Abdul Gaffar And Others Vs State of U.P.& Another

Court: Allahabad High Court

Date of Decision: May 6, 2009

Hon'ble Judges: Pankaj Mithal, J

Final Decision: Dismissed

Judgement

Pankaj Mithal, J.

Heard learned counsel for the appellant.

This First Appeal From Order is directed against the order dated 5.2.2009 passed by the lower appellate court whereby the appellant''s

application to recall the order dated 17.8.2007 has been rejected after condoning the delay in moving the said application.

The plaintiff appellant''s suit was dismissed vide judgment and order dated 28.2.2005. Against the same plaintiff appellant preferred a civil appeal

no. 59 of 2005.The said appeal was dismissed in default on 20.5.2005. Therefore, the plaintiff appellant moved an application under Order XLI

Rule 19 CPC for recall of the above order and to restore the appeal. This application was also dismissed in default on 17.8.2007. It was for the

recall of the order dated 17.8.2007 that the plaintiff appellant filed another application along with condonation of delay which came to be rejected

by the impugned order.

This First Appeal From Order has been preferred by the appellant under Order XLIII Rule 1 (t) which provides for an appeal against an order of

refusal passed on application under Order XLI Rule 19 or Rule 21 CPC. Order XLI Rule 19 CPC provides for an application for recall of the

order dismissing the appeal for default and for its restoration. The relevant words used therein are ""the appellant may apply to the appellate court

for the readmission of the appeal"". Therefore, it will not include within its fold an application for recall of an order passed on an application and for

its rehearing. In the instant case the application which had been rejected by the impugned order was not one which was for the restoration of the

appeal but was for the recalling of the order passed on an application ie, for the restoration of an earlier application. Refusal of such an application

is not covered by Order 43 Rule (1) (t) as it only speaks about an appeal against an order of refusal of an application for restoration of an appeal.

Therefore, such an order is not amenable to appeal.

Accordingly, the appeal is liable to be dismissed as not maintainable.

The certified copies of the judgment and orders filed along with this appeal may be returned to the learned counsel within 3 days to enable him to

take appropriate steps for challenging the order, if so advised, before an appropriate forum.

With the above liberty the appeal is dismissed.