SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			AO/401/2026 Satish Kumar Jain --Petitioner **Versus** Rajkumar --Respondent **Hon'ble Rakesh Thapliyal, J.** 1. Mr. J.K. Pandey, learned counsel for the appellant. 2. The instant appeal from order has been preferred by the appellant under Order XLIII Rule 1 (u) of CPC against the order dated 14.09.2026 passed by the learned IIIrd Addl. District Judge, Haridwar, in Civil Appeal No. 44 of 2024 whereby appeal preferred by the respondents – plaintiffs was allowed and the judgment and decree passed by the learned Civil Judge (Senior Division), Haridwar dated 19.09.2019 in O.S. No. 118 of 2010 (Sri Raj Kumar and another Vs. Satish Kumar Jain and others) has been set aside. 3. Learned counsel for the appellant submits that in fact, First Appeal preferred by the respondents – plaintiffs was not maintainable, since suit in question was dismissed without touching the merit and as such, there is no decree, therefore, the First Appeal preferred by the respondents – plaintiffs, in fact, was not maintainable. He further submits that since first appeal preferred by the respondents – plaintiffs was not maintainable, since there was no decree of the trial court, therefore, order passed by the first appellate Court is illegal and cannot be sustained. In support of his submission, he placed reliance on the definition clause Section 2 (2) of CPC, which defines "decree" which read as under: *"2 (2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [* * *] section 144, but shall not include – (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default.* *Explanation.-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;*

4. He has further placed reliance to Section 96, which also read as under:

"96. Appeal from original decree:-

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [ten thousand rupees.]

5. By referring the aforesaid provision i.e. Section 96 read with Section 2 (2) of the Code of Civil Procedure, learned counsel for the appellant submits that an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court and since there is no decree, hence, the First Appeal was not maintainable.

6. By placing reliance on the aforesaid two provisions of CPC, learned counsel for the appellant submits that in fact, against the order of learned Civil Judge (SD), Haridwar dated 19.09.2019 plaintiffs – respondents have a remedy to invoke Order IX Rule 9 CPC, which reads as under:

"Decree against plaintiff by default bars fresh suit.

(1) Where a suit is wholly or partly dismissed under rule 8 the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party."

7. By Referring this provision, he submits that the order passed by the learned Civil Judge (SD), Haridwar dated 19.09.2019, is in fact, order of dismissal of the suit for want of prosecution, therefore, in such an eventuality, the only remedy which was available to the respondents – plaintiffs is to invoke Order IX Rule 9 CPC.

8. After gone through with the aforesaid provisions, as relied upon by the learned counsel for the appellant, I found force on the submissions of the learned counsel for the appellant.

9. On perusal of order of learned Civil Judge (SD), Haridwar dated 19.09.2019, it is very much clear that merit of

			the suit has not been touched and in fact, by this order opportunity to adduce the evidence was closed and so far as order of the First Appellate Court is concerned no doubt first Appeal was not maintainable but for the substantial justice first Appellate Court only remanded the matter back to the learned Civil Judge (SD), Haridwar, to decide the matter on its own merit by giving opportunity to the respondents – plaintiffs to adduce evidence, therefore, this Court is of the view that while remanding the matter by the first appellate Court no prejudice is caused to the appellant, who is defendant in the suit filed by the plaintiffs – respondents. 10. Order of the First Appellate Court was for substantial justice, however, this Court is of the view that first appeal is not maintainable and plaintiffs have to invoke Order IX Rule 9 of the CPC. 11. After hearing the submissions, as advanced by the learned counsel for the appellant, the instant appeal is allowed. Consequently, order dated 14.09.2026 passed by the learned IIIrd Addl. District Judge, Haridwar, in Civil Appeal No. 44 of 2024 is set aside with the liberty to the respondents – plaintiffs to invoke Order IX Rule 9 Code of Civil Procedure against the order passed by the learned Civil Judge (Senior Division), Haridwar dated 19.09.2019 in O.S. No. 118 of 2010 (Sri Raj Kumar and another Vs. Satish Kumar Jain and others). 12. No order as to costs. **(Rakesh Thapliyal, J.)** 02.11.2026 SKS