

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

F MA No. 1569 of 2025

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CAN 2 of 2025
+
CAN 3 of 2025

Suresh Chandra Ghosh
-vs-
Dipak Kumar Ghosh and others

For the respondent no. 1 : Mr. Aniruddha Chatterjee, Snr. Adv.
Mr. Kushal Chatterjee,
Mr. Sibashis Chowdhury.

For the respondent no. 2 : Mr. Partha Pratim Roy,
Mr. Oishik Chatterjee.

Heard on : December 22, 2025.

Judgment on : December 22, 2025.

Sabyasachi Bhattacharyya, J.:

1. The affidavit-of-service filed in Court today be kept on record.

2. Despite service, none appears for the appellant at the time of call.
3. Learned senior counsel appearing for the respondent no. 1 submits that the appeal is not maintainable, since it has been preferred against an order which was itself passed in a miscellaneous appeal arising out of an order passed on an application under Order XXXIX Rule 4 of the Code of Civil Procedure (Code).
4. There is substance in such contention.
5. By a composite reading of the provisions of Order XLIII of the Code, read with Section 104 thereof, it is found to be the clear position of law that no further appeal lies from an order passed in an appeal preferred under Order XLIII of the Code.
6. Since the present appeal itself arises out of an order passed in an appeal under Order XLIII Rule 1 of the Code, the appeal itself is not maintainable.
7. Accordingly, FMA No. 1569 of 2025 is dismissed as not maintainable without any order as to costs, consequentially disposing of all the connected pending applications.
8. Interim orders, if any passed in the appeal, stand hereby vacated.

9. Leave is granted to the appellant to prefer a properly constituted challenge against the impugned order before the appropriate court/Bench.
10. For such purpose, liberty is given to the learned Advocate-on-record for the appellant to take back the certified copy of the impugned order from the Memorandum of Appeal, from the concerned department of this Court, upon furnishing a photocopy thereof for the records.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)