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**(2012) 04 DEL CK 0359**

**In the Delhi High Court**

**Case No :** CM (M) 194 of 2011 and CM No. 3635 of 2011

Raj Kishan and Others

APPELLANT

Vs

Prahlad and Others

RESPONDENT

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**Date of Decision :** 17-04-2012

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 43  
Delhi High Court Act, 1966 — Section 10, 10(1)

**Citation :** (2012) 04 DEL CK 0359

**Hon'ble Judges :** Indermeet Kaur, J

**Bench :** Single Bench

**Advocate :** Atha Sagar Verma, for the Appellant; Pradeep Kumar, Dr. S.P. Sharma, for R-5, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Indermeet Kaur, J.—The impugned order is dated 04.12.2010. The appeal against the dismissal of an application under Order 1 Rule 10 of the CPC (hereinafter referred to as the "Code") had been entertained by the first appellate Court i.e. the Court of Additional District Judge. This was inspite of the fact that an objection about the maintainability of the appeal had been raised by the respondent. Record shows that the present suit has been filed by the plaintiff seeking a declaration and permanent injunction against the defendant. In the course of the proceedings, an application under Order 1 Rule 10 of the Code had been filed by the applicants namely Prahlad and others which was dismissed on 10.05.2010. Appeal was filed against this order which was entertained and the impugned order holding that an appeal against the dismissal of an application under Order 1 Rule 10 of the Code is maintainable, thereafter Court had on merits allowed the appeal and impleaded the applicants as parties in the aforesaid suit.

2. This is the grievance of the petitioner. His vehement contention is that an appeal against the dismissal of an application under Order 1 Rule 10 of the Code

is not maintainable. He has placed reliance upon a Division Bench judgment of this Court reported as Gurmauj Saran Baluja Vs. Mrs. Joyce C. Salim and Others, to support his submission that the provisions of Section 10 (1) of the Delhi High Court Act, 1966 (hereinafter referred to as the "said Act") only make reference to an order which is passed by a Single Judge of the High Court in exercise of its ordinary civil jurisdiction and as such an order although not strictly appealable u/s XLIII of the Code yet if it amounts to a "judgment", an appeal against the order of the Single Judge would be maintainable to a Division Court of the High Court u/s 10 of the said Act.

3. This judgment clearly enunciates this position; the submission of the respondent that the applicability of Section 10 (1) of the said Act is also applicable to the subordinate courts is ill-founded and is clearly contrary to the statutory provisions i.e. Section 10 (1) which categorically speaks of an order which is passed by a Single Judge of the High Court in its ordinary civil jurisdiction against which an appeal would lie to a Division Court.

4. The trial Court had relied upon the aforementioned provisions to hold that the appeal under Order XLIII of the Code was maintainable and had thereafter proceeded to pass the order on its merits. The trial Judge has committed an illegality. At the cost of repetition, Section 10 (1) of the said Act makes a reference only to an order passed by the Single Judge of the High Court while sitting in ordinary civil jurisdiction which order is an appealable to a Division Court. Appeal was not maintainable and could not have been entertained by the Additional District Judge. On this count alone, the order needs to be quashed. It is accordingly set aside. Petition is allowed and disposed of in the above terms.