

8th April,
2026
AK
04-05

FMA 712 of 2025
IA No: CAN 1 of 2025

Badri Narayan Bhatte and another
Vs.
Hari Narayan Bhatte and another

With

FMAT 257 of 2025
IA No: CAN 1 of 2026

Hari Narayan Bhatte
Vs.
Badri Narayan Bhatte and others

Mr. Siddhartha Banerjee,
Mr. Rahul Karmakar,
Mr. Abhishek Baran Das
.....for the appellants
in FMA 712 of 2025 and
for the respondents
in FMAT 257 of 2025

Mr. Rachit Lakhmani
Mr. Shubham Gupta,
Mr. Md. Ayaan
Mr. Rajsekhar Bal Bakshi

....for the respondent no.1
in FMA 712 of 2025
and for the appellant
in FMAT 257 of 2025

Mr. Narayan Prasad Agarwala,
Ms. Nipa Mullick,
Ms. Nandini Mazumdar
....for the respondent no.2
in FMA 712 of 2025

1. A peculiar predicament has arisen.
2. By the impugned order, an application under Order XL Rule 1 of the Code of Civil Procedure filed by the plaintiffs/appellants in their suit was dismissed.

3. By the self-same order, an application under Order VII Rule 11 filed by the defendants/respondents for rejection of the plaint of the said suit was virtually converted to one under Order VII Rule 10 of the Code and the plaint was returned to be presented before the appropriate forum.
4. FMA 712 of 2025 has been filed by the plaintiffs, challenging both the components of the said order.
5. However, the defendants have preferred an independent First Miscellaneous Appeal bearing FMA 257 of 2025, being aggrieved with the component of the impugned order whereby instead of rejecting the plaint, the same was only returned.
6. The predicament referred to above is that although the appeal by the plaintiffs is maintainable, since both the components of the order complained of by the plaintiffs are appealable under Order XLIII of the Code of Civil Procedure, no First Miscellaneous Appeal lies against the rejection of an Order VII Rule 11 application.
7. In the present case, insofar as the defendants are concerned, their application under Order VII Rule 11 of the Code was disposed of, thereby turning down the prayer for rejection of plaint in effect and instead, returning the plaint, which was beyond the prayer made in the Order VII Rule 11 application.
8. Thus, the grievance of the defendants are confined to the deemed rejection of their application under

Order VII Rule 11 of the Code of Civil Procedure, which is not appealable under Order XLIII of the Code or any other provision of law.

9. Under normal circumstances, a revisional application under Section 115 of the Code of Civil Procedure would lie at the behest of the defendants, insofar as their grievance is concerned, since if their application Order VII Rule 11 of the Code were to be allowed, it would have finally decided the suit.
10. However, learned counsel for the defendants argues that their appeal may be treated to be a cross-objection in the plaintiffs' appeal.
11. Technically, there is a bar to accepting such proposition, since a cross-objection had to be filed within 30 days from the date of notice of the appeal, whereas no cross-objection has been filed till date, much beyond such period.
12. Even otherwise, an appeal which is not maintainable at the inception cannot be converted to a cross objection, thereby glossing over the bar of limitation to such cross objection at the juncture of such conversion.
13. However, under Order XLI Rule 33 of the Code of Civil Procedure, which is also applicable by implication to appeals under Order XLIII of the Code, the court can enter into the merits of all facets of the order impugned in the main appeal as well as consider the grant of further or other order

or orders which ought to have been passed by the learned Trial Judge.

14. Accordingly, we dismiss FMAT 257 of 2025 along with the connected application bearing CAN 1 of 2026 as not maintainable in the eye of law, with liberty to the appellants therein (defendants in the parent suit) to urge all grounds taken in the memorandum of the said appeal by way of arguments advanced in the capacity of respondents in FMA 712 of 2025, within the contemplation of Order XLI Rule 33 of the Code of Civil Procedure.
15. In view of arguable questions of law and fact being involved, FMA 712 of 2025 is admitted to be heard on the grounds taken in the memorandum of the said appeal.
16. On the prayer of learned counsel for the respondents, the respondents are directed to file their affidavit(s)-in-opposition to CAN 1 of 2025, filed in FMA 712 of 2025, within three weeks from date. Affidavit(s)-in-reply thereto, if any, shall be filed within a week thereafter.
17. The application shall be listed for hearing on May 18, 2026 under the heading 'Applications'.
18. The parties shall maintain status quo with regard to the suit property till disposal of the application.
19. The respondents shall maintain accounts with regard to the income and expenditure in respect of the suit property till the date of affirming the

affidavit-in-opposition and shall annex such accounts to the affidavit-in-opposition, to be filed by the respondents.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)