

19.11.2020

Item no. 08

Dd/aloke

Through Video Conference

CO 1369 of 2020

Pratap Chandra Hazra

Vs.

Ashoke Kumar Hazra

Mr. A. Chakraborty

... .. For the Petitioner

Heard the learned counsel for the petitioner who is the defendant in a suit for eviction. The plaintiff is his brother. The suit was decreed. Pending appeal, he filed an application for admission of additional evidence in terms of Rule 27 Order XLI CPC. He also prayed for grant of leave to amend the written statement. The court below has dismissed the application for amending the written statement. This is the challenge in this application under Article 227 of the Constitution, read with Section 115 CPC.

2. The law laid by the Apex Court in *Surya Dev Rai vs. Ram Chander Rai & Ors.* reported in (2003) 6 SCC 675 alerts among other things that such supervisory exercise under Article 227 of the Constitution or under Section 115 of Code of Civil Procedure will be anathema to the scheme of

amendments to the Code of Civil Procedure. Obviously, if the first appeal filed by the defendant before the first appellate court is ultimately decided adverse to him, it will be open to him to challenge the interlocutory orders in the appeal in a properly constituted second appeal and carried to the superior forum in accordance with law after the final disposal of the first appeal by the lower appellate court. It is to be noted that the policy of law is to exclude piecemeal access to superior courts in pending matter.

3. In the aforesaid facts and circumstances of the case, I am inclined to take the view that the right and liberty of the petitioner to challenge all orders passed in the first appeal being available, no interference is called for at this stage by this Court in exercise of power under Article 227 of the Constitution.

4. In this result, without prejudice to recourse to remedies after the final disposal of the first appeal, this revisional application is dismissed in limine.

(Thottathil B. Radhakrishnan, C.J.)