

**Satya Narain Vs. Mukesh**

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**Court :** Rajasthan

**Decided On :** Sep-02-1999

**Reported in :** 2000(2)WLN478

**Judge :** Shivaraj V. Patil and; Bhagwati Prasad, JJ.

**Appeal No. :** D.B. Civil Special Appeal No. 932 of 1999

**Appellant :** Satya Narain

**Respondent :** Mukesh

**Disposition :** Appeal dismissed

**Judgement :**

Shivaraj v. Patil, C.J.

1. The appellant has filed this appeal against the order dated 5.7.1999 passed by a learned Single Judge of this Court in S.B. Civil Writ Petition No. 2203/99 in which the appellant was respondent and had appeared as Caveator at the time when the writ petition was being heard for admission. The order under challenge has been passed on the stay application filed by the writ petitioner respondent in the appeal.

2. Learned counsel for the appellant was asked a pointed question by the court as to how an appeal is maintainable against an order passed on the stay application.

3. Learned counsel for the appellant asserted that the learned Single Judge has not appreciated the fact that the appellant was only a caveator and was supplied the copy of the writ petitioner only during the course of arguments. No indulgence was granted to the appellant to prepare reply and thereafter argue the matter. Learned counsel for the appellant has further asserted that the order under challenge has the effect of changing the situation wherein the appellant will lose his position. Learned counsel for the appellant further asserted that as and when an order has the effect of finally adjudicating the rights of the parties, that should be construed to be a judgment in terms of Section 18 of the Rajasthan High Court Ordinance, 1949 (referred to hereinafter as 'the Ordinance') and an appeal should be held maintainable.

4. Learned counsel for the appellant placed reliance on a decision of the Hon'ble Supreme Court rendered in *Jethabhai Khatau and Co. v. Luxmi Narayan Cotton Mills Ltd. and Ors.* : [1981]3SCR449 . In this case, the Hon'ble Supreme Court entertained an appeal against the interlocutory order passed by the High Court under Article 136. Learned counsel has also asserted that the Hon'ble Supreme Court has been entertaining the appeals against the orders passed under Order 39 Rules 1 and 2 C.P.C.

5. We have given our anxious consideration to the submissions made by the learned Counsel for the appellant. The question of going into the merits of the case would only arise when it is held that an appeal is maintainable against an interlocutory order passed on a stay application. The scope of Section 18 of the Ordinance has been subject matter of decision of this Court and one of such decision was rendered in the matter of *Udai Singh Solanki v. Security and Exchange Board of India&Ors.*; (D.B. Spl. Appeal (Civil) No. 31/99, decided on 21.5.1999). In this decision, this Court took notice of a decision of the Hon'ble Supreme Court in the matter of *New Kernilworth Hotel (P) Ltd. v. Orissa State Finance Corporation* : [1997]1SCR395 and following the earlier decisions of the Division Bench of this Court, it was held that right of appeal is a creature of the statute. The right of appeal against an introductory order is not provided under Section 18 of the Ordinance and, thus, the present appeal is not maintainable and cannot be entertained. Once this Court comes to the conclusion that no appeal lies

against an interlocutory order, the question of going into the merits of the case does not arise and, therefore, we are refraining ourselves from entering into the merits of the case.

6. Learned counsel for the appellant further urged that he was denied opportunity of hearing in the writ petition in which the order of stay was passed. His grievance is that by the end of January, 2000 the term of the Sarpanch would come to an end and if the writ petition is not heard before that then the writ petition itself would be rendered infructuous.

7. Looking to the peculiar facts and circumstances of the case, we permit the appellant to renew the request for early hearing before the learned Single Judge.

8. In the result, the appeal is held to be not maintainable and is consequently dismissed as aforesaid.

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