

(1973) 04 DEL CK 0031

In the Delhi High Court

Case No : Civil Revision Appeal No. 218 of 1973

Ram Babu and Another

APPELLANT

Vs

Jaswant Singh

RESPONDENT

Date of Decision : 25-04-1973

Acts Referred:

Citation : (1973) 9 DLT 377 : (1973) RLR 397

Hon'ble Judges : V.S. Deshpande, J

Bench : Single Bench

Advocate : Ravinder Sethi and S.I. Bhatia, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) Respondent Jaswant had filed suit No. 347/72 in the Court of Sub Judge 1st Class, Delhi against the appellant Ram Babu for a declaration that any order for ejectment which may be passed against Jaswant Singh in a suit filed by Ram Babu u/s 84 of the Delhi Land Reforms Act 1954 in the Court of the Revenue Assistant under Serial No. 19 of schedule I to the Act would be a nullity. During the pendency of the suit Jaswant Singh filed an application under order Xxxix rules I and 2 Criminal Procedure Code for a temporary injunction restraining Ram Babu from proceedings with the suit before the Revenue Assistant. The Sub Judge Ist. Class dismissed the application. An appeal u/s 104 read with order X 1-111 rule I(r) CPC was, Therefore, filed before H.C.Goel, Additional District Judge, Delhi. During the pendency of the appeal Jaswant Singh filed an application (M.C.A, 13/73) praying that either he should be allowed to amend the plaint under order Vi rule 17 CPC or alternatively he should be allowed to withdraw the suit with permission to file a fresh suit on the same cause of action under order Xxiii rule I Civil Procedure Code. By the order dated 30th March, 1973 against which this revision has been tiled, the Additional District Judge dismissed the application for amendment on the ground that the question whether the plaint should be allowed to be amended or not can be decided only by the trial court in which the suit was pending. Curiously enough contrary to the

above reasoning, however, the Additional District Judge allowed Jaswant Singh appellant to withdraw the suit pending with the trial court with permission to file a fresh suit on the same cause of action under order Xxiii rule I Civil Procedure Code.

(2) In this revision petition by Ram Babu the first question for consideration is whether the Additional District Judge had any jurisdiction to entertain the application under order Xxiii rule I Civil Procedure Code, It is common sense that an appeal is a continuation of a suit. This is only when the suit terminates in the trial court and thereafter it continues in the appellate court. This is why the powers of the appellate court are as large as the powers of the trial court in respect of the whole of the suit in an appeal of which the subject matter comprises the whole of the suit. But what about an appeal against an order ? Orders are themselves of two kinds, namely (A) final orders and (B) interlocutory orders. If a suit is disposed of by a final order, an appeal against a final order may cover the same subject matter as may be covered by an appeal against a decree. For, a suit may cease to be pending in the trial court after a final order. On the contrary appeal against an interlocutory order has a much more limited scope than an appeal against a decree or an appeal against a final order. The question before the Additional District Judge in the appeal was whether temporary injunction refused by the trial court should be granted to Jaswant Singh or not. In respect of that matter, the jurisdiction of the trial court had been exhausted and, Therefore, the jurisdiction was vested only in the appellate court. For the same reason the jurisdiction of the trial court over the rest of the suit continued and no part of that jurisdiction vested in the appellate court. For, it is also common sense that the trial court and the appellate court both do not have jurisdiction over the same matter simultaneously. Had that been so, conflicting orders by the two courts would come to be passed A mere filing of the appeal does not operate as a stay of the suit. Muchless can the filing of an appeal take away the jurisdiction of the trial court to decide the suit. In the appeal before the Additional District Judge no stay order seems to have been passed staying the proceedings in the suit in the trial court. The trial court, Therefore, had the jurisdiction to dispose of the suit on the merits or under order Xxiii rule I CPC if Jaswant Singh were to make an application there under to the trial court. It must follow there fore, the Additional District Judge did not have the jurisdiction either to dispose of the suit on merits or under order XXIII rule I Civil Procedure Cole. The application under order XXIII rule I CPC would, Therefore, be made only to the trial court and not to the appellate court.

(3) Shri S.1. Bhatia for the respondent says that u/s 107 of the CPC the duties of the appellate court are "as nearly as may be" analogous to those of trial court and according to order XLIII rule 2 C.PC., the provisions of order XLI shall apply "so faras may be" to appeals from orders. Ha, Therefore, argues that the appellate court have the same jurisdiction to entertain an application under order Xxiii rule I CPC as was vested in the trial court. The learned counsel is not, however, giving due importance to the words "as nearly as may be" in S. 107

and the words "so far as may be" of rule of order XLIII. These words show that the jurisdiction of the appellate court in an appeal against an order is; restricted only to the order appealed against. As there was no appeal before the Additional District Judge in respect of any other matter, he had no jurisdiction to pass any order in respect of any other matter. The rest of the jurisdiction continue to be vested in the trial court.

(4) The Additional District Judge could not, Therefore, entertain the application under order Xxiii rule I Civil Procedure Code. The order under revision is set aside. The appeal under order Xlii rule I (r) CPC is said to have been disposed of by the Additional District Judge as a result of the order passed by him on 30th March, 1973. But that disposal was not on merits The said appeal will, Therefore, revive to be heard by the Additional District Judge. Parties to appear before the Additional District Judge on 1st May, 1973. The Additional District Judge will please expedite the hearing of the appeal. No order as to costs.