

**(2014) 07 CAL CK 0049**

**Calcutta High Court**

**Case No:** FMA No. 001 of 2014

Bimal Majumdar

APPELLANT

Vs

The Lieutenant Governor

RESPONDENT

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**Date of Decision:** July 31, 2014

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 11, Order 43 Rule 1(u), 100

**Citation:** (2014) 4 CALLT 315 : (2014) 5 CHN 606

**Hon'ble Judges:** Subhro Kamal Mukherjee, J; Indrajit Chatterjee, J

**Bench:** Division Bench

**Advocate:** Anjili Nag, Advocate for the Appellant; Santosh Kumar Mandal and Satish Chandra Mishra, Advocate for the Respondent

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### **Judgement**

1. When this appeal is called on for hearing, our attention is drawn that this is an appeal against an order of remand. Therefore, under Chapter II, rule 1 of the Appellate Side Rules of the High Court at Calcutta, this appeal is to be considered by a Single Judge.

2. Mrs. Anjili Nag, learned advocate appearing for the appellant Gopala Binnu Kumar, learned advocate appearing for the respondent Nos. 3, 4, 5, 6 and 7 jointly submit that, at the time of hearing of this appeal under rule 11 of Order 41 of the Code of Civil Procedure, no substantial question of law was formulated.

3. In [Narayanan Vs. Kumaran and Others](#), the Supreme Court of India held that it has been obvious that an appeal would lie from an order of remand only in those cases in which an appeal would lie against the decree if the appellate court instead of making an order of remand had passed a decree on the strength of the adjudication on which the order of remand was passed. The test has been whether in the circumstances an appeal would lie if the order of remand was to be treated as a decree and not a mere order. In these circumstances, it has been quite safe to adopt that appeal under Rule 1(u) of Order 43 should be heard only on the ground

enumerated in section 100 of the Code of Civil Procedure.

4. The same view was reiterated by the Supreme Court of India in [Jegannathan Vs. Raju Sigamani and Another,](#) . In Jegannathan (supra), the Supreme Court of India observed that the constraints of section 100 of the Code of Civil Procedure would continue to be attached to an appeal under Order 43, rule 1(u) of the Code. Thus, the appeal under Order 43 Rule 1(u) of the Code could only be heard on the grounds a second appeal would be heard under section 100 of the Code.

5. We are, thus, invited to formulate a substantial question of law for consideration in this appeal.

6. This appeal would be heard on the following substantial question of law:

Whether the learned judge in the lower appellate court substantially erred in law in remanding the suit without deciding as to the competence of a civil court to entertain a suit challenging an order of termination of an employee of the co-operative union?

7. Mr. Gopala Binnu Kumar, learned advocate appears and accepts notice on behalf of the respondent Nos. 3, 4, 5, 6 and 7. Therefore, formal notice of appeal on those respondents is dispensed with.

8. The appellant is directed to put in requisite for effecting service of notice of appeal, that is, postal costs, correct postal addresses and written up notice forms, on the respondent Nos. 1 and 2, by fortnight.

9. In default, put up for final orders. List this matter for hearing" before the appropriate Single Judge as and when the appeal is ready for hearing.