

(2009) 06 AHC CK 0102
In the Allahabad High Court

C/M, Saraswati Vidya Mandir Inter College And Another	APPELLANT
Vs	
State of U.P.& Others	RESPONDENT

Date of Decision : 01-06-2009

Acts Referred:

Citation : (2009) 06 AHC CK 0102

Hon'ble Judges : Sunil Ambwani, J and Devendra Kumar Arora, J

Final Decision : Dismissed

Judgement

D.K. Arora, J.

Heard Shri Ashwani Kumar Mishra, learned counsel for the appellantpetitioner. Learned standing counsel appears for respondent nos. 1 to 4. Shri Anil Bhushan appears for respondent no. 5.

Learned counsel for the petitioner insists that the matter should be heard in summer vacations, failing which the reliefs claimed in the special appeal would become infructuous.

By the order dated 22.5.2009 passed in Writ Petition No.36354 of 2009, learned Single Judge has, while granting time to exchange affidavits, directed that meanwhile, the elections held in pursuance of the impugned order dated 1.5.2009 shall remain subject to the further orders passed in the writ petition. He has also made it clear that the Court is not staying the holding of elections or declaration of the results.

Shri Anil Bhushan has taken a preliminary objection to the maintainability of the special appeal. He would submit that under Chapter VIII Rule 5 of the High Court Rules 1952, the special appeal is maintainable against a judgment. In the present case learned Single Judge has not decided the rights of the parties either way and thus the special appeal is not maintainable.

Learned Single Judge has not passed any order, which may adversely affect the rights of either of the parties. He has simply declined to pass any interim order

staying the elections and has made the interim order dated 1.5.2009 in the writ petition subject to further orders to be passed in the matter.

The submission, that the special appeal will become infructuous, is not a ground in which we may interfere with the matter.

The special appeal against the order, which has not decided any of the rights of the parties, and cannot be treated as a judgment, is not maintainable under the Rules of the Court and is dismissed.