Decision:** July 7, 1977

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 43 Rule 1, 89, 97(2)

**Citation:** AIR 1979 Raj 65

**Hon'ble Judges:** A.P. Sen, J

**Bench:** Single Bench

**Advocate:** N.M. Singhvi, for the Appellant; B.R. Arora, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

A.P. Sen, J.

This purports to be an appeal by the plaintiff under Order XLIII, Rule 1 (m) of the Civil P. C. against the order of Civil Judge, Ganganagar, dated 14-3-1977, refusing to record an alleged compromise.

2. The Civil P, C, (Amendment) Act, 1976, came into force w. e. f. 1-2-1977, making drastic changes in the Civil P. C. Section 89 of the Amendment Act brings about several changes in Order XLIII. By Clause 1 (b), Clauses (b), (e), (g), (h), (m), (o) and (v) of Order XLIII have been omitted. As a result of the amendment, the order passed by the learned Civil Judge was a non-appealable order. The order was passed on 14-3-1977. Order XLIII, Rule 1 (m) stood deleted w. e. f. 1-2-1977. The present appeal was filed on 23-4-1977.

3. Shri B. R. Arora, learned counsel for the respondent No. 1, raises a preliminary objection that having regard to the provision contained in Section 97 (2) (zb), the vested right of appeal, if any, against an order under Order 23, Rule 3, was taken away by the repeal of Order XLIII, Rule 1 (m). There is, in my view, great force in his submission. Section 97 (2) (zb) reads:--

"97, (1) x x x x

(2) Notwithstanding that the provisions of this Act have come into force or the repeal under Sub-section (1) has taken effect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897,--

X X X X X X

(zb) the provisions of Order XLIII of the First Schedule, as amended by Section 89 of this Act, shall not apply to any appeal against any order pending immediately before the commencement of the said Section 89; and every such appeal shall be disposed of as if the said S, 89 had not come into force."

4. Shri N. M. Singhvi, learned counsel for the appellant, however, contends that the right of appeal is not mere matter of procedure, but a substantive right, and any such right is to be governed by law prevailing at the date of institution of the suit or proceedings, and not by the law that prevails at the date of its decision or at the date of filing of the appeal. He has placed strong reliance on certain observations of their Lordships of the Supreme Court in [Garikapatti Veeraya Vs. N. Subbiah Choudhury](#), . The argument looks rather attractive at first sight, but on deeper consideration must be rejected. The principles settled by their Lordships in Garikapati Veeraya v. N. Subbiah Choudhry (supra) are not in dispute but the difficulty is about the application of those principles to the present case. In my view, the decision in Garikapati Veeraya v. N. Subbiah Choudhry (supra) is clearly distinguishable. There was no provision like Section 97 (2) (zb) before their Lordships.

5. The language of Section 97 (2) (zb) is clear and unambiguous. It admits of no other construction than this, that the vested right of appeal under Order XLIII Rule 1 (m) has been preserved only with respect to the pending appeals. If there was no provision like Section 97 (2) (zb), the decision of their Lordships in Garikapati Veeraya v. N. Subbiah Choudhry (supra) would have applied with full force. We cannot, however, lose sight of the expression "pending appeals" in regard to which the right of appeal under Order XLIII Rule I (m) is saved. Though there is no express provision in regard to other appeals, i.e. those presented after the Amendment Act came into force, The vested right could be extinguished by express provision or by necessary intendment. There is no express provision. The necessary intendment clearly is that no such appeal under order XLIII Rule 1 (m) should be entertained.

6. The result, therefore, is that the appeal fails and is dismissed as not competent. No order as to costs.