



2022:CHC-PB:1149-DB

October 19, 2023  
Item No. 3  
PA(SS)

**IN THE HIGH COURT AT CALCUTTA**  
[CIRCUIT BENCH AT PORT BLAIR]

**FAT 3 of 2022**  
**Robin Bagchi**  
**Vs.**  
**Dr. M Joy and Others**

Mr. Swatarup Banerjee  
Mr. Gaurav Purkayastha  
... for the appellant

Mr. K. Vijay Kumar  
... for the respondents

The present appeal is directed against the judgment and decree dated 28<sup>th</sup> February, 2022 passed by the learned Joint Civil Judge, Senior Division, South Andaman District at Port Blair in Other Suit No. 51 of 2015 granting decree for specific performance of agreement for sale dated 19<sup>th</sup> April, 2002 executed by defendant no.3 in favour of the plaintiff.

On the date on which this appeal was taken up for hearing, learned advocate for respondents raised an objection regarding the maintainability of this appeal before this Court on the ground that the same being a wrong forum of appeal.

Since the objection to the maintainability of the appeal on such ground has been taken on behalf of the respondents, it becomes imperative to deal with the ground of maintainability at the first instance.

Mr. K. Vijay Kumar, learned advocate for respondents submitted that the District Court is the



Court of Ordinary Original Civil Jurisdiction and is coupled with the exclusive powers to hear appeals from original decrees in exclusion of this Hon'ble Court. In support of this contention, he placed reliance upon the Andaman and Nicobar Islands Civil Courts Regulation 1940, Notification No. 78/1954 dated 8<sup>th</sup> November, 1954 and Notification No. 201/2012/F No.7-4/2010-Legal dated 10<sup>th</sup> September, 2012. Thus, the present appeal is not maintainable before this Court.

In reply to the contentions raised on behalf of the respondents, Mr. Swatarup Banerjee, learned advocate for appellant submitted that by virtue of Calcutta High Court (Extension of Jurisdiction) Act, 1953, Andaman and Nicobar Islands came within the extended jurisdiction of the Calcutta High Court. That apart, Chapter XVIII of the Appellate Side Rules was made applicable in relation to Andaman and Nicobar Islands which was framed by Calcutta High Court in exercise of power conferred on it by Article 225 read with Section 14A of the Andaman and Nicobar Islands Regulation, 1876 read with Section 4 of the Act of 1953. By virtue of amendment incorporated in Chapter XVIII of the Appellate Side Rules by Notification 7087/G dated 14<sup>th</sup> October, 1991, the Circuit Bench was established in the Islands and the visiting Judges were to hear all cases including application under Articles 226 and 227 of the Constitution of India. As per Rule 1(a) of Chapter XVIII of Appellate Side Rules, Case includes suit,



appeal, application, petition and reference. Further Civil Procedure Code, 1908 defines High Court in relation to Andaman and Nicobar Islands means High Court in Calcutta. Thus, powers of Circuit Bench of Calcutta High Court in the Islands is similar to the Principal Bench at Calcutta. Further in the absence of any law specifying the pecuniary jurisdiction of the learned District Judge of the Islands to entertain First Appeals, one must read harmoniously and take assistance from the provisions as mentioned in the Act of 1953 together with the rules as has been framed by this Hon'ble Court, Code of Civil Procedure, 1908 in cohesion with the Regulation XI of 1940 which defines the pecuniary limits of the District Courts in West Bengal and this Hon'ble Court's Principal Bench to entertain First Appeals. The appellate jurisdiction/power of the District Courts and this Hon'ble Court's Principal Bench is derived from Section 21(1) of the Bengal, Agra and Assam Civil Courts Act, 1887. Section 21(1) of the said Act of 1887 provides that an appeal from a decree or order from Subordinate Judge shall lie to the District Judge where the value of the original suit in which or in a proceeding arising out of which the decree or order was made did not exceed Rs. 1,50,000/- and in any other case, to the High Court. Since the value of the original suit is Rs.5,00,000/-, hence it exceeds the pecuniary jurisdiction of learned District Court. To buttress his contentions, he relied on



the decision of this Court passed in ***Amitabha Datta versus Kiran Rasaily*** reported in **2011 SCC OnLine Cal 236**. Therefore, in all event, the First Appeal would lie before this Court and is thus maintainable.

Having heard the rival contentions of the respective parties, now we proceed to decide the issue of maintainability of this appeal.

In order to appreciate the aforesaid issue, it would be apposite to reproduce the Regulation XI of 1940 and Notification No. 78/1954 which are as follows:

“1. x x x

2. ESTABLISHMENT OF CIVIL COURTS.—*The Chief Commissioner may establish civil courts within the Andaman and Nicobar Islands, and may define their jurisdiction both original and appellate, and the local limits thereof, and their subordination one to the other for appellate or administrative purposes.*

3. x x x

4. x x x

5. x x x”

#### “NOTIFICATION

Port Blair, the 8<sup>th</sup> November, 1954.

No. 78/54. – *In exercise of the powers conferred by section 2 of the Andaman and Nicobar Islands Civil Courts Regulation, 1940 (Regulation XI of 1940), the Chief Commissioner of the Andaman and Nicobar Islands hereby establishes a Court of the District Judge for the Andaman and Nicobar Islands as the principal Civil Court of original jurisdiction within the Andaman Islands with jurisdiction to hear appeals from judgments, decrees and final orders of all the subordinate Civil Courts within the Andaman Islands.*

S. N. MAITRA,

Chief Commissioner, A. & N. Islands.”



Section 2 of Regulation XI of 1940 conferred powers upon Chief Commissioner to establish civil courts within the Andaman and Nicobar Islands and define their jurisdiction both original and appellate and the local limits thereof and their subordination one to the other for appellate or administrative purposes.

The Chief Commissioner of Andaman and Nicobar Islands exercising powers under Section 2 of Regulation XI of 1940 established a Court of the District Judge for the Andaman and Nicobar Islands as the principal Civil Court of original jurisdiction within the Andaman Islands by Notification No. 78/54 dated 8<sup>th</sup> November, 1954. By virtue of Calcutta High Court (Extension of Jurisdiction) Act, 1953, Andaman and Nicobar Islands came within the extended jurisdiction of Calcutta High Court. Chapter XVIII of Appellate Side Rules provides rules for cases arising in the Andaman & Nicobar Islands framed by the Court in exercise of the power conferred on it under Section 4 of the Calcutta High Court (Extension of Jurisdiction) Act, 1953 amended by Notification 7087/G dated 14<sup>th</sup> October, 1991. Rule 2 of Chapter XVIII provides that one or more Judges of the High Court shall visit the Islands, by way of Circuit, whenever the Chief Justice from time to time may appoint, in order to exercise in respect of cases arising therein the jurisdiction and powers vested in this Court by the Constitution and the Calcutta High Court (Extension of Jurisdiction) Act,



1953 provided that such visit shall be made at least once a month unless the Chief Justice otherwise directs. Rule 3 of the aforesaid Chapter enshrines that all cases including application under Articles 226 and 227 of the Constitution of India shall be initiated in the Islands and are be heard by the Circuit Bench. The term “Case”, as per Rule 1(a) of the aforesaid Chapter, defines that “*Case includes suit, appeal, application, petition and reference*”. Section 2(7-A) of the Civil Procedure Code, 1908 defines “*High Court in relation to Andaman and Nicobar Islands, means the High Court in Calcutta*”. Therefore, Rules applicable in High Court in Calcutta also applies to the Circuit Bench of this Hon’ble Court in Andaman and Nicobar Islands. On conjoint reading of Rule 3 and Rule 1(a), it manifest that Judges sitting in the Circuit can hear all cases which includes suits, appeals, application, petition and reference including application under Articles 226 and 227 of the Constitution of India. Thus, the corollary that emerges from the aforesaid Rules is that the High Court in Circuit can entertain and hear the First Appeal. It is relevant to note that the Regulation XI of 1940 or subsequent notification of 8<sup>th</sup> November, 1954 or notification dated 10<sup>th</sup> September, 2012, nowhere underlines that the First Appeal cannot be heard by the High Court. Further Section 21(1) of the Bengal, Agra and Assam Civil Courts Act, 1887 provides that an appeal from a decree or an order of Subordinate Judge shall lie



to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed Rs.1,50,000/- and in any other case to the High Court. Undisputedly the original suit in the present case is valued at Rs. 5,00,000/-, therefore, the learned District Judge, Andaman and Nicobar Island do not have the pecuniary jurisdiction to entertain such appeal. We find substance in the submission of Mr. Banerjee, learned advocate for the appellant in this regard relying on *Amitabha Datta (supra)*.

In light of aforesaid discussion, the present appeal is maintainable before the High Court at Circuit Bench. Thus, the objection to the maintainability of the appeal raised by respondents is negated.

List this appeal before the next available Circuit Bench.

**(Bivas Pattanayak, J.)**

**(Rajarshi Bharadwaj, J.)**