(2019) 08 UK CK 0233

In the Uttarakhand High Court

Case No : Second Appeal No. 98 Of 2019

Ashfaqh	APPELLANT
Vs	
Zahir Hassan	RESPONDENT

Date of Decision : 30-08-2019

Acts Referred:

Real Estate (Regulation And Development) Act, 2016 — Section 43, 44, 58
Code Of Civil Procedure, 1908 — Section 96, 100, 104
Kerala Forest Act, 1961 — Section 4, 5, 6, 8, 9, 11, 12A, 12A(1), 83
Telecom Regulatory Authority Of India Act, 1997 — Section 18, 18(1)
Income Tax Act, 1961 — Section 260A, 260A(4), 260A(7)
Real State (Regulation And Appeal) Act, 1916 — Section 58

Citation : (2019) 08 UK CK 0233

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Nagesh Aggarwal

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

This is a Second Appeal which was initially instituted by the learned counsel for the appellant under the Head of Appeal from Order, under the pretext that the same happens to be an appeal as provided under Section 58, which was arising out of an order passed in the proceedings under the Real Estate (Regulation and Development) Act, 2016, by it Appellate Tribunal has been constituted under Sections 43 and 44 of the Act of 2016. Initially, when the appeal was instituted as an Appeal from Order, the Registry of this Court has raised an objection to the effect, that in view of a literal interpretation of Section 58 of the Act of 2016. It ought to have been registered as a Second Appeal for the reason that Section 58, which is providing for appeal to the High Court, itself makes reference to Section 100 of CPC, wherein, it has mentioned that an appeal against the Appellate Tribunal judgment could be preferred under Section 58, before the High Court in same fashion and manner as that which is contemplated under

Section 58 of the Act of 2016, to be read with Section 100 of CPC which read as under:-

"58. Appeal to High Court.-(1) Any person aggrieved by any decision or order of the Appellate Tribunal may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908. (5 of 1908).

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Explanation.- "High Court" means the High Court of a State or Union territory where the real estate project is situated.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties."

"100. Second Appeal:-(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.]"

The distinction which has been sought to be drawn by the learned counsel for the appellant herein is that a reference made to Section 100 of CPC, under Section 58 of the Act, will not in itself imply that all the elements and essentialities as provided for in Section 100 of CPC would be attracted for the reason that the challenge which was given to the judgment was that of the Appellate Tribunal, as constituted under the Act itself, and in support of his contention he has made reference to a judgment as reported in (2010) 9 Supreme Court Cases 642, James Joseph vs. State of Kerala, where the Hon'ble Apex Court was dealing with a different set of litigations which was arising out of different provisions contemplated under the various acts which provides for an appeal against an appellate order and the provisions which has been dealt with in the aforesaid judgment was in relation to the provisions relating to a challenge given to a decision of the Forest Settlement Officer in view of the implications used under Section 12A(1) of the Kerala Forest Act, 1961. The provisions as far as it relates to an appeal against a decision or an order of the Forest Settlement Officer, the implication of Section 83 was also taken into consideration as to whether the decision taken by the Forest Settlement Officer would constitute to be a decree to make an appeal tenable before the High Court in a manner as to be a Second Appeal or it would be filed as an appeal against an order. The issue which was dealt with by the Hon'ble Apex Court in para 8 of the said judgment in the context of the appellate provisions as contained under Section 6, where, the Forest Settlement Officer inquired into the claim raised under the Act and what would be the impact of the decision taken by the Forest Settlement Officer whether it takes a shape of decree of a Civil Court or not. But as far as the power pertaining to an appeal under Section 12A, which has been given therein was as against any order of the District Court in an appeal under Section 11, which has been provided and appeal under Section 11 of the said Act against an order of Forest Settlement Officer under Section 6 of the Act of 1961. As far as Section 12A is concerned, where it provides an appeal against an Appellate Order, the said provision will not be of any rescue to the argument extended by the learned counsel for the appellant for the reason being that Section 12A, where it contemplates an appeal against an appellate order it neither refers that it has been provided to be preferred as a Second Appeal nor does it make any reference to the provisions contained under Section 100 of CPC. It simply embarks upon that it has to be an appeal to the High Court against an appellate order under Section 12A which has been passed by the District Court in an appeal under Section 11 of the Act. Hence, since the set of provisions which deals with all together a distinct situation, wherein, though the provisions of the Code of Civil Procedure has been made attracted but the appellate provision of an appeal before the High Court under Section 12A against an appellate order under Section 11 by the District Court, it does not circumscribe the appellate jurisdiction whether it has to be a Second Appeal or a appeal as provided under Section 100 of CPC.

"8. The answers to the questions raised depend upon the scheme of chapter II of the Act relating to Reserved forests. The relevant portions of Sections 4, 5, 6, 8, 9, 11, 12A and 83 of the Act are extracted below :

"4. Notification by Government.- Whenever it is proposed to constitute any land a Reserved Forest, the Government shall publish a notification in the Gazette-

(c) appointing an officer (hereinafter called the Forest Settlement Officer) to inquire into and determined the existence, nature and extent of any rights claimed, by or alleged to exist in favour of any person in or over any land comprised within such limits, or to any forest produce of such land and to deal with the same as provided in this Act."

That is why the distinction was carved out in the reasoning which has been assigned in para 10 of the said judgment, wherein, the Hon'ble Apex Court has to extract the meaning of the term of, "appeal", because under the Code of Civil Procedure or under the Principle Act providing for an appeal from an appellate order, since has not defined the appeal itself, the Hon'ble Apex Court has considered the meaning of appeal as it is literally provided in the dictionary which in it is simplicitor terminology has defined it as to be a proceeding undertaken to have a decision reconsidered by bringing it to a higher court. Even if, this meaning is taken into consideration, this meaning of an appeal provided under the Black's Law Dictionary (7th Edn.) will not imbibe within its scope, the restrictions or the limitations as contained in Second Appeal as contemplated under Section 100 of CPC, wherein, it's the appellate judgment which has been put to scrutiny before the Superior Appellate Court, exercising the second appellate jurisdiction. The scope of Section 100 of CPC has to be read in consonance to the word 'Second Appeal' used therein as per the various pronouncements of the Hon'ble Apex Court it is yet again confined to its interpretation and interference, where it entails only a scrutinisation limited from consideration of a substantial question of law.

"10. Section 12A does not use the words "second appeal". It provides that an appeal would lie against an appellate order under section 11 to the High Court. The word `appeal' is not defined either under the Act or under the Code. Black's Law dictionary, (7th edn.) defines an appeal as:

"A proceeding undertaken to have a decision reconsidered by bringing it to a higher authority."

11. The classic definition of an appeal in Chappan v. Moidin Kutti [ILR (1899) 22 Madras 68], by a Full Bench of the Madras High Court, adopted by this Court, in Tirupati Balaji Developers (P) Ltd. v. State of Bihar [2004 (5) SCC 1], is as follows :

"9. ....Appeal implies in its natural and ordinary meaning the removal of a cause from any inferior court or tribunal to a superior one for the purpose of testing the soundness of decision and proceedings of the inferior court or tribunal. The superior forum shall have jurisdiction to reverse, confirm, annul or modify the decree or order of the forum appealed against and in the event of a remand the lower forum shall have to rehear the matter and comply with such directions as may accompany the order of remand. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below. ...

10......An appeal is a process of civil law origin and removes a cause, entirely subjecting the facts as well as the law, to a review and a retrial."

(emphasis supplied)

12. In Hari Shankar v. Rao Girdhari Lal Chowdhury this court held:

"7.....A right of appeal carries with it a right of rehearing on law as well as fact, unless the statute conferring the right of appeal limits the rehearing in some way as, we find, has been done in second appeals arising under the Code of Civil Procedure."

(emphasis supplied)

13. In Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat [1969 (2) SCC 74], this court referred to the statement in Story on Constitution (of United States), Vol. 2, Article 1761 that

"5.... the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause. The appellate jurisdiction may be exercised in a variety of forms and, indeed, in any form in which the Legislature may choose to prescribe. An appeal is a process of civil law origin and removes a cause, entirely subjecting the fact as well as the law to a review and a retrial.

(emphasis supplied)"

14. In Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar, this court held :

"2. ...Ordinarily, appellate jurisdiction involves a rehearing, as it were, on law as well as fact and is invoked by an aggrieved person. Such jurisdiction may, however, be limited in some way as, for instance has been done in the case of second appeal under the Code of Civil Procedure, and under some Rent Acts in some States."

(emphasis supplied)

Thus as far as the analogy which has been sought to be dealt by the learned counsel for the appellant in view of the provisions contained under Sections 11 & 12A will not be available or attracted in the instant case. Rather, if the said judgment of the Hon'ble Apex Court is scrutinized as far as it relates to the determination of the meaning of an appeal as used by the legislature in various provisions, it only contemplates that the appeal is a process of a civil law which originates where a scrutiny of a judgment rendered by the court of inception of the proceeding is put to judicial scrutiny by a Superior Court and there the Superior Appellate Court exercises the power of a First Appellate Court to scrutinize the facts and law both, it is the proceeding where its scope and ambit of exercise of powers is little wider then what is contemplated under Section 100 of CPC and that is why, the legislature being conscious the Civil Procedure Code itself which was promulgated in 1908 has distinctly provided with the provisions of an appeal under Section 96 and a Second Appeal under Section 100 of CPC with a definite and distinct intention with regards to the ambit within which the court which deals with an appeal or Second Appeal could exercise their powers.

The scope of Section 100 of CPC has been by aforesaid judgment of Hon'ble Apex Court in the case of James Joseph (supra) in its paras 15 and 16, which is quoted hereunder:-

"15. Section 100 of the Code is a classic example of limiting the jurisdiction in an appeal. It specifically provides that the second appeal will be available only where there exists substantial question of law. Some enactments do not specify that the second appeal will be restricted to substantial questions of law, but incorporate section 100 of the Code by reference, in regard to appeals from appellate orders. Section 18(1) of the Telecom Regulatory Authority of India Act, 1997 is an example :

"18. Appeal to Supreme Court - (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code."

16. Some other statutes have provisions in regard to appeals from appellate orders placing specific limitations on the extent and scope of the appellate jurisdiction by providing that a second appeal will lie only if it involves substantial questions of law or questions of law, without reference to section 100 of the Code. We may by way of illustration, refer to the following:

Section 260A of Income Tax Act, 1961".

The said judgment has also dealt with the situation prevailing in an appeal under Section 18 of the Telegraph Regulatory Authority Act, 1997, where under, the provisions of Section 18 of the Telecom Regulatory Authority Act, 1997, where it contemplates of giving a right to prefer an appeal before the Hon'ble Apex Court against the judgment of the Appellate Tribunal, wherein, it has provided that it has to be on substantial question of law on one or more grounds specified under Section 100 of CPC. If the legal interpretation as per the view of this Court to the provisions of Section 18 is concerned, as soon as Section 18 provides for an appeal against the judgment of an Appellate Tribunal and that too the provision itself limits the scope within the limits of any of the ground which are available under Section 100 of CPC, it's simplicitor meaning would be that the grounds which are enunciated under Section 100 of CPC, which in itself requires a limited determination for the purposes of drawing an analogy, that in a provision which provides for an appeal against an appellate order and when it restricts the jurisdiction of the Court sitting against the appellate judgment to the extent that such a limitation of an appeal would only be confined to its entertainment on limited question i.e. only when it entails a consideration of a substantial question. Meaning thereby, what is relevant is that it invokes Section 100 of CPC it is under those circumstances only where a certain substantial question which "it requires a determination by the Superior Appellate Court". The substantial question as per the judicial pronouncement has been confined with that it only entails an interpretation of law in a given set of circumstances of the case but it does not entail an appreciation of an evidence, as it has been sought to be postulated by the learned counsel for the appellant by placing reliance on the said judgment and as if it permits that all the contention of the learned counsel for the appellant is accepted that the powers under Section 58 irrespective of reference to Section 100 in the said provisions in itself will yet again be treated as to be an Appeal from Order under Section 104 that will impeach the very purpose of the reference of Section 100 as made under Section 58 of the said Act.

Identically, the aforesaid judgment on which the reliance has been placed by the learned counsel for the appellant also refers to an appeal under Section 260A of the Income Tax Act, which too provides an appeal to the High Court from order passed by the Appellate Tribunal created under the Income Tax Act. The said provision too under Section 260A of the Act, yet again neither it utilizes the word 'Second Appeal' nor at any place it makes a reference to the provisions as contained under Section 100 of CPC. The only distinction which it postulates to enforce is from the proviso to Sub Section (4) of Section 260A, which circumscribes the powers of the Appellate Court sitting against the Appellate Tribunal's judgment that it has to be only on an existence of substantial question involved in it. Meaning thereby, the provisions of Section 260A will not fall to be strictly within the ambit of definition of Second Appeal and it would also further not fall to be within the ambit of the scope of interference as limited under Section 100 of CPC, because the legislature in its term has never intended to limit the jurisdiction of the Appellate Court sitting against the appellate jurisdiction while dealing with the appeals as provided under Section 260A of the Income Tax Act. What is relevant in this instance is that as far as Sub Section (7) of Section 260A is considered rather to the contrary the legislature has only provided that in an appeal which is preferred against an Appellate Tribunal's judgment before a Superior Appellate Court and when it is in the light of the provisions contained under Sub Section (4) of Section 260A, it confines its entertainment only based on the availability of the substantial question of law, therein yet again there is a distinction that while providing an entertainment of an appeal against the appellate judgment its limited on the basis of availability of substantial question of law only. The Income Tax Act itself under its Sub Section (7) of Section 260A has independently made the provisions of CPC applicable with regards to the procedural law which is to be followed while deciding of an appeal under Section 260A (4). Hence, the provisions of Section 260A cannot be brought to be within the exclusive ambit of exercise of its jurisdiction under Section 100 of CPC, because there is neither any reference to it nor it intends that it has to be treated as a Second Appeal because the provisions of the appeal against an Appellate Tribunal judgment as contemplated under Section 260A of the Act independently attracts only the procedural aspect of an appeal provided under the CPC. Hence, this particular aspect of his argument is also not tenable as argued by the learned counsel for the appellant. Section 260A(4) and 260A(7) of Income Tax Act, reads as under:-

"4. The appeal shall be heard only on the question so formulated, and the respondents, shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

7. Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section."

Lastly, the learned counsel for the appellant has drawn the attention of this Court to the guidelines which have been framed by the aforesaid judgment with regards to the wider principles where there is a reference of an appeal against an Appellate Tribunal's Judgment. A reliance has been placed on para 19 of the said judgment which has laid down the wider principles to be followed. He embarks upon Sub Para (1) of Para 19 of the aforesaid and judgment, which provides for an appeal before a higher forum to reconsider the decision of a lower forum, wherein, the scope of scrutinisation has been widened by its interference on the question of facts and question of law both, wherein, the jurisdiction of the Appellate Court has been made subject matter of scrutiny by implications of law and by an interference in the fact also and it has given a power to sit as an appeal that means as if of regular First Appeal by modifying the order remanding the matter and hence forth but Sub Para (1) of Para 19 of the judgment, under no stretch of imagination as per the view of this Court could be widened to bring within its ambit the provisions of Section 100 of CPC. Similarly, the attention of this Court is drawn by the learned counsel for the appellant to Sub Para (VI) of para 19 of the aforesaid judgment, wherein, it provides that when in any of the circumstances under any legislation when an appeal is provided against an Appellate Tribunal's Judgment before a higher court. In that eventuality, the legislature intention is quite apparently reflected by way of an indication made under the provisions of an appeal against an appellate order, particularly, if it deliberately incorporates within its expressive terms that it would be as per the provisions of Section 100 of CPC, then the appeal thus has had to be treated as to be a Second Appeal under Section 100 of CPC i.e. Second Appeal, as provided within its limitation under the CPC. In order to further elucidate on the aspect as argued by the learned counsel for the appellant, this Court cannot ignore the reasoning which has been given in Sub Clause (6) of para 19 of the said judgment. It deals with those situation where the statute providing for an appeal against an appellate judgment do not put any limitation with regards to the exercise of its jurisdiction by the Appellate Court against the Appellate Tribunal's judgment. The restriction of an appeal can be bifurcated into two folds one as an appeal by way of a right or two an appeal by way of an involvement of an adjudication of a substantial question which curtails or interference or limits the interference of an appellate jurisdiction by confining its finding and consideration only on a substantial question which has referred under Section 100 of CPC.

"19. We may therefore formulate the following principles with reference to appeals :

(i) An appeal is a proceeding where an higher forum reconsiders the decision of a lower forum, on questions of fact and questions of law, with jurisdiction to confirm, reverse, modify the decision or remand the matter to the lower forum for fresh decision in terms of its directions.

(ii) The appellate jurisdiction can be limited or regulated by the legislature and its extent has to be decided with reference to the language employed by the statute conferring the appellate jurisdiction.

(iii) The width of jurisdiction or the limitations on jurisdiction with reference to an appeal, does not depend on whether the appeal is a first appeal or a second appeal, but depends upon the limitations, if any, placed by the statute conferring the right of appeal.

(iv) If the Legislature's intention is to limit the jurisdiction in an appeal, it may indicate such limits in the provision providing for appeal. Alternatively, it may expressly or impliedly incorporate the provisions of section 100 of the Code, into the provision for appeals.

(v) Generally statutory provisions for appeals against original orders or decrees (that is, first appeals) will not have any limitations and therefore rehearing on both law and fact is contemplated; and statutory provisions for appeals against appellate orders (that is, second appeals) will be restricted to questions of law. But such restriction is not on account of any legal principle that all second appeals should always be with reference to questions of law, but would depend upon the wording of the statute placing the restrictions upon the scope of second appeal.

(vi) Where the statute does not place any limitations or restrictions in regard to the scope and width of the appeal, it shall be construed that the appeal provides a right of rehearing on law as well as facts. If the Legislature enacts a self contained provision for second appeals, without any limitation upon the scope of the second appeal and excludes the possibility of reading the provision of section 100 of the Code, into such provision, then, it will not be permissible to read the limitations of section 100 of the Code into the special provision."

In view of the fact that the situation which was dealt with in the aforesaid judgment of the Hon'ble Apex Court was not akin to the controversy, when an appeal is preferred against the Appellate Tribunal's judgment under the Real State (Regulation and Development) Act, 2016, particularly under Section 58, when the legislature it makes or attracts the provisions contained under Section 100 of CPC, because the legislature has used the word, "that appeal has to be filed for the purposes of this Act in the same manner or on the ground as specified under Section 100 of CPC." As soon as under a statute under Section 58 it provides for an appeal against an Appellate Tribunal judgment by using the word "on the ground of Section 100" that in its specific terms legislature intended to mean made that the scope of interference in an appeal against an Appellate Court's Judgment under those provisions where Section 100 of CPC has been made attracted by reference would be limited to the scope of interference as provided under Section 100 of CPC.

In that view of the matter, the objection raised by the learned counsel for the appellant that this appeal has to be treated as to be an Appeal from Order, cannot be accepted by this Court because if the contention of the learned counsel for the appellant is accepted, that it has to be treated as an Appeal from Order against the judgment of the Appellate Tribunal, that would amount to supplying an alternative forum of Section 104 which has not been specifically provided under Section 58 to be attracted for treating the appellate judgment open to an appeal, in the same manner as it has been provided under Section 104, which is not the intention expressly referred to in Section 58 of the Real State (Regulation and Development) Act, 2016, it be a view contrary to the intention of the legislature which attracted Section 100 by way of reference and hence in view of the aforesaid reasoning, this Court is of the view that the appeal as against the Appellate Tribunal constituted under the Act of 2016, would be appealable before the High Court by preferring a Second Appeal and within the scope of Section 100 of CPC itself which has been attracted by way of reference. Hence, it cannot be treated as Appeal from Order as provided under Section 104 of C.P.C., which has not been made applicable under the statute, and as per Section 58 of the Act.

Accordingly, the objection raised by the learned counsel for the appellant as against the objection reported by the Registry is rejected. The Registry has remarked that the appeal if at all would lie, it would be the Second Appeal and not the Appeal from Order is hereby upheld. Accordingly, it is held that the Appeal from Order is not contemplated under Section 58 of the Act of 2016.

There is another argument which has been raised by the learned counsel for the appellant it is that as far as the court fee which would be payable while giving the challenge to the appellate Court's judgment before the Second Appellate Court, it ought not to be valued in accordance with the valuation mentioned with regards to the valuation of the Second Appeal under schedule-1 of the Court Fee Act but rather the determination of its valuation and the Court Fee payable on it has to be made in accordance with Entry 11 of Schedule 2 of the Act.

What is relevant to be pointed out here is that in view of the reasoning which has already been observed above with regards to the scope of interference under Section 58 of the Act since it has already been determined as to be within the scope of Section 100 of CPC, and accordingly, the same has to be preferred as Second Appeal only then the court fee which would be chargeable on appeals under Section 58 of the Act of 2016, would as a Second Appeal, chargeable under Schedule I of Court Fee Act.

In these circumstances, the provisions of Clause 11 of Schedule 2 of the Court Fee Act, on which the reliance has sought to be made by the learned counsel for the appellant would not be tenable and attracted for the reason that if Clause 11 is taken into consideration, the same is attracted, where a decree or an order having a shape or form of a decree, the valuation of the same could be made determinable accordingly.

As it has already observed that once it has already been held by this Court that an appeal under Section 58 will be falling to be within the ambit of Second Appeal as provided under Section 100 of CPC, because of the fact that a reference in the said provisions do not contemplate the settlement of a controversy or it do not stretch enough with regards to the appreciation of evidence because it has been confined to its entertainment based on substantial questions of law then the Court Fee which would be payable is to be determined in accordance with Entry-1 of Schedule-1 of the Court Fee Act i.e. on the basis of the relief clause which has been sought for by the appellant in the instant Second Appeal preferred before this Court. Hence, this Court holds that the case of the petitioner since it has already been held to be as of a Second Appeal in view of the reference as made under Section 58 of the Real State (Regulation and Appeal) Act, 1916, it has to be determined in accordance with the valuation provided under Entry-I of Schedule-1 of the Court Fee Act.

"1. Plaint, written statement, pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act), presented to any Civil or Revenue Court except those mentioned in Section 3."

Accordingly, the said objection too as raised by the learned counsel for the appellant is not accepted because if the said argument of the learned counsel for the appellant is accepted to bring the case for determination of the Court Fee Act in accordance with Entry-11 of Schedule-2 of the Court Fee Act. It would run contrary to the analogy and the reasoning which has been decided about the maintainability of the proceedings as per the provisions contained under Section 100 of CPC which has been referred under Section 58 of the Act of 2016.

Accordingly, this objection too as raised by the learned counsel for the appellant regarding the payability of court fee is not sustainable, the same would accordingly stand rejected. The learned counsel for the appellant, if so advise, may remove the defects as pointed out by the Registry treating the same as to be a Second Appeal under Section 58 of the Act and pay the requisite court fee accordingly, as determined by the Registry, under Schedule I of the Court Fee Act.

Learned counsel for the appellant ultimately after conclusion of the judgment prays for that he may be granted time to make good deficiency of court fee as observed by the stamp reporter in his report, for which, he is granted one month's time for the said purpose.

Accordingly, the objection of appellant against the Stamp Reporter of the Registry of the Court is rejected, and the objections accordingly upheld.

