
(1951) 07 AHC CK 0014
In the Allahabad High Court
Case No : Writ Application No. 7783 of 1951

Ram Manohar

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 10-07-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 30

Citation : AIR 1952 All 90 : (1951) 21 AWR 635

Hon'ble Judges : Sapru, J;C.B. Agarwala, J

Bench : Division Bench

Advocate : Shanti Bhushan, for the Appellant;

Final Decision : Dismissed

Judgement

Sapru, J.—This is an application under Article 226 of the Constitution of India praying that this Court may be pleased to issue a writ of certiorari & send for the appeal which has been disposed of by the Board of Revenue to its own file.

2. The grievance of the applicant is that the appeal which was filed against him before the Board of Revenue was heard by one of the Members. The other Member later signed the order of the Member who heard the appeal & assented to the order passed by him. It is urged that this procedure was highly irregular & opposed to the principles of natural justice.

3. There is, in our opinion, no force in this argument because, apart from the fact that the rules of the Board authorise a single Member to act in the name of the Board, under serial No. 5 of List 2, U. P. Tenancy Act, two members of the Board are not required to sit together in the exercise of appellate or revisional jurisdiction under the Act. Rule 170 of the Revenue Court Manual published by the Board of Revenue, U. P. runs as follows:

"When the Board has distributed its appellate business among the Members, the order of a single Member is the order of the Board, but no decree or order coming under the consideration of the Board in appeal shall be modified or

reversed without the concurrent judgment of two members of the Board."

Our interpretation of this Rule is that it is not necessary for both the members to be present at the time of argument, but the order or decree of one Member has, however, to be concurred in by the other member. This Rule is not in conflict with the Act, because, as we see it, Serial No. 5 of List 2 of the second Schedule attached to the U. P. Tenancy Act, provides that nothing in this section shall require two Members of the Board to sit together in the exercise of appellate or revisional jurisdiction under this Act. In other words, this provision of the Act, specially empowers the procedure of the character adopted by the Board of Revenue.

4. Reference was also made to Order 41, Rule 30, Civil P. C. It is in the following terms:

"The appellate Court, after hearing the parties or their pleaders & referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders."

It is urged that the expression appellate Court here means both the Members of the Board. We are unable to read any such meaning into the words "appellate Court" as used in this Rule. The appellate Court was, according to Rule 170, the Member hearing the parties but his judgment or order had to be concurred in by the other Member. This is the position as we see it under this rule.

5. For the reasons given above there is no force in the contention put forward by the learned counsel that the procedure of the Board was so highly irregular as to go against the principles of natural justice.

6. We see no force in this application. It is accordingly dismissed.