
(1996) 10 AHC CK 0057
In the Allahabad High Court
Case No : Special Appeal No. 753 of 1996

Yogesh Kumar Rai

APPELLANT

Vs

Shyam Kartik Singh & Ors.

RESPONDENT

Date of Decision : 09-10-1996

Acts Referred:

Citation : (1996) 10 AHC CK 0057

Hon'ble Judges : Raghubar Dayal, J and B.S.Chauhan, J

Final Decision : Dismissed

Judgement

R. Dayal an Dr. B.S. Chauhan, JJ.—Heard Sri R.P. Singh, Advocate on admission.

2. This special appeal is directed against the order dated 25th September, 1996 passed by a learned Single Judge of this Court whereby the appellant, Yogesh Kumar Rai was directed not to function as teacher in the Institution till further orders. This order was passed after directing the petitioner of the writ petition in which the impugned order was passed to serve the appellant personally within two weeks. It is, thus, apparent that the appellant did not have the opportunity of being heard in the matter at the time when the impugned order was passed and by the impugned order itself the appellant was afforded the opportunity of being heard and it was specifically mentioned that the impugned order would be operative till further orders. In our view, this order does not amount to a judgment within the meaning of Rule 5 of Chapter VIII of the Allahabad High Court Rules. It was observed by the Supreme Court in *Shah Babulal Ktiimji v. Java ban D. Kant a and another*, AIR 1981 SC 1786, that whenever a Trial judge decides a controversy which affects the valuable rights of one of the parties, it must be treated to be a judgment within the meaning of the Letters Patent. It was further observed that every interlocutory order cannot be regarded as a judgment but only those orders would be judgment which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. On the basis of this authority, learned counsel for the appellant submits that the fact that the appellant was directed not to

function as teacher in the Institution affects the rights of the appellant and as such the impugned order amounts to a judgment. However, we are unable to agree with this submission for the reason that though the order was passed affecting the rights of the appellant it did not amount to a judgment since no controversy was decided and no controversy remains yet to be decided after the appellant files reply and avails of the opportunity of being heard in the matter". In this view, we find support from paragraph 24 in *Society Madarsa Mazahir Uloom Mubarak Shah, Saharanpur v. Muzaffar Hussain*, 1994 (1) UPLBEC 277 where having regard to the facts of that case it was held that it was not necessary to decide the issue which was involved in the petition is the appellant in that case had the opportunity to submit counteraffidavit in reply to the petition and to move an application to vacate the stay order. Further, it was observed that the learned Single Judge had by an interim order only stayed the operation of the impugned order and had not adjudicated upon any right of the parties.

3. The impugned order not being a judgment, Special Appeal does not lie. The Special Appeal is, accordingly, dismissed. Special Appeal dismissed.