

(1985) 10 AHC CK 0033
In the Allahabad High Court
Case No : F.A.F.O. No. 764 of 1983

Ram Babu Verma

APPELLANT

Vs

Om Prakash Verma and Others

RESPONDENT

Date of Decision : 03-10-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, Order 43 Rule 1

Citation : AIR 1986 All 355 : (1985) AWC 978

Hon'ble Judges : R.K. Shukla, J;N.D. Ojha, J

Bench : Division Bench

Advocate : S.K. Sazena, for the Appellant; Pradeep Kumar, for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—This first appeal from order has been preferred against the order dt. 22nd Oct. 1983, passed by the Civil Judge, Etawah, in suit No. 20 of 1983 pending in his Court directing a receiver to be appointed on the ground that it was just and convenient to do so. The parties were required to submit within seven days the name of the person to be appointed receiver. It was also stated in the said order that in case the parties fail to furnish the name of the receiver within seven days the receiver shall be nominated by the Court. This appeal was preferred even before any person could be nominated as receiver.

2. Having heard counsel for the parties we are of opinion that this appeal is not maintainable in view of the decision of a Division Bench of this Court in *Sunni Central Waqf Board v. Sirajul Haq* AIR 963 All 537 where it was held :--

"An appeal lies under Order XLIII, Rule 1(s) from an order passed under Order 40, Rule 1. If an order is an order passed under Order XL, Rule I, an appeal lies and it is irrelevant to go into the question whether it is an incomplete order or interlocutory order or a final order. Security has to be furnished after an order appointing a person as a receiver has been made under Rule 1; this is made clear by Rule 3 which lays down That "every receiver so appointed shall (a)

furnish such a security" etc. it cannot be doubted for a moment that furnishing security has to follow the appointment of a person as a receiver and a person is appointed as a receiver when an order under Rule 1 is made. An appeal lies from an order made under Rule 1 and, therefore, as soon as an order under Rule 1 is made, an appeal can be filed from it even though the receiver has not furnished security. We cannot accept the contention that no appeal lies unless the receiver has furnished security as required by Rule 3.

When the Legislature itself provides that security is to be furnished after an appealable order has been passed, it is not open to any Court to say that no appeal can be filed even though an appealable order has been passed until security has been furnished, to say so would be a refusal to follow the law or importing words to render an absolute right of appeal into a conditional right of appeal."

It was further held : --

"An order contemplated by Rule 1 is an order appointing a receiver of property. When the Court finds it to be just and convenient, it by order appoints a receiver. Every order of appointment of receiver, therefore, includes a finding that it is just and convenient to appoint a receiver, thereby creating an office of receiver and a direction nominating a certain person to fill the office of receiver as created. Actually the order appointing a receiver has to follow the finding that it is just and convenient to appoint a receiver. This is clear from the words used in Rule 1 "where it appears to the Court to be just and convenient, the Court may by order (a) appoint a receiver", which mean that appointing a person as a receiver is the order to be passed under Rule 1; deciding that it is just and convenient is only a finding on which the order is to be based. An appeal is provided by Order 43, Rule 1(s) from and "order" made under Rule 1 of Order 40, that is from the order or direction appointing a certain person as a receiver and not from the finding that it is just and convenient to appoint a receiver or creating an office of receiver."

In the instant case as seen above by the order appealed against only a finding was recorded that it was just and convenient to appoint a receiver and a receiver deserved to be appointed. No order appointing a particular person as receiver was passed by the order appealed against. On the other hand the parties were required to furnish the name of the person to be appointed receiver within seven days and it was provided therein that in case the parties fail to do so a receiver shall be nominated by the Court. The appeal thus is an appeal against the finding that it was just and convenient to appoint a receiver and creating the office of receiver and not against an order "appointing a certain person as a receiver".

3. Counsel for the appellant brought to our notice the decision of another Division Bench of this Court in the case of Saroj Rani v. Krishna Swarup 1984 All LJ 1003. Firstly, in that case the decision in the case of Sunni Central Waqf Board (supra) was not brought to the notice of the learned Judges. Secondly, that case

is clearly distinguishable even otherwise on its own facts. There an application for appointment of a receiver was made which came up for hearing before the trial Court on 27th Sept. 1983. In the course of arguments there was a suggestion made by counsel for the respondent that in case Suresh Chandra, defendant 1, was prepared to guarantee continued accrual average income of the firm he might himself be appointed a receiver. The trial Court directed that in case Suresh Chandra was prepared to furnish security till the following day he might be appointed receiver failing which the parties may submit a list of two persons each from which the person to be appointed as receiver may be selected. An appeal was preferred in this Court against that order.

4. It further appears that Suresh Chandra made an application in the trial Court expressing that he was ready and willing to work as a receiver on the terms laid down by the Court. He was required to furnish the draft of the guarantee on certain terms. However, while doing, so Suresh Chandra also inserted the words "Subject to all just exceptions and orders of the Court". These words were deleted by the trial Court on 19th Nov. 1983 by approving the rest of the draft and appointing Suresh Chandra as receiver. Another appeal was filed against this order. Both these appeals were decided together. In regard to the appeal filed against the order dt. 19th Nov. 1983, suffice it to say that the said appeal was against an order appointing a specified person namely Suresh Chandra as receiver and was thus clearly an order passed under Order 40, Rule 1 and was appealable. As regards the order dt. 27th Sept. 1983, it would be seen that Suresh Chandra had at the suggestion of the respondents' counsel himself been nominated as a receiver on his furnishing guarantee as stated above. It is true that the words used in the order dt. 27th Sept. 1983, were that if Suresh Chandra was prepared to furnish security till the following day he might be appointed receiver. In substance Suresh Chandra had been nominated as a receiver and the requirement of furnishing security was, as contemplated by Order 40, Rule 3. In view of what has been held in the case of *The Sunni Central Board of Waqf U.P. Lucknow and Another Vs. Sirajul Haq Khan Vakil and Others*, in these circumstances even that order was appealable notwithstanding the fact that security had not been furnished till the appeal was filed. It cannot, therefore, be said that a view contrary to the view taken in the case of *Sunni Central Waqf Board (supra)* has been taken in the case of *Saroj Rani 1984 All LJ 1003 (supra)*.

5. In the result without going into the merits of the finding that it was just and convenient to appoint a receiver, this appeal is dismissed as not maintainable. The interim order passed in the appeal is vacated. The record of the Court below may be sent down expeditiously. In the circumstances of the case, however, the parties shall bear their own costs.