

11.06.2025
Court No.1
Item No.**9**
[Milan, A.R. (Ct.)]

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

SAT 3 of 2022
With
CAN 1 of 2022

Mohan S. Jethwani & Anr.
versus
Harish Kumar Prasad & Anr.

This Second Appeal has been placed in the list for admission, and was called on for the purpose of admission on 9th June, 2025 and 10th June, 2025 when no one appeared in support of the appeal.

Today, i.e. on 11th June, 2025, also no one appears in support of the appeal.

After perusing the materials on record and the order impugned, we find that the predecessor of the original appellants as the plaintiff filed a suit for declaration and injunction with other consequential reliefs against the present defendants/respondents and another, namely, Domino's Pizza India Ltd. (in short, "Domino's"). The Domino's was subsequently expunged by an order dated 9th April, 2022. The original plaintiff, namely, Gauri Shankar Prasad died on 6th April, 2010, as a result of which, Harish Kumar Prasad was substituted in his place and stead vide order dated 1st December, 2010. The O.C Suit No.10 of 2009 was

dismissed by the judgment and decree dated 29th March, 2016 passed by Civil Judge (Senior Division) at Darjeeling. The original appellant preferred an appeal therefrom before the Court of Learned Additional District Judge, 3rd Court at Darjeeling which was numbered as O.C Appeal No.2 of 2016 by the judgment and order dated 15th June, 2018.

The First Appellate Court had set aside the dismissal and granted only the decree of permanent injunction against the defendants/respondents. Challenging the said judgment and decree dated 15th June, 2018, the present second appeal has been preferred.

We have considered the judgment of the Trial Court as also that of the First Appellate Court. The memo of appeal suggests that the petitioner/appellant is aggrieved by the findings of the fact arrived at by the Trial Court at the First Appellate Court based on the appreciation of evidences. Existence of substantial question of law is sine-qua-non in admitting the second appeal. We do not find that any substantial question of law is involved in this appeal for which the same has to be admitted for hearing.

In the aforesaid facts and circumstances, in exercise of the powers under Section 100 (5) read with provisions of Order XLI and Rule 11 (2) of the Code of Civil Procedure, 1908, we refrain from admitting the

appeal. The same along with connected application is accordingly dismissed.

(Arindam Mukherjee, J.)

(Partha Sarathi Chatterjee, J.)