

D/L. 22.
July 9, 2025.
MNS.

FAT 216 of 2025
+
CAN 1 of 2025

Sri Barid Baran Roy
Vs.
Gopal Banerjee and others

Mr. Gopal Chandra Ghosh,
Mr. Raj Krishna Mondal,
Ms. Sunandana Saha

... for the appellant.

1. No appeal lies against the impugned order, which is a judgment of dismissal of the plaintiff/appellant's suit for default.
2. Section 2(2)(b) of the Code of Civil Procedure specifies that a "decree" shall not include any order of dismissal for default.
3. Although learned counsel for the appellant submits that the dismissal of default was not for non-appearance but for non-compliance of the trial court's order, there is no such distinction recognized in the definition of "decree" as stipulated in Section 2(2) of the Code.
4. In any event, a "default" for the present purpose need not be restricted to the non-appearance of the plaintiff but may also pertain to non-compliance of the court's order.

5. Accordingly, FAT 216 of 2025 is dismissed as not maintainable, with liberty to the appellant to prefer an appropriate challenge against the impugned order.
6. CAN 1 of 2025 is also disposed of consequentially.
7. The learned Advocate-on-record for the appellant is granted leave to take back the certified copy of the impugned order upon furnishing a photocopy of the same for the records.
8. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)