

(2003) 03 CAL CK 0006**Calcutta High Court****Case No:** F.M.A. NO. 323 of 2003

Abu Taher (SK.)

APPELLANT

Vs

Margina Bibi (Missammat)

RESPONDENT

Date of Decision: March 28, 2003**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 11
- Constitution of India, 1950 - Article 226
- Guardians and Wards Act, 1890 - Section 47

Citation: (2003) 2 ILR (Cal) 94**Hon'ble Judges:** Gora Chand De, J; Bhaskar Bhattacharya, J; Altamas Kabir, J**Bench:** Full Bench**Advocate:** Soumen Dutta, for the Appellant;**Final Decision:** Allowed**Judgement**

1. This matter has been referred to this Bench to answer the question as to whether an appeal u/s 47 of the Guardians and Wards Act, 1890 is required to be posted for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

2. The said reference has been occasioned by an Order dated June 22, 2001, passed in this appeal, wherein it has been observed that the appeal was not required to be heard under Order XLI Rule 11 of the Code of Civil Procedure, since the appeal to the High Court lies under the Act itself.

3. This appeal appears to have been listed before another Bench presided over by Dilip Kumar Seth J., on September 12, 2002. While considering the matter the Division Bench took note of a decision of this Court in the case of Lalit Chandra Dhar Vs. Abdul Rauf and Others, where a similar question had arisen in connection with an appeal under the Provincial Insolvency Act and it had been held that the matter was required to be heard under Order XLI Rule 11 of the Code of Civil Procedure.

4. In the said Order of September 12, 2002, it was also mentioned that the said question had already been considered by the said Division Bench in the case of *Nilmoni Majumder v. Sanghamitra Majumder* 2002(2) C.L.J. 227.

5. Having regard to the provisions of Chapter v Rule 17 of the Appellate Side Rules of this Court we see no reason to differ with the views expressed either in *Lalit Chandra Dhar*'s case Supra or in *Nilmoni Majumder*'s case Supra. It is necessary to mention that Rule 17 of Chapter V of the Appellate Side Rules provides for Admission of Appeals. Clause (a) of Rule 17 of the Appellate Side Rules indicates that in the case of Appeals from certain Orders and from decrees, the appeal is required to be admitted by the officer to whom the Memorandum is presented, who shall cause the same to be registered, and, thereafter, issue notice to the Respondents. However, in Clause (b) of Rule 17, it has been indicated that in case of an appeal from an appellate decree or an appeal from an Order, other than an appeal under the Workmen's Compensation Act, an appeal from an Order under Article 226 of the Constitution, an appeal under the Indian Railways Act 4 of 1890 and an appeal under the Motor Vehicles Act 4 of 1939, the officer to whom the Memorandum is required to be presented shall admit it, cause it to be registered, and, thereafter, post it to a Bench for hearing under Order XLI Rule 11 of the Code of Civil Procedure. In other words, an appeal not specifically excluded by Clause (b) of Rule 17 of the Appellate Side Rules of this Court is required to be posted for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

6. In the aforesaid circumstances, in the instant case also, this appeal, which has been provided for by Section 47 of the Guardians and Wards Act, 1890 is required to be posted for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

7. In such circumstances, the Order passed on June 22, 2001, is recalled with a direction that this appeal be posted for hearing under Order XLI Rule 11 of the Code of Civil Procedure.