

Title Appeal 25/2019
CNR No.WBEM01-003516-2019

Present: Sri G.C. Karmakar,
District Judge, Purba Medinipur.

Order No. 12 dated 10.03.2022

Appellants and respondents file hazira through Ld. Advocate.

This day is fixed for hearing of the petition under O 41 R14(4) C.P.C for exemption to serve summons on the respondent Nos. 3 and 10

Heard Ld. Advocate for the appellants.

Considered the submission of Ld. Advocate for the appellants.

In this context it has been observed by the Hon'ble High Court in the case reported in -

Smt. Kamla and others v. Harbhajan Singh and another, AIR 2005 RAJASTHAN 288 that-

Civil P.C. (5 of 1908), O.41 R.14 - Appeal - Dispensing with notice - As per O. 41, R. 14 dispensability of service of notice is only "of any proceedings incidental to an appeal" - It does not provide for dispensability of notice of appeal itself - Order dispensing with notice of appeal to respondent who had not appeared before Trial Court - Is violative of natural justice.

In this context it has also been observed by the Hon'ble High Court in the case reported in -

Magadri Satyanarayana v. B. Jayaramarao and others, AIR 1990 ANDHRA PRADESH 160 that -

Motor Vehicles Act (4 of 1939), S.110D - Civil P.C. (5 of 1908), O.41 R.14(4)

- Accident - Claim petition filed against owner, driver and insurer - Petition dismissed against all respondents as they remained ex parte - Appeal filed against insurer without impleading owner and driver - Appeal is not maintainable - O.41, R.14(4) which applies only to incidental proceedings cannot be invoked.

Therefore, in view of the observations of the Hon'ble Courts petition under O.41 R.14(4) C.P.C. is not entertainable in the appeal itself and it applies only in case of incidental proceedings.

Thus, the petition under O.41 R.14(4) C.P.C stands rejected.

Appellant is directed to take step on respondent Nos. 3 and 10 in the meantime.

Fix on 21.04.2022 for S/R, A/D, appearance of respondent Nos. 3 and 10 and further order.

Dictated & corrected by me

District Judge,
Purba Medinipur.

District Judge,
Purba Medinipur.