

D/L.24.
January 21, 2025.
MNS.

FMA No. 117 of 2025
+
CAN 1 of 2025
&
CAN 2 of 2025

M/s Octal Securities & Services Private
Limited
Vs.
Messrs Bamsons & Co. Pvt. Limited and
another

Mr. Shyamal Sarkar,
Mr. Kumar Gupta,
Mr. Piyush Jain

... for the appellant.

1. The present appeal has been preferred against an order whereby an application by the present appellant in the nature of one under Order XXII Rule 10 of the Code of Civil Procedure (in short “the Code”) was dismissed by the Executing Court.
2. We find from a perusal of Order XXII Rule 10 of the Code that the same is applicable only in respect of a suit. Although Order XXI Rule 103 of the Code provides that where an application has been adjudicated under Order XXI Rule 98 or 100 of the said Order, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it was a decree, fact remains that by virtue of the said provision, an application under Order XXI Rules 99 to 101 and/or an execution case has not been intended to be converted to a suit for Order XXII Rule 10 to apply thereto. Hence,

since Order XLIII confers appellate jurisdiction on us only in respect of orders passed under Order XXII Rule 10 in a suit, the present impugned order is not appealable.

3. As such, FMA No. 117 of 2025 is dismissed as not maintainable since the impugned order is an appealable order, with liberty to the appellant to approach the appropriate court/forum for the same relief as sought herein.

4. CAN 1 of 2025 and CAN 2 of 2025 are consequentially disposed of.

5. It is made clear that the merits of the matter have not been gone into by this Court at all.

6. Liberty is given to the learned Advocate-on-record for the appellant to take back the certified copy of the impugned order from the concerned department upon furnishing a photocopy thereof for the records.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)