

(2011) 12 AHC CK 0314

In the Allahabad High Court

Case No : Special Appeal Defective No. - 1285 of 2011

Smt. Krishna Ajwani

APPELLANT

Vs

Ajit Dhawan and Others

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A

Citation : (2011) 12 AHC CK 0314

Hon'ble Judges : Sunita Agarwal, J;Ashok Bhushan, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Re: Civil Misc. Application No. 388133 of 2011 for permission to file the Special Appeal.

1. This is an application praying for leave by the applicant to file this Special Appeal. The applicant's case is that she has already filed an impleadment application in the writ petition. The leave is granted to the appellant to file this Special Appeal.

Special Appeal:

2. Sri Nikhil Agrawal has put in appearance on behalf of respondents no. 1 and 2. Sri R. B. Singhal, learned Assistant Solicitor General of India assisted by Sri Anurag Misra has put in appearance on behalf of respondents no. 3,4 and 5.

3. This special appeal has been filed against the following judgment and order of Hon"ble Single Judge dated 9.12.2011:

Shri R.B.Singhal, Assistant Solicitor General of India states that by way of last opportunity, time for filing the counter affidavit may be granted. He has stated before the Court that he has made personal efforts to get the counter affidavit filed but certain facts have to be sorted out. He produced a letter dated 30.11.2011 by the Registrar, Central Administrative Tribunal addressed to him

stating that Shri Ajit Dhawan has consented to accept the payment of Rs.83,08,760/-as provisional rent for the period up to 31.8.2011 for which DOP&T had already conveyed to the Administrative Tribunal. He states that he is quite hopeful that by the next date, the said amount shall be paid to the petitioner.

Taking into consideration that Shri R.B.Singhal, Learned Senior Counsel is making serious efforts in the matter, on his request, the case is adjourned. As agreed by Shri R.K.Jain, Learned Senior Counsel, the case is postponed to 9.1.2012.

List on 9.1.2012.

4. Sri Ravi Kiran Jain, learned Senior Advocate, assisted by Sri A.K. Misra, learned appearing for the appellant contends that the writ petition was filed by the respondents no. 1 and 2 being writ petition no. 1956 of 2011 with following reliefs:

(i) issue a suitable writ, order or direction in the nature of mandamus commanding the respondent No. 4 District Judge, Allahabad to decide the application under Order 39 Rule 2-A of the C.P.C. expeditiously;

(ii) issue a suitable writ, order or direction in the nature of mandamus commanding the respondents to pay upto date rent to the petitioner for one and occupation of the premises;

(iii) to direct respondent No. 4 District Judge, Allahabad to attach the properties (including Bank accounts) of the Union of India for preservation and enforcement of rent to the petitioners pending disposal of the suit;

5. It is submitted that the application which was referred as application under Order 39 Rule 2A C.P.C. contained a prayer to the effect that the order dated 27.8.2010, passed by the learned District Judge be enforced. It is submitted by Mr. Jain that the order dated 27.8.2011 passed by learned District Judge in original suit no. 386 of 2008 did not contain any injunction order or any direction, violation of which can be complained of by means of application under Order 39 Rule 2A. He submits that the writ petition itself was misconceived and Hon"ble Single Judge could not have entertained the writ petition or made any observation with regard to acceptance of the amount of Rs. 83,08,760/-.

6. Learned counsel appearing for the contesting respondents submits that the Special Appeal is not maintainable under Chapter VIII Rule 5 of the Rules of the Court. Learned Counsel for the appellant submits that Special Appeal is maintainable. In the writ petition no order passed by Civil Court was under challenge. Prima-facie appeal appears to be maintainable, however on the question of maintainability of appeal, the parties may make their submissions on the next date. Sri R.B. Singhal, learned counsel for the Union of India submits that there is a dispute of entitlement between appellant and the respondents no. 1 and 2.

7. In the facts of the present case, where there is a dispute of entitlement, to protect the interest of the parties, the amount as indicated in the impugned order be deposited in the Court. Let appropriate Bank Draft/Cheque in favour of Registrar General, Allahabad High Court, be deposited by the respondents no. 3,4 and 5 within three weeks.
8. List this appeal on 12.1.2012.