

(1980) 07 AHC CK 0034

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 6557 of 1979

Firm Devesh Kumar Viresh
Kumar, Aligarh and Others

APPELLANT

Vs

5th Addl. District Judge, Aligarh
and Others

RESPONDENT

Date of Decision: July 14, 1980

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11, 148, 149, 151

Citation: AIR 1981 All 15 : (1980) AWC 448

Hon'ble Judges: A.N. Varma, J

Bench: Single Bench

Advocate: V.K. Gupta, for the Appellant; K.N. Tripathi and B.N. Mishra, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.N. Varma, J.

By this writ petition, the validity of an order passed by the learned V Additional District Judge, Aligarh on 11-10-1976 is questioned.

2. The relevant facts are these,

3. A plaint was presented by respondent No. 2 in which the petitioners were arrayed as defendants. The plaint was rejected by the trial court on the ground of insufficiency of the court-fee stamp. The plaintiff thereupon filed an application for recalling of that order under Sections 148, 149 and 151 of the Code of Civil Procedure. The said application was rejected by the trial Court on the short ground that it was not maintainable and that the plaintiff had his remedy only by way of appeal against the order rejecting the plaint. Aggrieved by that order, the plaintiff filed a revision u/s 115 of the CPC which was allowed by the impugned order by the

learned V Additional District Judge, Aligarh. The learned District Judge allowed the revision and set aside the order passed by the trial Court rejecting the application of the plaintiff. While allowing the revision, the learned District Judge has directed that the application in question be disposed of by the trial Court on merits.

4. Learned counsel for the petitioners contends that the view taken by the trial Court that the only remedy available to the plaintiff was by way of appeal was correct and that the learned District Judge has erred in taking a contrary view.

5. Having heard the learned counsel for the parties, I am of the view that the learned District Judge is right in holding that the application filed by the plaintiff was maintainable. Against such an order, the aggrieved party has two alternatives depending on the circumstances of the case. He may file a regular appeal or may file an application under Sections 151, 148 and 149 of the Code of Civil Procedure, if the circumstances so permit. If circumstances for invoking the Court's discretion under Sections 148, 149 and 151 exist, the Court will certainly have jurisdiction to entertain the application irrespective of the consideration that the aggrieved party also has an alternative remedy by way of an appeal. The trial Court was, therefore, not right in taking the view that the application of the plaintiff was not maintainable.

6. There is no merit in this writ petition which is consequently dismissed. There will be no order as to costs.