
(1933) 04 AHC CK 0052
In the Allahabad High Court
Case No : Civil Revision No. 662 of 1932

Raghubir Saran Raj Kumar Lala	Vs	APPELLANT
Mohammad Nur Haji Abdul Majid		RESPONDENT

Date of Decision : 26-04-1933

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, 135

Citation : (1933) 04 AHC CK 0052

Hon'ble Judges : Rachhpal Singh, J; Miamatullah, J

Bench : Division Bench

Advocate : H.L. Kapoor, for the Appellant; S.P. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Niamatullah and Rachhpal Singh, JJ.—This is an application in revision by the Plaintiff against an order passed by the District Judge of Kumaun on the 11th September, 1932.

2. The firm of Lala Raghubir Saran Raj Kumar instituted a suit in the court of the Subordinate Judge of Kashipur against the Defendant firm to recover a sum of money. After the institution of the suit an application was made by the Plaintiff under Order 38, Rule 5, Code of CPC asking for attachment before judgment against the Defendant firm which carries on business at Naini Tal and beyond the jurisdiction of the Subordinate Judge of Kashipur. This application was granted by the Subordinate Judge who sent an order for attachment to the Nazir of:he District Judge of Naini Tal. The Nazir in compliance with the order went to the Defendant's firm who offered securityj The Nazir sent back the papers to the court of the Subordinate Judge. It appears that some one made an application to the District Judge complaining against the attachment order passed by the Subordinate Judge, Upon this the learned District Judge got the office to make a report and then he passed an order directing the warrant to be returned to the Kashipur Court. The learned District Judge was perfectly right in saying that the order of the Subordinate Judge in sending an attachment order to his Nazir at

Naini Tal was wrong and should not have been passed. The proper procedure which should have been adopted by the Subordinate Judge, having regard to the provisions of Section 135, Code of Civil Procedure, was to send the attachment order to the District Judge of Naini Tal within whose jurisdiction the Defendant was residing for execution. But we find that the learned Subordinate Judge did not observe these provisions and sent the order of attachment direct to the Nazir of the District Judge. We are of opinion that application for revision cannot succeed, as the order which the learned District Judge passed in this case is not a judicial order and so no revision lies. Some one complained to him of the irregularity committed by the Subordinate Judge and when the matter was brought to his notice, he passed an order directing his own office not to comply with the orders of the Subordinate Judge which he considered to be abominable. It cannot be said that this was a judicial order or that it affected in any manner the original order passed by the learned Subordinate Judge directing attachment before judgment.

3. For this reason we dismiss the application for revision with costs.