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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 169/2022 & CM APPL. 56331/2022**

SMT BHAGWATI DEVI

.....Appellant

Through: Mr. Manish Kapoor, Adv.

versus

SH BHOPAL SINGH

.....Respondent

Through: Mr. R.K. Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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18.12.2024

1. The present Regular Second Appeal has been preferred against the order dated 12.10.2022, whereby, the appeal, under Order XLIII (1) (d) of the Code of Civil Procedure against order dated 17.09.2019, passed by Civil Judge in Misc. No.7 of 2019, rejecting the application under Order IX Rule 13 CPC, has been dismissed.
2. The facts of the case would indicate that the respondent/plaintiff had filed a suit for possession, damages, mesne profit and permanent injunction against the appellant/defendant which was decreed by the Court of Civil Judge-05, Central, Tis Hazari Courts, Delhi *vide* an *ex-parte* judgment and decree dated 27.01.2018. Thereafter, the appellant/defendant preferred an application under Order IX Rule 13 CPC for setting aside the *ex parte* judgment and decree. The aforesaid application was also rejected by the Trial Court *vide* order dated 17.09.2019.
3. Subsequently, the order dated 17.09.2019 of rejecting the application



under Order IX Rule 13 was challenged by way of an appeal under Order XLIII(1)(d) of the CPC by the appellant/defendant in MCA No.67 of 2019. The appeal came to be rejected *vide* impugned order dated 12.10.2022.

4. Aggrieved by the aforementioned impugned order, the appellant/defendant has preferred the instant appeal under Section 100 of CPC, invoking the second appellate jurisdiction.

5. Before proceeding to hear the parties on merit, it is seen that against an order passed in an appeal under Order XLIII Rule (1)(d) of the CPC, no appeal under Section 100 of the CPC would lie. In the instant case, it is seen that the first appeal was preferred against the rejection of application under Order IX Rule 13, not against the original *ex parte* judgment and degree. It is also seen that an order passed in appeal preferred under Order XLIII Rule 1(d) is not amenable to Section 100.

6. In addition, under Section 104 (2) of CPC, there is a specific bar on an appeal against an order passed in appeal from an order under Section 104 or Order XLIII.

7. The position of law explicated above is further strengthened by the decision of this Court in ***Surinder Bhatiani v. Som Nath***¹, wherein, the facts involved were almost similar.

8. In view of the aforesaid, the instant appeal stands dismissed as not maintainable. All pending applications are disposed of.

PURUSHAINDR KUMAR KAURAV, J
DECEMBER 18, 2024/DPA

¹ 2018 SCC OnLine Del 10530.