

MGMT OF M/S DEVI THEATRE

A

v.

VISHWANATH RAJU

APRIL 8, 2004

[BRIJESH KUMAR AND ARUN KUMAR, JJ.]

B

*Code of Civil Procedure, 1908:*

*S.96 r/w Order 41, r.11—First appeal—Conditional admission—Legality of—High Court ordering to admit the appeal subject to appellant depositing a certain amount, failing which appeal to stand dismissed—Held, admission of appeal subject to condition of depositing some given amount is not envisaged by s.96 read with Order 41, r.11—Merits of the case alone would be basis for admitting or not admitting an appeal under s.96—Further, imposition of condition that failure to deposit the amount would result in dismissal of appeal compounds the infirmity in the order of conditional admission—However, in case appellant prays for stay of execution of decree or for any order by way of interim relief pending appeal, it is open for the Court to impose any condition as it may think fit—Order passed by High Court in so far as it imposes condition of deposit in admitting the appeal is set aside—Order of admission of first appeal would be treated without condition of deposit.*

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CIVIL APPELLATE JURISDICTION : Civil. Appeal Nos. 2582-2583 of 2004.

From the Judgment and Order dated 9.1.2003 of the Karnataka High Court in R.F.A. No. 267 of 2001.

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R.S. Hegde, Chandra Prakash, P. Devesh, Ms. Savithri Pandey and P.P. Singh for the Appellant.

S.N. Bhat for the Respondent

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The following Order of the Court was delivered

Delay condoned.

Leave granted.

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A The appellant before us preferred a first appeal under Section 96 of Civil Procedure Code before the High Court of Karnataka on which the following order was passed.

B “Admit subject to the condition the appellant depositing Rs. 75,000 within a period of eight weeks, failing which the appeal stands dismissed without further orders.”

C It appears that the amount as required to be deposited was not deposited. The application which was moved for extension of time remained undisposed of. The impugned order passed showed that since the deposit has not been made the inevitable consequence was that the appeal stood dismissed.

D The learned counsel for the appellant submits that appeal lies from every decree passed by any court exercising original jurisdiction. The jurisdiction of the Court in first appeal extends to examine the questions of facts as well as that of law. It is though true as pointed out by the learned counsel for the respondent that under Order 41 Rule 11 CPC it would be open for the court to dismiss the appeal *in limine* at the time of admission but even examining the matter from that point of view we find that the court while considering the question of admission of appeal filed under Section 96 CPC, may admit the appeal if considered fit for full hearing having *prima facie* merit. Otherwise, if it finds that the appeal lacks merits it may be dismissed at the initial stage itself. But admission of the appeal, subject to condition of deposit of some given amount, is not envisaged in the provision as contained under Section 96 read with Order 41 Rule 11 CPC. The deposit of the money would obviously have no connection with the merits of the case, which alone would be basis for admitting or not admitting an appeal filed under Section 96 CPC. Further, imposition of condition that failure to deposit the amount, would result in dismissal of the appeal compounds the infirmity in the order of conditional admission.

G It is a different matter, in case the appellant prays for stay of the execution of the decree or for any order by way of an interim relief during the pendency of the appeal, it is open for the court to impose any condition as it may think fit and proper in the facts and circumstances of the case. Otherwise imposing a condition of deposit of money subject to which an appeal may be admitted for hearing on merits, is not legally justified and such order cannot be sustained.

H In the result the appeal is allowed, the impugned order passed by the

High Court in so far it imposes condition of deposit in admitting the appeal is set aside. The order of admission of the first appeal in High Court would be treated without condition of deposit. It is, however, clarified that it would be open to the High Court to impose any condition including for deposit of any amount, in case any kind of interim relief is granted during pendency of the appeal. Consequently, the first appeal stands restored to the file of the court which shall be considered and decided on merits expeditiously.

No costs.

Appeal allowed.