

Data Ram and anr. Vs. Afsar

Data Ram and anr. Vs. Afsar

SooperKanoon Citation : sooperkanoon.com/762870

Court : Rajasthan

Decided On : Jul-27-2005

Reported in : IV(2005)ACC101; RLW2005(4)Raj2588; 2005(4)WLC227

Judge : N.K. Jain, J.

Acts : [Motor Vehicles Act, 1988](#); Code of Civil Procedure (CPC) - Order 9, Rule 13 - Order 43, Rule 1; [Constitution of India](#) - Article 227

Appeal No. : S.B. Civil Misc. Appeal No. 266 of 1997

Appellant : Data Ram and anr.

Respondent : Afsar

Advocate for Def. : V.S. Chouhan, Adv.

Advocate for Pet/Ap. : J.P. Goyal, Adv.

Disposition : Appeal dismissed

Judgement :

N.K. Jain, J.

1. This appeal has been filed under Order 43 Rule 1 (d) CPC against the order dated 4.2.1997 passed by Motor Accident Claims Tribunal, Hindaun City, in Civil Misc. Application No. 38/1996 whereby an application under Order 9 Rule 13 CPC

filed by the appellant was dismissed.

2. Learned Counsel for the respondent has raised an objection that this appeal, arises out of application for compensation filed under the provisions of the Motor Vehicles Act and no appeal in such matters lies under Order 43 Rule 1 (d) CPC against an order passed by Tribunal on an application under Order 9 Rule 13 CPC. He submits that the appellants may file the writ petition under Article 227 of the [Constitution of India](#) challenging the said order, but appeal is not maintainable. He has placed reliance on the case of Mangla Jat v. Raju, reported in 2001 (1) WLC (Raj.) 698, wherein this Court has held as under:

6. 'Reliance is placed by the counsel for the respondents on a judgment of this Court in the case of Vikram Singh Verma v. Smt. Kashmiri Devi and Ors. 2000 (2 WLC (Raj.) 314 wherein application was moved for setting aside ex parte award passed by the Commissioner Workmen's Compensation Act maintainable under Order 9 Rule 13, it was held that on such application having been moved before the authority and in case the authority had dismissed the application, no misc. appeal is maintainable under Order 43 Rule 1 CPC. It was further held that even the appeal under Order 43 Rule 1 CPC was not maintainable.

7. 'Yet in another judgment in the case of Bharat Lal v. Smt. Sriom and Ors. SB Civil Misc. Appeal No. 474/98 decided on 24.11.2000, the law laid down in Vikram Singh's case (supra), was affirmed and it was held that the provisions of order 43 Rule 1 CPC were not applicable and appeal was not maintainable in the application dismissal under Order 9 Rule 13 CPC and the aggrieved person is entitled to file a writ petition under Article 227 of [Constitution of India](#) which provides that every High Court shall have superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction'.

3. Learned Counsel for the appellants does not dispute the above position of law, but his prayer is that he may be granted liberty to file writ petition under Article 227 of the [Constitution of India](#) challenging the impugned order dated 4.2.1997 so his writ petition may not be dismissed on the ground of laches.

4. I have considered the rival submissions and examined the impugned order.

5. The present case is squarely covered by the aforesaid judgment (supra), and as such this appeal is dismissed as not maintainable. So far as grant of liberty to appellant for filing of writ petition challenging the impugned order dated 4.2.1997, is concerned, it is suffice to say that the petitioner may explain the delay in filing the writ petition by mentioning a fact that this appeal against the same order remained pending before this Court during the period from 11.3.1997 to till day and as such no liberty is required to be given. This Court in the above referred case, has already held that the impugned order can be challenged by filing a writ petition under Article 227 of the [Constitution of India](#), which provides that every High Court shall have superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.

6. In view of above, the appeal is dismissed as not maintainable. No order as to costs.

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