

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

APPEAL FROM ORDER NO.382 OF 2014
WITH
CIVIL APPLICATION NO.436 OF 2014

Sohanlal Shankarlal Vishnoi

... Appellant

V/s.

Kishor Prakash Lunawat & Ors.

...Respondents

Mr. P. S. Dani, Senior Advocate with Pratap Mandlik for the Appellant
Mr. S. S. Kanetkar for the Respondents.

CORAM: K.K. TATED, J.
DATED : FEBRUARY 17, 2015

PC. :

1. Heard the learned counsel for the parties. This appeal is preferred by original Defendant No.2 challenging the order dated 16/01/2014 passed by the 7th Civil Judge, Senior Division Pune below Exhibit 34 in Special Civil Suit No.399/2012.

2. The Respondent Plaintiff had preferred Application under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 (CPC) for attachment before judgment in Special Civil Suit No.399/2012 which was partly allowed by the Trial Court. Hence, the Defendant No.2 preferred the Appeal from Order.

3. The learned counsel for the Respondent Plaintiff raised a preliminary objection about the maintainability of the Appeal from Order. He submits that the Appeal from Order itself is not

maintainable under Order XLIII of the Code of Civil Procedure, 1908 if the order is passed by the Trial Court under Order XXXVIII rule 5. He relies on Order XLIII Rule 1(q). He submits that at the most the Appeal from Order is maintainable if the order is passed by the Trial Court under Order XXXVIII Rule 6.

4. The learned senior counsel for the Appellant original Defendant No.2 submits that the Trial Court already disposed of the Application filed by the Plaintiff under Order XXXVIII Rule 5. Hence, the Appeal from Order is maintainable under the said order.

5. Considering the submissions made by the parties, it is very clear that if the order is passed by the Trial Court under Order XXXVIII Rule 5, the Appeal from Order is not maintainable. Appeal from Order is maintainable only if the order is passed under Order XXXVIII Rule 2,3 or 6 of the Code of Civil Procedure, 1908.

6. Considering these facts, I am of the opinion that the Appeal from Order is not maintainable. Hence, the Appeal from Order is rejected.

7. In view thereof, the Civil Application does not survive. Same stands dismissed as infructuous.

8. At this stage, the learned senior counsel for the Appellant seeks liberty to file an appropriate proceeding. Liberty granted.

(K.K. TATED, J.)