

5th March,
2025
(AK)
19

S.A. 142 of 2022
IA No: CAN 1 of 2025

Sri Subodh Kumar Sain
Vs.
Sri Benimadhab Das

Mr. Subrata Bhattacharyya
Ms. Shipra Santra

...for the appellant.

Mr. Anit Dey
Ms. R. Paul (Sarkar)

...for the respondent.

1. When the matter is called on for hearing under Order XLI Rule 11 of the Code of Civil Procedure, learned counsel for the defendant/appellant fails to make out any substantial question of law.
2. The second appeal has been preferred against a judgment of affirmance whereby both the courts, that is, the trial court and the First Appellate Court, have concurrently granted a decree of eviction on the ground of a notice under Section 106 of the Transfer of Property Act.
3. Learned counsel for the appellant ventilates grievance on the alleged endeavour of the respondent to evict the appellant from a property which is beyond the schedule of the present litigation.
4. It is also submitted that an application under Section 47 of the Code of Civil Procedure was filed by the appellant on such count before the executing court, which has since been dismissed.

5. However, the order of the executing court under Section 47 of the Code of Civil Procedure is not amenable to appeal.
6. Moreover, it is entirely beyond the scope of this court, sitting in second appeal over the parent eviction decree, to look into the merits of such application.
7. It is for the appellant to prefer an appropriate challenge, if available in law, against the order dismissing the appellant's application under Section 47 of the Code of Civil Procedure.
8. Be that as it may, since no substantial question of law or infirmity and/or illegality in the impugned judgments and decrees of the trial court and/or first appellate court has been made out before us, S.A. 142 of 2022 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
9. Consequentially, CAN 1 of 2025 is also dismissed without any order as to costs.
10. It is made clear that nothing in this order shall prevent the appellant from pursuing his remedy before the appropriate forum against the order passed on the application under Section 47 of the Code of Civil Procedure filed by the appellant.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)