

(2025) 06 J&K CK 0178
In the Jammu And Kashmir High Court
Case No : CM No. 4876 Of 2023

Raj Kumar Gupta and Anr

APPELLANT

Vs

Bank of India and Anr

RESPONDENT

Date of Decision : 06-06-2025

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100(A), Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r), Order 41 Rule 19

Citation : (2025) 06 J&K CK 0178

Hon'ble Judges : Arun Palli, CJ;Rajnesh Oswal, J

Bench : Division Bench

Advocate : Parveen Kapahi, Jugal Kishore Gupta

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. In a suit titled "Raj Kumar Gupta vs. Bank of India and Anr." pending before the court of learned 1st Additional District Judge,

Jammu (hereinafter to be referred as "the trial court"), an application filed by the appellant for grant of interim injunction in terms of Order 39 Rule 1 & 2 CPC came to be rejected by the learned trial court vide order dated 09.05.2023. The order dated 09.05.2023 was assailed by the appellant through the medium of an appeal under Order 43 Rule 1(r) CPC before the learned Single Judge of this Court and vide order dated 21.07.2023, the learned Single Judge dismissed the appeal preferred by the appellant.

2. This intra-court appeal is directed against the order dated 21.07.2023, whereby the appeal filed by the appellant under Order 43 Rule 1(r) CPC was dismissed by the learned Single Judge.

3. A preliminary objection has been raised by the learned counsel for the respondent in respect of the maintainability of this intra-court appeal on the

ground that in view of bar contained in Section 100A CPC, the instant appeal is not maintainable.

4. Mr. Parveen Kapahi, learned counsel for the appellant, has argued that the appeal is maintainable in view of the judgment of coordinate Bench of this Court in 'Doulat Ram and Anr. Vs. Roop Chand and others', 2021(4) JKJ(HC) 165 and that of the Hon'ble Supreme Court of India in 'Shyam Sel and Power Limited and Another vs. Shyam Steel Industries Limited' (2022), 3 S.C.R.1175.

5. Learned counsel for the respondent has relied upon the judgments of the Hon'ble Supreme Court of India in cases titled 'Mohd Saud and Anr. Vs. Dr. (Maj) Shaikh Mahfooz and others', 2010 (13) SCC 517, and 'Kamal Kumar Dutta vs. Ruby General Hospital Ltd', 2006 (7) SCC 613, to submit that where the learned Single Judge decides an appeal arising from original or appellate decree or order, then no further appeal shall lie from that judgment, decree or order, as such, this intra court appeal is not maintainable.

6. Heard learned counsel for the parties and perused the record.

7. The moot question that arises for consideration of this Court is whether the intra-court appeal in terms of Section 12 of the Letters Patent is maintainable against an order passed by the learned Single Judge while exercising the appellate jurisdiction.

8. To answer the above-mentioned question, it is imperative to extract Section 100-A CPC, which is as under:

"100-A. No further appeal in certain cases.-- Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge."

9. A perusal of Section 100-A CPC would reveal that where a Single Judge of a High Court decides any appeal from an original or appellate decree or order, no further appeal shall lie from the judgment and decree of such Single Judge.

10. In this context, it would be appropriate to take note of judgment of Hon'ble Supreme Court of India in Mohd Saud and Anr. Vs. Dr. (Maj) Shaikh Mahfooz and others (supra). In this case, the first appeal under Order 43 Rule 1 of the CPC came to be preferred before learned Single Judge of the High Court, which was decided on 06.08.2008. The said judgment of the learned Single Judge was assailed through the medium of Letters Patent Appeal, but it was held to be not maintainable by the Division Bench of the High Court. The said order was assailed before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India while upholding the order passed by the High Court held that the intra-court appeal is not maintainable against the order passed by the learned Single Judge while exercising appellate jurisdiction. The Hon'ble Supreme Court

of India held as under:

13. While at first glance this argument may appear plausible but when we go deeper into it, we will realize that it has no merit. It would be strange to hold that while two appeals will be maintainable against interlocutory orders of a District Judge, only one appeal will be maintainable against a final judgment of the District Judge.

14. It may be noted that there seems to be some apparent contradiction in Section 100-A as amended in 2002. While in one part of Section 100-A it is stated "where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court", in the following part it is stated "no further appeal shall lie from the judgment and decree of such Single Judge". Thus while one part of Section 100-A refers to an order, which to our mind would include even an interlocutory order, the later part of the Section mentions judgment and decree.

20. To resolve this conflict we have to adopt a purposive interpretation. The whole purpose of introducing Section 100-A was to reduce the number of appeals as the public in India was being harassed by the numerous appeals provided in the statute. If we look at the matter from that angle it will immediately become apparent that the LPA in question was not maintainable because if it is held to be maintainable then the result will be that against an interlocutory order of the District Judge there may be two appeals, first to the learned Single Judge and then to the Division Bench of the High Court, but against a final judgment of the District Judge there can be only one appeal. This in our opinion would be strange, and against the very purpose of object of Section 100-A, that is to curtail the number of appeals."

11. The judgments relied upon by the learned counsel for the appellant are not applicable in the present facts and circumstances of the case.

12. In *Shayam Sel Power Limited and Anr. (supra)*, the learned Single Judge and the learned Single Judge had not passed any order in exercise of its appellate jurisdiction. So far as the judgment passed by the coordinate Bench of this Court in *Daulat Ram and anr. Vs. Roop Chand and others (supra)* is concerned, the learned Single Judge dismissed the application filed under Order 41 Rule 19 CPC for re-admission of the appeal. The intra-court appeal was entertained in respect of an order, which was not passed in exercise of appellate jurisdiction by the learned Single Judge. This observation has been made in para-32 of the judgment.

13. In view of the above, it is held that when an appeal is heard and decided by the learned Single Judge of a High Court against original or appellate decree or order, the intra-court appeal would not be maintainable against that order. As such, the question is answered accordingly.

14. For what has been said and discussed above, we do not find any merit in this

appeal, the same is, accordingly, dismissed.