

Misc. Appeal 41 of 2022
CIS Registration No.41 of 2022
Present: Sri Abir Chatterjee, Additional Dist. & Sess. Judge.
Judicial Officer's Code : WB-00833

Order Number 15 dated 20.09.2024

Parties file hazira.

Vide order No.14 dt.28.08.2024, this Court had observed that no decree was drawn by the Trial Court subsequent to dismissal of the suit on the point of maintainability. Further direction was issued upon the Trial Court to immediately draw a decree and return the LCR. In view of the direction passed by this Court, Ld Trial Judge had prepared the decree and consigned the LCR back to this Court.

Now we have before this Court a decree in terms of Section2(2) of CPC.

In terms of Section 96(1) of CPC an appeal will lie from an original decree. The present appeal bears no caption as to the provision (Order 41 or Order 43) under which it was filed however in the cause title, it is stated Misc. Appeal. As per statutory mandate, a regular appeal U/o 41 of CPC will lie from an original decree.

It can be appreciated that confusion regarding the provision of the present appeal stems from the error from the end of the Trial Court for which, the appellant/litigant cannot be put to sufferance. In such circumstance, the appellant is given the liberty to amend the memorandum of the present appeal as Title Appeal. The requisite amendment be undertaken by the next date.

BC-II is further directed to have this case registered as Title Appeal in the relevant register and also in CIS after the amended memorandum of appeal is filed.

To **22.11.2024** for steps by the appellant in terms of the order dt.20.09.2024.

Dict. & Corr. by me,

*Addl. Dist. & Sess. Judge, 2nd Court,
Sealdah.*

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