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**(1982) 02 DEL CK 0003**

**In the Delhi High Court**

**Case No : Civil Revision Appeal No. 1276 of 1981**

Nand Gopal Bacchas and Others

APPELLANT

Vs

Bank of India

RESPONDENT

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**Date of Decision : 17-02-1982**

**Acts Referred:**

**Citation :** AIR 1982 Delhi 280 : (1982) 21 DLT 323 : (1982) 3 DRJ 228 : (1982) RLR 287

**Hon'ble Judges :** B.N. Kirpal, J

**Bench :** Single Bench

**Advocate :** Rakesh Tikku, for the Appellant;

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## **Judgement**

B.N. Kirpal, J.

(1) The respondent had filed suit for the recovery of Rs. 96,869-09 against the petitioner herein. Time was granted to the present petitioners to file their written statement.

(2) The petitioners herein did not file the written statement but moved two applications, one under Order 7 Rules 9 and 14 read with Section 151 CPC . and another under Sections 6, 17 and 23 of the Court Fees Act. The Additional District judge in his judgment dated 2nd September, 1981 observed that despite time having been granted the defendants-petitioners-herein, had not filed their written statement. The Additional District judge proceeded under Order 8 Rule 10 and, taking the allegations in the plaint to be correct, he pronounced the judgment against the defendants. The Additional District Judge observed " I grant to the plaintiffs a decree for the recovery of Rs. 869-09 ps. with costs of the suit."

(3) The aforesaid order is now sought to be challenged in the present Petition u/s 115 C. P. C.

(4) It was put to the learned counsel for the petitioners that the petition u/s 115

was not maintainable. The learned counsel contended that the revision was maintainable and it was not necessary that an appeal should be filed against the decree in order to get the impugned judgment and decree set aside.

(5) In order to decide this point it is necessary to refer to the amended as well as unamended provisions of the Code of Civil Procedure. Prior to amendment in 1976, Order 8 Rule 10 read as follows:

"WHERE any party from whom a written statement is so required fails to present the same within the time fixed by the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit."

(6) It is clear that prior to the amendment the court could pronounce Judgment against the defendant under order 8 Rule 10, if a written statement had not been filed. Such a judgment could be appealed against under the provisions of Section 104 read with Clause (b) of Rule 1 of Order 43.

(7) The aforesaid provisions of Rule 10 of Order 8 as well as Order 43 have been amended with effect from 1st February, 1977. The amended Rule 10 of Order 8 reads as follows :

"WHERE any party from whom a written statement. is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and upon such judgment, a decree shall be drawn up."

(8) Clause (b) of Rule. 1 of Order 43 was omitted. In the "objects and reasons" whereby the aforesaid clause was omitted it was stated as follows :

"CLAUSE(B) provides for an appeal against an order under Order Viii, Rule 10, where the defendant fails to file a written statement within the time fixed by the Court and the Court pronounces judgment against him. This clause is being omitted with a view to reducing two appeals because the defendant can, in an appeal from the decree passed as a result of the order, take the same point as he can take in an appeal under clause (b)."

(9) It is clear that, as mentioned in the aforesaid objects and reasons to the bill proposing the amendment, an appeal can now be preferred against the decree passed under Order 8 Rule 10. Rule 10 now specifically provides that upon the judgment being pronounced a decree shall be drawn up. u/s 115 the High Court has jurisdiction to interfere in a case decided by a subordinate court in which no appeal lies. It is obvious that against the judgment passed and the decree, which is drawn up, under Order 8 Rule 10, an appeal is maintainable under the provisions of Section 96 of the Code of Civil Procedure. As such no revision petition u/s 115 CPC . is maintainable.

(10) The intention of the Legislature in amending the provisions of Rule 10 of Order 8 and omitting Clause (b) of Rule 1 of Order 43 is very clear. The intention

is obviously to avoid two appeals. It will be clearly against the Legislative intent if the court interferes u/s 115 against a judgment pronounced under Order 8 Rule 10, when the Legislature has expressly omitted the provision which provided for an appeal against such a judgment. To my mind, the provisions of Order 8 Rule 10 are *pari materia* with the provisions of Order 20 Rule 6A(2) which reads as under :

"6A, (2) Every endeavor shall be made to ensure that the decree is drawn up as expeditiously as possible, and, in any case, within fifteen days from the date on which the judgment is pronounced; but where the decree is not drawn up within the time aforesaid, the Court shall if requested so to do by a party desirous of appealing against the decree, certify that the decree has not been drawn up and indicate in the certificate the reasons for the delay, and thereupon.....

(11) Under the provisions of Order 20 Rule 6A(2), after the trial of the suit, a judgment is pronounced and thereafter a decree is drawn up. It is not denied that in such a case a revision is not maintainable and only an appeal can be filed u/s 96 CPC. There is in effect, no difference in the two provisions i.e. Order 8 Rule 10 and Order 20 Rule 6A(2). Just as an appeal has to be preferred against a decree drawn up under Order 20 Rule 6A(2), similarly an appeal has to be filed against a decree drawn up under Order 8 Rule 10.

(12) The learned counsel for the petitioner sought to place reliance upon *Siri Krishan Bhardwaj Vs. Manohar Lal Gupta and Another*. The said decision can be of no assistance to the petitioner. The aforesaid case related to leave to defend not being granted under the unamended provisions of Order 37 Rule 2(2). The court observed that in such a case the order refusing to grant leave was revisable. In arriving at this conclusion the Division Bench followed the observations of S.N. Andley C.J. in the case of *The Chamber of Colours and Chemicals (P) Ltd v. Trilok Chand Jain* 1973 D.L.T. 510 wherein it had been observed that :

"IT cannot be doubted that the appeal when filed was competent, if so, it cannot be rendered incompetent merely because final order has been passed. If the appeal against an order under sub-section( 7) of Section 15 which may be described as an interlocutory order or even as a preliminary order succeeds the final order even if passed in the meantime, will have to be suitably modified."

(13) The provisions of unamended Order 37 Rule 2 and the provisions of the amended Order 8 Rule 10 are not *pari materia*. The judgment which is pronounced under Order 8 Rule 10 is not an interlocutory or a preliminary order. The judgment is a final judgment upon which a decree is drawn up. The aforesaid decision is clearly distinguishable.

(14) Reference was also made by Mr. Tikku to C.R. No. 1045/81. That was also a case where a revision had been filed against a judgment pronounced under Order 8 Rule 10. In that case, however, though the High Court had interfered no contention had been raised or dealt with to the effect that the said revision was

not maintainable. The point in issue not having been decided, no reliance can be placed on the said decision.

(15) It was lastly contended, while relying upon the decision in the case of Walaiti Ram Seth Vs. Krishan Kapoor and Others, , by the learned counsel that this court should exercise jurisdiction under Article 227 of the Constitution. This cannot be done. When an appeal against a decree is provided under the provisions of the Code of Civil Procedure, then the court ought not to exercise its jurisdiction under Article 227 of the Constitution. Mr. Tikku has not been able to bring to my notice any case where any court has so exercised its jurisdiction under Article 227 of the Constitution to set aside a decree passed by a subordinate case. I am, Therefore, of the opinion that the decision Walaiti Ram Seth Vs. Krishan Kapoor and Others, is of no application.

(16) For the aforesaid reasons this revision is dismissed as being not maintainable.