

Union of India Vs. Cementone.

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Court : Kolkata

Decided On : Mar-28-2011

Judge : Kalyan Jyoti Sengupta; Asim Kumar Ray, Jj.

Acts : Code of Civil Procedure (CPC) - Order 41 Rule 1, 2

Appeal No. : APOT No. 102 OF 2011; GA 918 of 2011; APO 111 of 2011 AP 84 of 2007.

Appellant : Union of India.

Respondent : Cementone.

Advocate for Pet/Ap. : Mr.P.S. Bose, Adv.

Judgement :

1. The appeal and the application are treated as on days list. We fail to understand why the department has admitted this appeal as a regular one accepting Memorandum of Appeal with the certified copy of the judgment which is contrary to the provisions of Chapter 31 r. 2 of the Original Side Rules, which provides as follows ;-

Every Memorandum of Appeal from the Original Side shall be in Form no. 1, shall be drawn up in the manner prescribed by order XLI r.1 of the Code, and shall be presented to the Registrar, accompanied by a copy of the decree or order appealed from.

2. In the instant appeal, the certified copy of the judgment has been annexed but not the certified copy of the order. Needless to mention, the judgment and order are completely different things although both of them owe to the same origin.

3. The Rule 2 of the above rule clearly provides that the memorandum of appeal shall be drawn up in the manner prescribed by Order XLI r.1 of the Code. Therefore, it has partial application of aforesaid provision of Code not its entirety. At present Order XLI R.1 enables the litigant to prefer appeal with the certified copy of the judgment. However, Original Side Rules has not been amended in the line of the code of Civil Procedure to enable the litigant to prefer appeal by presenting Memorandum of Appeal annexing certified copy of the judgment instead of decree or order.

4. Accordingly, we direct the department not to accept the memorandum of appeal in the Original Side without adherence to the aforesaid provision until suitable amendment in the line of Rule 1 of Order XLI of CPC is made by this Court. However, the certified copy of the judgment may be relevant at the time of hearing of any application for interim relief, but under usual procedure an appeal can be preferred without the certified copy of the decree or order with leave of the Appeal Court on condition that parties will have to take steps for getting the decree or order drawn up and also for obtaining certified copy within the period of limitation.

5. In view of the aforesaid proposition this appeal and the application are dismissed. However, liberty is given to take up a fresh one in accordance with the Rules of this Court. We feel Registrar, Original Side is to take steps for necessary amendment of the above provision. Registrar, Original Side, Department concerned and all parties are to act on a Photostat signed copy of this order on the usual undertakings.

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