

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Sudershan Chopra Vs. New Okhla Industrial Development Authority and Others

Sudershan Chopra Vs. New Okhla Industrial Development Authority and Others

SooperKanoon Citation : sooperkanoon.com/465821

Court : Allahabad

Decided On : Jan-20-2000

Reported in : 2000(2)AWC983

Judge : R.H. Zaidi, J.

Acts : General Rules (Civil) - Rule 28; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 2927 of 2000

Appellant : Sudershan Chopra

Respondent : New Okhla Industrial Development Authority and Others

Advocate for Def. : U.S. Awasthi, Adv.

Advocate for Pet/Ap. : B.D. Malhotra and ;Rajiv Gupta, Advs.

Judgement :

R.H. Zaidi, J.

1. Heard learned counsel for the petitioner and also perused the record.

2. By means of thts petition, the petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the Impugned order dated 18.11.1999

passed by the Court below rejecting petitioner's application to return the memo of appeal to respondent No. 2.

3. It appears that the petitioner filed a suit for specific performance of contract of sale and for permanent injunction. The suit of the plaintiff was contested by defendant ; but ultimately the suit was decreed by the trial court by judgment and decree dated 6.2.1999. Challenging the validity of the said decree, the defendant-respondent No. 1 filed an appeal before the Court below. In the said appeal, the petitioner filed an application purporting to be under Rule 28 of General Rules (Civil). It was contended that the memo of appeal contained argumentative matter, therefore, the same was liable to be returned to respondent No. 1 under the said Rule. The Court below disagreeing with the submission made by the learned counsel for the petitioner dismissed the application by the impugned order, hence the present petition.

4. Learned counsel for the petitioner submitted that the view taken by the Court below that memo of appeal does not come within the definition of application and that it was not liable to be returned is erroneous and the impugned order, therefore, is liable to be set aside.

5. I have considered the submission made by the learned counsel for the petitioner. Rule 28 of the General Rules (Civil) reads as under :

'Application containing argumentative matters to be returned. No application containing argumentative matter, e.g.. quotations and discussions of the effect of certain sections of Acts, or of certain rulings of the High Court, shall be placed on record. They shall be returned to applicants without any order, except an endorsement that the application is returned under this Rule.'

6. A perusal of the aforesaid Rule clearly reveals that the same applies to the application containing argumentative matters. It provides that no such application which contains argumentative matters, quotation and discussion of the effect of certain sections of the Acts, or of certain rulings of the High Court shall be placed on record. They shall be returned to applicants without any order.

7. In common parlance, to apply means to make a formal request or petition, usually in writing to a Court or office, board or company for granting some favour or of rule or order which is within his or their power or discretion. For example, to apply for an Injunction, for appointment of a receiver, for amendment of pleadings, impleadment of parties, etc.

8. In Black's Law Dictionary, expressions 'application' and 'appeal' mean as under :

'Application.--A putting to, placing before, preferring a . request or petition to or before a person. The act of making a request for something, a written request to have a certain quantity of land at or near a certain specified place.'

'Appeal in civil practice. The complaint to a superior court of an injustice done or error committed by an inferior one. whose judgment or decision the Court above is called upon to correct or reverse.

The removal of a cause from a Court of inferior to one of superior jurisdiction for the purpose of obtaining a review and retrial. Hall v. Kincaid, 64 Ind. App. 103, 115 N.E. 361, 365. Lea County State Bank v. Mc Caskey Register Co., 39 NM 454, 59, P. 2d 577, 579.'

9. Thus, the meanings and scope of expression 'application' and 'appeal' are totally different from each other. Rule 28 referred to above applies only to the applications and not to memorandums of appeals. A memo of appeal inevitably contains argumentative matters. The grounds of appeal are nothing but arguments against the order of appeal. In the grounds of appeal, not only arguments, but some time the material in support of the arguments is stated by the appellant including the case law on the point in question. If the submission made by learned counsel for the petitioner is accepted, then in almost all appeals, the respondents Instead of contesting the appeals on merits may apply for returning the memorandums of appeals to the appellants which would frustrate and make unworkable of all statutory provisions in various statutes providing for appeals against the orders or decree of inferior courts, authorities or tribunals to superior courts, authorities and tribunals.

10. The submission made by learned counsel for the petitioner is, on the face of it, misconceived and untenable in law.

11. In my opinion, the Court below did not commit any error of law or Jurisdiction in holding that Rule 28 of referred to above Rules does not apply to appeals ; but only to miscellaneous applicants, that too, of the nature of applications specified in the said Rule and in rejecting the application made by the petitioner for returning the memo of appeal.

12. This petition has got no merits. No case for interference under Article 226 of the [Constitution of India](#) is made out. The writ petition fails and is dismissed in limine.

13. This also disposes of the Writ Petition No- 2932/2000.

14. A copy of the Judgment may be placed on the record of W.P. No. 2932/2000.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com