

06.07.2021

Item No. 08

Ct. No. 04

RP

S.M.A.T. 2295 of 2000
+
IA No.CAN 1 of 2000 (Old No.CAN 6173 of 2000)
(Application not found)
(Via Video Conference)
Bishnupada Bhowmick & Ors.
Vs.
Sujit Kumar Samanta & Ors.

The second miscellaneous appeal tender is of year 2000. Additional Stamp Reporter had on 6th November, 2006 reported that valuation of the appeal was not furnished in the memo. There are several notings in order sheet to show that thereafter the learned advocate never appeared to have information regarding the report, for steps to be taken. None appears on behalf of appellants.

On noticing the classification as second miscellaneous appeal tender we looked at order dated 12th August, 1998 passed in the title suit. We reproduce the ordered portion hereinbelow.

“that the petition dated 01/4/98 under Order XXXIX Rules 1 and 2 and petition dated 22/6/98 under Section 151 both are of the Code of Civil Procedure filed by the plaintiffs are allowed on contest without any cost.

Contesting defendants No.1 to 3 are hereby restrained by an order of temporary injunction from interfering with the peaceful possession of plaintiffs till disposal of the suit.

To date.”

Lower appellate Court passed impugned judgment dated 29th April, 2000 in Misc. Appeal no.23 of 1998 (Sri Sujit Kr. Samanta & Ors. vs. Bishnupada Bhowmik). The ordered portion from said judgment is also reproduced hereinbelow:

“That the Misc. Appeal be and the same is allowed on contest but without any order as to costs.

The impugned order no.9 dated 12.8.1998 passed by the Ld. Court below is hereby set aside. The order of injunction passed by that order is hereby vacated.

Let a copy of this order along with the L.C.R. be sent to the Ld. Court below for information and record.”

Section 104 in Civil Procedure Code, 1908 provides for orders, from which appeal lies. One of the provisions is for an appeal to lie from any order made under rules, from which an appeal is expressly allowed by rules. We find the judgment of trial Court was in passing order under order XXXIX rules 1 and 2. As such the appeal is barred by sub-section (2) in

section 100. This is because order XLIII specifically provides for appeal from, inter alia, an order passed under rules 1 and 2 in order XXXIX. In view of aforesaid, we find the appeal is not maintainable.

Considering that the learned advocate has not taken any step to remove reported defect, the appeal is dismissed.

(Arindam Sinha, J.)

(Biswajit Basu, J.)