
(1995) 08 AHC CK 0080
In the Allahabad High Court
Case No : Special Appeal No. 29 M/s of 1995

Yogendra Raj Bali Mathur

APPELLANT

Vs

Central Bank of India, Barabank & Anr.

RESPONDENT

Date of Decision : 08-08-1995

Acts Referred:

Allahabad High Court Rules, 1952 — Chapter 8 Rule 5

Citation : (1995) 08 AHC CK 0080

Hon'ble Judges : R.K.Gulati, J and K.C.Bhargava, J

Final Decision : Dismissed

Judgement

R.K. Gulati and K.C. Bhargava, JJ.—This Special Appeal is directed against the order dated 19595. By the impugned order the learned Single Judge refused to interfere with his earlier order dated 13694, by which the writ petition was decided and the order dated 161294 which was made on the Review Petition No. 91 (w) of 1994.

2. It would not be wrong to say that the impugned order was passed on an application which was a second review petition. By the impugned order no rights or the parties have been decided. In our opinion the impugned order cannot be construed to be a judgment" and as such no Special Appeal is maintainable under Chapter VIII, Rule 5 of the Rules of the Court or under clause 10 of the Letters Patent. The decision in the case of State of UP & others v. Dr. VijayAnand Maharaj, AIR 1963 SC 946, relied upon by the appellant was rendered in a different context and is clearly distinguishable. In that case a learned Single Judge of this Court in exercise of his power under Article 226 of the Constitution of India had set aside an order of assessment that was made by an Additional Collector under the provisions of U.P. Agricultural Income tax Act, 1948 on the ground that the assessment was without jurisdiction. However, by a subsequent legislation all assessments made by the Additional Collectors were validated by the State of Uttar Pradesh by Ordinance No. 2 of 1956, subsequently replaced by U.P. Act 14 of 1956 with retrospective effect. It was further provided by Act 14 of

1956 that if any proceeding under the principal Act (the U.P. Agricultural Incometax Act) any Court or authority had set aside any assessment made by the Additional Collector on the ground that he had no jurisdiction to make it, any party to the proceedings might apply for review under Section 11 of the U.P. Act 14 of 1956. An application for review was made before the learned Single Judge who had passed the order under Article 226. That application was dismissed on the ground that U.P. Act 14 of 1956 did not apply to orders made under Article 226 of the Constitution of India. An appeal against that order was also dismissed by a Division Bench of this Court on the ground inter alia that the order dismissing the review application was not a judgment" within the meaning of Chapter VIII, Rule 5 of the Allahabad High Court Rules and was not therefore appealable. On further appeal to the Supreme Court, it was held that the order of the Division Bench dismissing the application for review under Article 226 was a Judgment" within the meaning of Clause 10 of the Letters Patent (All) as well as Chapter VIII, Rule 5 of the Rules of the Court (All), as the new Act (U.P. Act 14 of 1956) created a right and the order decided the question relating to this right and the order was therefore appealable.

3. In the instant case no right of the parties has been decided by the impugned order. However, if the review application had been allowed, different consequence may have followed. See *Shah Babu Lal Khimji v. Jayaben D. Kaniya & another*, 1981 (4) SCC 8. "

4. In view of what has been stated above, the appeal is incompetent and is accordingly dismissed. Appeal dismissed.