

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****FA No. 284 Of 2017**

1. Gyan Ganga Education Academy Through Its Secretary, Village Nardaha, Balauda Bazar Road, Post Kachhari Branch, Police Station Civil Lines, District Raipur, Chhattisgarh, Director Gyan Ganga Educational Institute Private Limited Raipur, Chhattisgarh
2. Sachin Sandilya S/o Shri Upendra Kumar Sandilya, Aged About 46 Years R/o M-25, Rajiv Nagar, Raipur, Post- Shankar Nagar, Police Station- Civil Lines, District Raipur, Chhattisgarh, Director Gyan Ganga Educational Institute Private Limited Raipur, Chhattisgarh
3. Gyan Ganga Education Institute Private Limited, Through Its Secretary, Village Nardaha, Balauda Bazar Road, Police Station Vidhansabha, Tahsil & District Raipur, Chhattisgarh (Defendants)

---- Petitioner**Vs**

1. Smt. Suman Dheer W/o Shri Balraj Dheer, Aged About 71 Years R/o M I G-19, Indrawati Colony, Raipur, Post Kachhari Branch, Police Station Civil Lines, District Raipur, Chhattisgarh, Director Gyan Ganga Educational Institute Private Limited Raipur, Chhattisgarh(Plaintiff)
2. Ravindra Pal Singh S/o Late Shri Ramprasad Singh, Aged About 71 Years R/o M-32, Rajeev Nagar, Raipur, Presently Resident At 4, Golden House, Shankar Nagar, Raipur, Police Station- Civil Lines, Raipur, District Raipur, Chhattisgarh, Director Gyan Ganga Educational Institute Private Limited Raipur, Chhattisgarh

---- Respondent

For Appellants/Defendants

Mr. Sunil Pillai and Mr. Sumit
Raghuvanshi, Advocates

For Respondent No.1

Mr. Roop Naik, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board By**Prashant Kumar Mishra, J.****26/7/2017****FA No.284/2017**

1. While hearing learned counsel for the parties on IA No.01, an application for condonation of delay of 82 days in filing the appeal, it came to be noticed that First Appeal No.284/2017 is against the same judgment and decree, against which, the opposite party/plaintiff has preferred First Appeal No.41/2017. By the judgment and decree under challenge, in both the appeals, the plaintiff's suit has been dismissed on technical grounds though after holding regular trial.
2. Be that as it may, the fact remains that vide the judgment and decree, the suit has been dismissed by the Court below, therefore, there is no decree operative against the defendants/appellants of FA No.284/2017.
3. It is argued that the appeal is filed under Order 41 Rule 22 of CPC, which entitles the party against whom the findings are recorded in the same judgment and decree to challenge those findings by preferring an appeal even though he may not have appealed from any part of the decree. The language implied in Order 41 Rule 22 of CPC is apparently clear in terms that a person against whom the decree is not operative, but he is still aggrieved by some of the findings recorded by the trial Court, he can prefer cross-objection/cross-appeal without challenging the judgment and decree.

4. Order 41 Rule 22 of CPC is not a substantive provision for preferring a first appeal, which is filed under Section 96 of CPC providing that an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court, meaning thereby, it goes without saying than appeal can be preferred only by the person who is aggrieved by the judgment and decree and not by such party to the suit in whose favour the decree has been passed.
5. In our considered view, FA No.284/2017 is unnecessary and not maintainable. The appellants of FA No.284/2017 being the respondents in FA No.41/2017, they are entitled to prefer cross-objection/cross-appeal under Order 41 Rule 22 of CPC. For exercising such entitlement, there is no need of any liberty in their favour. As a matter of fact, the appellants of FA No.284/2017 have already preferred a cross-objection in FA No.41/2017, therefore, for this reason also, no liberty is needed for an action, which has already been initiated.
6. In view of the above, FA No.284 of 2017 is dismissed, as not maintainable. The cross-objection preferred by the respondents/defendants in FA No.41/2017 shall be considered in accordance with law.

Sd/-

Judge
(Prashant Kumar Mishra)

Sd/-

Judge
(Arvind Singh Chandel)

