
(1995) 02 KAR CK 0005
In the Karnataka High Court
Case No : M.F.A. No. 1394 of 1989

Sunitha Chemicals Pvt. Ltd.

APPELLANT

Vs

Canara Bank and Syndicate Bank

RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

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

Citation : (1995) ILR (Kar) 779 : (1995) 6 KarLJ 198

Hon'ble Judges : Narayan, J;Hakeem, J

Bench : Division Bench

Judgement

Hakeem, J.—This Appeal under Order 43 Rule 1 of the C.P.C. is directed against the order of the Court below dismissing the appellant's application under Order 33 Rule 1 of C.P.C. to sue as a indigent person.

2. When the Appeal came up for orders before the learned Single Judge on 10.08.94, on the submission of the learned Counsel for Respondent No. 2, the office was directed to place it before the Division Bench since the suit is for recovery of Rs. 32 lakhs and odd, and hence required to be posted before the Division Bench in accordance with amended Section 5 of the Karnataka High Court Act (hereinafter referred to as the Act). It is not in dispute that the order of the learned Judge is not an Order of Reference u/s 9 of the Act. The contention of Sri Aswath Ram, learned Counsel for Respondent No. 2 appears to be that since the Appeal arises out of an order passed in the proceedings in a suit, the value of which exceeds Rs. 3 lakhs, the amended Section 5 of the Act is attracted notwithstanding the specific forum provided u/s 9 of the Act for appeals under Order 43 Rule 1 of C.P.C. It is urged that this Appeal has to be treated as a "proceeding" referred in Section 5 of the Act, and hence to be posted before the Division Bench. In this connection reliance is placed upon a Decision of this Court in Special Land Acquisition Officer Vs. Gopal, in which Section 5 of the Act is interpreted in the following terms viz., that the tenor of the amended provision of Section 5 lays emphasis on the value of the subject matter in the first appeal and

not the value of the subject matter of the suit, or other proceedings. If it were to be held that the value of the subject matter in "a suit or proceeding" is pivotal for determining the forum, it may defeat the very purpose of amendment. Accordingly the First Appeals, the value of the subject matter of which is Rs. 3 lakhs or more shall be heard by a Bench consisting of not less than two Judges of this Court and other First Appeals to be heard by a Single Judge in terms of the amended Section 5. The said interpretation was given in an Appeal against the grant of enhanced compensation, the value of which in the Appeal was less than Rs. 3 lakhs. However in the cited Ruling (supra) the Bench has not considered the effect of Section 9(iv) of the Act which is a specific provision fixing the Forum for hearing of all the Appeals under Order 43 Rule 1 of C.P.C. It is therefore clear that all Appeals coming within the purview of Order 43 Rule 1 of C.P.C. have to be heard by a learned Single Judge irrespective of the value of the suit by virtue of the provisions of Section 9(iv) referred to supra.

3. It is however open for the learned Single Judge to adjourn the matter for hearing by a larger Bench as provided u/s 9 of the Act.

4. In the view we have taken above, this Appeal has to be placed before the appropriate Single Judge Bench for hearing and disposal.