

security for costs, and as there is no provision under the rules empowering the court to do so, I must hold that the order of the Subordinate Judge is without jurisdiction. I, therefore, allow the application with costs and set aside the order of the Subordinate Judge.

1933

GEURBY
LAL
v.
JAGANNATH
KASHINATH

APPELLATE CIVIL

Before Mr. Justice Young and Mr. Justice Bajpai

1933

November, 22

DULIA AND ANOTHER (DEFENDANTS) *v.* RAM NARAIN
(PLAINTIFF)*

Civil Procedure Code, order XLIII, rule 1(u)—Effect of amended rule—Only orders remanding the entire case are appealable and not orders remitting issues.

Under rule 1(u), as amended by the High Court, of order XLIII of the Civil Procedure Code only those orders are appealable where the entire case has been remanded from the appellate court to the lower court, and not where only certain issues have been remitted.

Mr. *Ambika Prasad*, for the appellants.

The respondent was not represented.

YOUNG and BAJPAI, JJ.:—This is an appeal from the following order of the court below dated the 26th of January, 1933: "For the ends of justice it is necessary to obtain definite findings from the trial court on the following issues . . . The findings shall be returned to this court within six weeks and the parties will be at liberty to file objections thereto according to law."

A preliminary objection has been taken on behalf of the respondent that no appeal lies to this Court from an order by which the appellate court has framed certain issues and referred them for trial to the first court. The reply of learned counsel on behalf of the appellant is that by reason of a recent amendment by the Allahabad High Court in order XLIII, rule 1, clause (u) an appeal has been permitted. Order XLIII,

*First Appeal No. 48 of 1933, from an order of Maheshwar Prasad, Subordinate Judge of Allahabad, dated the 26th of January, 1930.

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rule 1, clause (u) before the amendment stood as follows: "An order under rule 23, order XLI, remanding a case where an appeal would lie from the decree of the appellate court." After the amendment the rule runs as follows: "Any order remanding a case where an appeal would lie from the decree of the appellate court." It is, therefore, contended that the amendment has made every order appealable by which proceedings, even for a short time, have been sent back to the trial court. That is not the real reason or meaning of the amendment. The amendment was made because it happens that sometimes an order of remand is made which does not come within the four corners of the language of rule 23 of order XLI of the Civil Procedure Code, and yet such an order of remand is justified inasmuch as it is passed in the exercise of the inherent jurisdiction of the court or under the provisions of section 151 of the Civil Procedure Code. But only those orders are appealable where the entire case has been transferred from the first appellate court to the trial court and not where only certain issues have been remitted. The same view was taken by the Oudh Chief Court, where also the amendment of clause (u) has been similar to ours, in the case of *Sarabjit Singh v. Farahatullah Khan* (1), and the case of *Moti Lal v. Nandan* (2) also lends support to our view. Upholding the preliminary objection, we dismiss this appeal with costs.

FULL BENCH

*Before Justice Sir Lal Gopal Mukerji, Mr. Justice King and
Mr. Justice Niamat-ullah*

1933
November, 23

MAKHAN LAL AND OTHERS (PLAINTIFFS) v. SECRETARY OF
STATE FOR INDIA IN COUNCIL (DEFENDANT)*

*Land Acquisition Act (I of 1894), sections 3(d), 18, 26—"Court"
—District Judge hearing a reference under section 18—*

*Civil Revision No. 165 of 1932.

(1) A.I.R., 1930 Oudh, 366.

(2) [1930] A.L.J., 454.