

(1991) 11 KAR CK 0015
In the Karnataka High Court
Case No : O.S.A. No. 20/1991

B.L. Kalachar and Another

APPELLANT

Vs

Vijaya Bank

RESPONDENT

Date of Decision : 14-11-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 44 Rule 1(1)

Citation : (1992) 1 KarLJ 532

Hon'ble Judges : K. Shivashankar Bhat, J;N. Venkatachala, J

Judgement

Venkatachala, J.-In O.S. No. 230/1982 before the Court of Civil Judge at Bhadravathi, there was a Judgment and decree dated 30-6-1989/7-7-1989 made against the appellants for payment of a sum of Rs. 4,26,000-00 to Vijaya Bank on account of money which had been lent. That decree was sought to be appealed by the appellants and they filed an appeal before this Court. When they filed the appeal, they made an application to permit them to prosecute the appeal as indigent persons invoking the provision under Order 44, Rule 1(1) of the Code of Civil Procedure, 1908 (for short "the Code"), which reads:

"1. Who may appeal as an indigent person: (1) Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an indigent person, subject, in all matters, including the presentation of such application, to the provisions relating to suits by indigent persons in so far as those provisions are applicable."

The said application was rejected by a learned Single Judge of this Court in exercise of his power under clause (ii) of Section 9 of the Karnataka High Court Act, 1961, which enabled him to decide upon the admission of an appeal in forma pauperis. It is that order of the learned Single Judge which is sought to be appealed against by filing the present original side appeal purporting to be under Section 4 of the Karnataka High Court Act.

Section 4 of that Act reads:

"4. Appeals from decisions of a Single Judge of the High Court.-An appeal from a Judgment, decree, order or sentence passed by a Single Judge in the exercise of the original jurisdiction of the High Court under this Act for under any law for the time being in force, shall lie to and be heard by a Bench consisting of two other Judges of the High Court."

As could be seen from the provision in Section 4 above, an appeal would lie against an order made by a Single Judge in exercise of the original jurisdiction of the High Court under the High Court Act.

2. The order in the instant case is made by the learned Single Judge not in exercise of his original jurisdiction envisaged under the High Court Act, but in exercise of his appellate jurisdiction under sub-rule (1) of Rule 1 of Order 44 of the Code. When that is the position, we find that the present original side appeal of the appellants, who were the appellants in the regular first appeal filed before the Court and who had made the application along with that appeal for permitting them to prosecute the appeal as indigent persons, cannot be maintained.

3. In the result, we reject this original side appeal as unmaintainable.