

Ahmad Baksh and Sons and Another Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Feb-19-1999

Reported in : 1999(2)AWC1144

Judge : N.K. Mitra, C.J. and;D.K. Seth, J.

Acts : Allahabad High Court Rules, 1952 - Rules 2(6), 5 and 10; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 141 - Order 3, Rule 4; [Constitution of India](#) - Article 226

Appeal No. : Special Appeal No. 134 of 1999

Appellant : Ahmad Baksh and Sons and Another

Respondent : State of U.P. and Another

Advocate for Def. : Ran Vijay Singh, Adv. and; S.C.

Advocate for Pet/Ap. : A.K. Gaur, Adv.

Judgement :

N.K. Mitra, C.J. and D. K. Seth, J.

1. A preliminary objection was raised by the learned standing counsel to the extent that in absence of any vakalatnama accompanying the memo of appeal in order to enable the counsel to represent his client, the appeal is not maintainable.

2. Mr. A. K. Gaur, learned counsel for the appellants on the other hand contends that Special Appeal is a continuation of the writ proceedings and, therefore, when the client is represented by the same counsel who represented in the writ proceedings, no fresh vakalatnama would be necessary in the appeal. He also points out that Rule 10, Chapter IX of the Allahabad High Court Rules, 1952 does not prescribe that a vakalatnama has to accompany memorandum of appeal though it has specified what document should accompany the memorandum of appeal.

3. Mr. Ran Vijay Singh, learned standing counsel on the other hand contends that by reason of Section 141 of the Code of Civil Procedure, the provisions of C.P.C. Is not applicable and, therefore, reliance placed by Mr. Gaur on Rule 4. Order III. C.P.C. Is misplaced.

4. While opposing the case of Mr. Gaur yesterday. Mr. Singh had contended that in absence of vakalatnama, the appeal cannot be maintained. But, however, in his usual fairness, he took time to look in to the provisions. Today when the matter was taken up, in his usual fairness Mr. Singh had pointed out to Rule 2, sub-rule (6) of Chapter XXII of the Allahabad High Court Rules, 1952. Wherein it has been provided that Order III. Rule 4 of the Code of Civil Procedure shall apply to proceedings under Chapter XXII. This procedure is provided for proceeding under Article 226 of the Constitution of India other than a writ in the nature of habeas corpus. Thus it appears that Rule 4, Order III of the C.P.C. is very much applicable in proceedings under Article 226. It is no doubt that Special Appeal is also a continuation of the writ proceedings. Special Appeal has been provided by Rule 5 of Chapter VIII of the Allahabad High Court Rules, the procedure wherefor is provided in Rule 10, Chapter IX. Rule 10 is silent about the attachment of the vakalatnama with the memo of appeal while prescribing the necessary documents, which should accompany the memorandum of appeal in Special Appeal. Rule 4, Order III of the C.P.C. has been made applicable in case of writ proceedings by sub-rule (6) of Rule 2 of Chapter XXII of the Allahabad High Court Rules. Rule 4. Order III in sub-rule (2) provides for an Explanation that for the purposes of this sub-rule, it should be deemed to be proceedings in the suit where (c) an appeal from any decree or order in the suit, has also been explained to be proceedings in

suit. Even in Allahabad High Court Amendments, Explanation to sub-rule [2] of the Code of Civil Procedure has been amended by inserting clause (aa), which had included the proceedings for revision of an order in a suit as continuation of the proceedings of the suit. The appeal in Code of Civil Procedure is preferred from a Court different from the Court by which the decree was passed, whereas, a Special Appeal is an intra court appeal preferred against an order passed by the High Court from the order of a learned single Judge to a Division Bench of the same High Court. Thus, there is no doubt that a Special Appeal is a continuation of writ proceedings. Since it is a continuation of the same proceedings, so. If the petitioner or the appellant is represented by the same counsel, who had represented before the learned single Judge, by reason of the provisions contained in the Allahabad High Court Rules, as indicated above, no fresh vakalatnama would be necessary. We must appreciate the assistance rendered by Mr. Singh in this case.

List the Special Appeal along with Writ Petition No. 41801 of 1998 in the next supplementary cause list.

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