
(1970) 04 AHC CK 0028
In the Allahabad High Court
Case No : Special Appeal No. 330 of 1970

Radhey Shyam

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 21-04-1970

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5

Citation : AIR 1971 All 39

Hon'ble Judges : V.G. Oak, C.J.;S.N. Singh, J

Bench : Division Bench

Advocate : A.N. Kaul, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Oak, C.J.—This is a special appeal against an order passed by a single Judge of this Court vacating previous stay orders passed in a writ petition. On 27-1-1970 and 5-3-1970 interim stay orders were passed by the Court. Those interim stay orders were subsequently vacated by the learned single Judge on 31-3-1970. This special appeal by Radhey Shyam has been filed against the order dated 31-3-1970. Radhey Shyam is the petitioner in the writ petition. The writ petition is still pending.

2. We considered at the outset whether the impugned order is appealable. In Bishambhar Nath v. Suraj Kali 1959 All LJ 313 it was held by a Division Bench of this Court that where the effect of the decision in the proceedings in which it was made was to put an end to the proceedings so far as the Court before which that proceeding was pending was concerned, the adjudication would be "judgment" within the meaning of the term as contemplated in Chapter VIII, Rule 5, Rules of Court.

3. In Standard Glass Beads Factory and Another Vs. Shri Dhar and Others, it was held by a Full Bench of this Court that an order of a single Judge of the High Court dismissing an appeal against an order granting a temporary injunction is a

"judgment" within the meaning of Clause 10 of the Letters Patent of Allahabad High Court.

4. In the two cases referred to above the impugned order was a decision by a single Judge finally disposing of the proceedings before him. The situation in the instant case is different-The impugned order dated 31-3-1970 does not dispose of the writ petition. The writ petition is still pending before the single Judge. The impugned order is an interlocutory order.

5. In *Iftikar Husain v. Sharafat Ullah*, Spl. Appeal No. 628 of 1961, D/-20-12-1961 (All) it was observed by a Division Bench that an order granting or refusing an interim order of stay does not decide any question of right and does not amount to a judgment.

6. That decision was followed by another Division Bench of this Court in *G. B. Kapoor v. District Magistrate. Ktah.* 1967 All LJ 990. It was held that an order granting or vacating an interim order in a pending writ petition does not amount to a "judgment" and is, therefore, not appealable under Clause 10 of the Letters Patent of Allahabad High Court or under Chapter VIII, Rule 5, Rules of Court.

7. Thus the settled view of this Court is that interlocutory order of this type is not appealable under Chapter VIII, Rule 5, Rules of Court- Since the appeal is not maintainable, it is not necessary to enter into the merits of the appeal.

8. The appeal is not maintainable. It is, therefore, dismissed.