

Court No. - 36

Case :- FIRST APPEAL FROM ORDER No. - 2307 of 2024

Appellant :- Mahendra Kumar Jain And 6 Others

Respondent :- Sobran Singh And 11 Others

Counsel for Appellant :- Manish Kumar Jain

Hon'ble Kshitij Shailendra,J.

1. This Court, on 16.10.2024, passed the following order:-

"1. On 16.10.2024, following order was passed:-

"1. Prima facie, this Court is of the opinion that since the first appellate court has remanded the matter to the trial court, the instant second appeal is not maintainable and a first appeal from order under Order 43 Rule 1(u) CPC would lie.

2. Learned counsel for the appellants seeks time to go through the said provision and recent decision of this Court in **Shrivatsa Goswami vs. Anant Prasad Singh and others, 2024 (2) ADJ 763.**

3. **Put up as fresh on 06.11.2024. "**

2. Thereafter, following order was passed on 13.11.2024:-

" Today when the matter was called out, learned counsel for the appellants started arguing the case on merits. The Court made a query as to how this appeal is maintainable, as noted in its previous order and asked the counsel to address on the issue of maintainability.

Learned counsel submitted that he has already converted this Second Appeal into First Appeal From Order.

The Court notices from record that title of this appeal has been changed from "Second Appeal" to "First Appeal From Order" and there is a report dated 25.10.2024 submitted by Stamp Reporter that in compliance of the order dated 16.10.2024, learned counsel has converted the appeal into First Appeal From Order.

Admittedly, neither the Court ever permitted conversion of this Second Appeal into First Appeal From Order nor any application seeking such permission was ever filed. It is, therefore, apparent that learned counsel for the appellant has approached the Section Office and incorporated the changes. The act of learned counsel for the appellant is seriously condemnable and, at the same time, **office is directed to furnish an explanation** as to how without permission of the Court and without there being any application to the aforesaid effect, the present appeal was allowed to be converted.

Put up this case as fresh on 02.12.2024. "

3. Pursuant to previous orders, office has submitted an explanation

dated 19.11.2024 to the effect that since this Court, by previous order dated 13.11.2024, had observed that the instant Second Appeal was not maintainable and First Appeal From Order under Order XLIII Rule 1(u) CPC would lie, **as per prevalent practice, the second appeal was put up before the Stamp Reporter and after obtaining necessary correction from the learned counsel, the same was converted into a First Appeal From Order.**

4. The Court takes judicial notice of the report dated 19.11.2024 and finds that the explanation offered transgresses the judicial powers of this Court in a case when one or the proceeding is held to be non-maintainable by the Court but without there being any order of the Court, the office attempts to apply its own "**wisdom**" to convert one proceeding into another.

5. This Court also takes notice that Mr. Rakesh Kumar Singh, Assistant Registrar (Second Appeal) and Mr. Dibyanshu Kumar, Review Officer have taken the matter so lightly without understanding the gravity of the act done by them, as already noted in the previous order of this Court.

6. The apology tendered by the office stands **rejected** at this stage.

7. Let proceedings be drawn against Mr. Rakesh Kumar Singh, Assistant Registrar, (Second Appeal) and Mr. Dibyanshu Kumar, Review Officer on administrative side in accordance with the relevant Rules.

8. At the same time, Shri Manish Kumar Jain, learned counsel for the appellant is also warned to be vigilant in future and merely because this Court had observed regarding non-maintainability of the appeal, he was under no authority to incorporate corrections in the original record of the Court proceedings, without leave of the Court.

9. Put up this case as fresh before appropriate Bench on 10.02.2025.

10. In the meantime, learned counsel may file appropriate application.

11. Office shall place the matter before the Registrar General of this Court for appropriate proceedings.

Order Date :- 16.12.2024

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