

(1993) 08 GAU CK 0025
In the Gauhati High Court
Case No : Misc Appeal (First) No. 215 of 1992

Joy Krishna Das

APPELLANT

Vs

Samarendra Nath Uzir Dr.

RESPONDENT

Date of Decision : 26-08-1993

Acts Referred:

Civil Procedure Code, 1908 — Order 41 Rule 17, Order 41 Rule 18, 123
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 17, Order 41 Rule 18, 123

Citation : (1993) 2 GLJ 364

Hon'ble Judges : S.N.Phukan, J

Bench : Single Bench

Advocate : N.Choudhary, Advocates appearing for Parties

Judgement

1. This appeal came up for orders as no steps were taken by the appellant for reissue of notice on the respondent. The question that is being considered as to whether this Court can dismiss the appeal for not taking steps by the appellant for reissue of notice in view of the High Court Rules or the matter has to be placed before Division Bench for this purpose.

2. At the request of this Court Mr. N. Choudhury, learned counsel agreed to assist this Court and the learned counsel has ably presented the case. According to learned counsel Single Bench can dismiss an appeal for want of steps by the appellant. The attention of this Court has been drawn by the learned counsel to various provisions of the High Court Rules, CPC and decisions of different High Courts have also been placed.

3. Section 122 of the CPC empowers the High Court, after previous publication to make rules regulating its own procedure and procedure of other subordinate Courts and for this purpose Rule Committee has to be constituted under section 123 CPC. According to section 124 Rule Committee has to submit a report to annul, alter or add to the rules made in first Schedule or to make new rules and before making such Rules High Court shall take into consideration such report of the Rule Committee, Reading Rules 126 and 127, it is clear that previous

approval of the State Govt. is necessary and it also requires publication in the Official Gazette. Accordingly, this Court has framed rules under the above provisions of the CPC.

4. In *Pahuuchi Lai vs. Bhnp Singh*, AIR 1930 All ahaba 558, section 123 of the CPC and Letters Patent came up for consideration and it was held by a Division Bench that High Court being a subordinate body in the matter of framing rules it has no power to so frame rules as to override the provisions of CPC or the Letters Patent.

5. I am in respectful agreement with the above law laid down and let me examine as to whether rules framed by this High Court is contrary to the provisions of the CPC. In this connection Chapter V of the High Court Rules is relevant for the present purpose.

6. Rule 2 under the said Chapter under the heading "General Rules of Procedure, inter alia, lays down that in case of variation of the value of appeal a short explanatory note giving reasons shall be filed along with the memo of appeal and any commission shall be forthwith be reported to the Registrar of the High Court who may either direct that note be filed within a specified period or the matter may be laid before a Division Bench. According to Rule 5, in the event of commission on the part of the Advocate to append a note to the memo of appeal in terms of Rule 4, it shall be placed before Division Bench. According to Rule 10 if a memo of appeal is not in proper and/or is not accompanied by necessary copies of papers, Registrar may allow time within which such memo must be appended and/or necessary papers file or lay the same before Division Bench. Subrule (2) of said Rule 10 also provides that if copies of the judgment and decree or the order appealed from or filed after the period of limitation, the memo of appeal shall be presented to the Division Bench. According to Rule 14, an application for leave to appeal in forma pauperis may be presented to Division Bench without the office report. Subrule (3) of Rule 18, inter alia, provides that when the requisite court fee is not paid within the period fixed, the Registrar shall lay the matter before Division Bench.

7. Thus, it, appears that rules framed by this High Court, more particularly, Chapter V provide for placing a memo of appeal before a Division Bench. On going through the above Rules, it is clear that the meme of appeal has to be presented to the Division Bench for failure to comply with above provisions of the Rules.

8. The High Court Rules laid down the types of appeals to be placed before Single Bench or Division Bench for the purpose of disposal, depending on the valuation of the appeal. From reading the above Rules, it is clear that the appeal has to be placed before Division Bench only if there is noncompliance of the above Rules and that too before admission and thereafter, appeal has to be placed either before Division Bench or Single Bench depending on the valuation of the appeal. Therefore, after admission the question whether the appeal can be dismissed for

not taking steps for issuance of notice etc. can be decided by a Single Bench or Division Bench depending on the valuation of appeal.

9. Reading the rules it is very clear that once an appeal is admitted, power to deal with the appeal either by the Division Bench or by the Single Bench would depend on the valuation of the appeal.

10. Rule 17 of Order 41 CPC provides, where on the date fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that appeal be dismissed. Rule 18 of Order 31 CPC provides that where OB the date fixed or on any other day to which the hearing may be adjourned, it is found that notice on the respondent has not been served in consequence of the failure of the appellant to deposit within the period fixed, the sum required to defray the cost of serving the notice or if the notice is returned unserved, and if it is found that notice to the respondent has not been issued in consequent of the failure of the appellant to deposit within a subsequent period fixed the sum required to defray the cost of any further attempt to serve the notice, the Court may make an order that the appeal be dismissed,

11. Thus the above Rules 17 and 18 empower the Court to dismiss an appeal for the reasons stated above. In the High Court Rules, there is no condition that such dismissal order can be passed only by a Division Bench. Therefore, I have no hesitation in holding that reading the provisions of the CPC and the High Court Rules, there is no bar for the Single Bench to dismiss an appeal under Rule 17 or Rule 18, provided the Single Bench can finally dispose of the appeal in terms of the High Court Rules.

12. Incidentally I may mention that this Court comes across with appeals where the parties do not deposit paper book cost and the question arises whether appeal can be dismissed on this ground. This question came up before the Apex Court in Kalipada Das vs. Bimal Krishna Sen Gupta, (1983) 1 SCC 14. In that case, during the pendency of the appeal before the High Court, the appellant failed to comply with the order of the High Court to supply copies of paper book within the time fixer and on this ground the appeal was dismissed. The Apex Court consider as to whether failure to comply with the order of the High Court should be visited with sue serious consequences of a penal nature, it was held that supplying paper book is a procedural requirement devised to facilitate rendering justice and not substantive justice itself. The Apex Court held that omission or lapse arising out of noncompliance of the order of the Court was not of such a serious gravity as to close the door of the Court to the appellants by dismissing the appeal as it was procedural steps which facilitates hearing of the appeal and cannot impede access to justice. The Apex Court further observed that if the High Court felt that the appellants were trying to delay the hearing of the appeal by adopting dilatory tactics, it was open for the High Court to direct the respondents to get the paper book prepared and imposed the cost of the same on the appellants and this was the easiest way to deal with the situation.

In view of the above law laid down, this Court is bound to follow the above procedure in dealing with such a situation.

13. In the result, I hold that for not taking steps an appeal can be dismissed by a Single Bench as there is no bar for doing so in the High Court Rules. In case of failure of the appellant to deposit the paper book cost or to supply paper, book, the appeal cannot be dismissed and the right course would be to ask the respondent to prepare the paper book or to pay the cost and thereafter, realise it from the appellant. On the same analogy, if the respondents fail to deposit the paper book cost, paper book may be prepared at the cost of the appellant with a direction that respondent shall not be entitled to get a copy of the paper book unless the respondent deposit the paper book cost. The matter is disposed of accordingly.