

(2023) 07 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous No. 142, 3853 Of 2023

Noor Mohammad Gojar

APPELLANT

Vs

Ghulam Qadir

RESPONDENT

Date of Decision : 04-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civil Procedure, 1908 — Section 104, 105, 106, 107, 108, 151, Order 43

Citation : (2023) 07 J&K CK 0001

Hon'ble Judges : Wasim Sadiq Nargal, J

Bench : Single Bench

Judgement

Wasim Sadiq Nargal, J

The petitioner is aggrieved of and has challenged the Order dated 8th June, 2023, passed by the learned Principal District Judge, Shopain, in an appeal titled Ghulam Qadir vs. Mohammad Hussain Gojar and Anr. filed by the respondent herein against the Order dated 25th October, 2022, passed by the court of Sub Judge, Shopian, in an application filed under Section 151 of Civil Procedure Code 1908.

The short submission, which has been made by learned counsel for the petitioner, is that the learned District, Judge, Shopian, without having power, competence and jurisdiction to entertain the appeal, has passed the impugned order dated 8th June, 2023, and has allowed the appeal in spite of the fact that this aspect of the matter has been brought to his notice. Learned counsel has argued that the order passed by the Sub Judge, Shopian, is neither appealable under Order 43 of Civil Procedure Code nor revisable one, yet the learned Principal District Judge, Shopian, has entertained the appeal and set-aside the order dated 25th October, 2022, passed by the Sub Judge, Shopian. It is further argued by learned counsel for the petitioner that the appeal was not maintainable on the ground that Sections 104 to 108 and Order 43 of CPC deals with appeals from orders and appeal under Order 43 can be entertained against

the orders mentioned in Sections 104 to 108 read with Order 43 of CPC and no appeal lies against the other orders. Learned counsel has further argued that the remedy, if any, available against the order dated 25th October, 2022, was to file petition under Article 227 of the Constitution of India and not an appeal under Section 43 of Civil Procedure Code. Accordingly, the order impugned dated 8th June, 2023, is against the provisions of law, more particularly, against the Order 43 of Civil Procedure Code and is without jurisdiction and competence of learned District Judge, therefore, is liable to be quashed.

Learned counsel for the petitioner with a view to fortify his claim has placed a reliance on a Judgment passed by this Court in an identical matter viz. OWP No. 387/2017 titled Mohammad Rajab Ganai and Anr vs. Ghulam Mohammad Ganai. For facility of reference, the operative part of the Judgment is taken note of:-

"...11. Having regard to what has been observed, considered and analyzed hereinabove, the trial court seemingly has grossly erred in entertaining the application of the plaintiff/respondent herein and passing the impugned order dated 2nd March, 2017 thereon. The petition, thus, merits to be allowed and impugned order liable to be quashed.

12. Accordingly, petition is allowed and impugned order dated 2nd March, 2017, is set aside."

Heard learned counsel for the petitioner at length and perused the material on record, prima facie, case for indulgence of this Court is made out.

Notice to the main petition as also in CM, returnable within four weeks.

Requisite steps for service within one week.

List again on 11th September, 2023.

In the meanwhile, subject to objections and till next date of hearing before the Bench, the Order impugned dated 08th June, 2023, passed by Principal District Judge, Shopian, shall remain stayed.