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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **RSA 44/2019**

MAWASI RAM (DECEASED) THR LRS Appellant
Through: **Mr.Sandeep Kapoor, Adv.**

versus

TEJ RAM SHARMA & ORS. Respondents
Through: **Mr.Tara Chand Sharma, Adv.**

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)% **21.03.2022**

1. This is a second appeal under Section 100 of the Code of Civil Procedure, 1908 challenging an order dated 20th July, 2018, passed by the learned Additional District Judge (“the learned ADJ”) in RCA 20172/2016, which was filed by the appellant challenging a judgment dated 15th July, 2013 of the learned Civil Judge.

2. The learned ADJ has, in para 12 of the impugned judgment, held that RCA 20172/2016 was not maintainable, as the order of the learned Civil Judge was passed on a petition under Section 6 of the Specific Relief Act. She has relied, for the said purpose, on the judgment of this Court in *ITC Ltd. v. Adarsh Cooperative*¹, in which it has been held, categorically, that an unsuccessful litigant in a suit preferred under Section 6 of the Specific Relief Act could not maintain an appeal, as the suit proceedings were summary in nature

¹ (2013) 10 SCC 169



and the right of appeal, against an order passed in such proceedings stands expressly excluded by Section 6(3) of the Specific Relief Act.

3. Having held the appeal not to be maintainable and deserving of dismissal on that ground, the learned ADJ went on, nonetheless, to pass detailed orders and to dismiss the appeal on merits as well.

4. In the present second appeal, preferred against the aforesaid judgment dated 20th July, 2018 of the learned ADJ, this Court, *vide* order dated 15th April, 2019, framed the following substantial question of law:

“Whether the Appeal in RCA No. 20172/2016 that was pending before the learned ADJ-01, South East, having been held to be not maintainable, could have been dismissed on consideration of merits of the case”

5. Once the said first appellate Court had held the appeal of the appellant not to be maintainable, it had rendered itself *coram non judice*. It would not, therefore, have proceeded to pass any order on the merits of the case. One may refer, in this context, to the judgment of a learned Single Judge of the High Court of Allahabad in **Bansraj v. Moti**², specifically to the following paragraphs:

“20. This Court may remark at once that the lower Appellate Court in returning its findings about the issue of jurisdiction of the Civil Court being barred, has held it barred, both under Section 331 of the U.P.Z.A. & L.R. Act and Section 49 of the Consolidation Act. In case it were to be held that the Civil Court has no jurisdiction to try the suit in view of the bar under Section 331 of the U.P.Z.A. & L.R. Act, this Court is of opinion that there would be no further necessity

² 2019 (11) ADJ 185



for the lower Appellate Court to opine about the bar under Section 49 of the Consolidation Act. This is for more than one reason. In the event, the suit is held barred under Section 331 of the U.P.Z.A. & L.R. Act, the moment the Civil Court has reached that conclusion, it should have laid its hands off from opining about the suit being barred under Section 49 of the Consolidation Act. The Civil Court, once it holds its jurisdiction ousted, recording any other finding about the bar to that suit under some other provision of law, would be of no consequence. The Civil Court having found itself to be a Court, not competent to try the suit, all its findings on any other or further issues, would also be without jurisdiction. It is not that, that the Civil Court would on the one hand hold that it has no jurisdiction to try the suit vis-à-vis its subject matter and at the same time pronounce upon other issues of fact and law. The issue whether the plaintiffs' claim is barred under Section 49 of the Consolidation Act, is a question of law affecting the rights of the plaintiffs. It can be decided by a Court of competent jurisdiction alone; not by a Court that holds itself out of jurisdiction.”

(Emphasis supplied)

6. The Supreme Court has also, in a recent decision, in **Ajay Kumar Das v Divisional Manager**³, observed that, once the High Court had held an appeal filed before it to be barred by time, it could not have proceeded to pass any orders on the merits of the appeal. This principle would apply, *mutatis mutandis*, to a case where the appeal before the First Appellate Court was held not to be maintainable on any other ground as well.

7. In view thereof, the aforesaid substantial question of law has necessarily to be answered in favour of the appellant and against the respondent.

³ 2022 SCC OnLine SC 93



8. The impugned judgment, therefore, to the extent it dismisses the First Appeal filed by the appellant before the learned ADJ on merits, cannot sustain and is accordingly, quashed and set aside.

9. The appeal is allowed to the aforesaid extent with no orders as to costs.

MARCH 21, 2022/kr

C. HARI SHANKAR, J

