

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7167 OF 2004

MAKBUL ALI (DEAD) TH:LRS & ORS.

Appellant (s)

VERSUS

SUKHAMAY PAUL (DEAD) TH:LRS.& ANR.

Respondent(s)

(With office report)

Date: 21/08/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR
HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s)

Mr. Manoj Goel, Adv.
Mr. Shuvodeep Roy, Adv.
Mr. Gopal Verma, Adv.
Mr. Wajeeh Shafiq, Adv.
Mr. Brij Bhusan, Adv.

For Respondent(s)

Mr. S.B. Sanyal, Sr. Adv.
Ms. Madhumita Bhattacharjee, Adv.
Mr. Avijit Bhattacharjee, Adv.

UPON hearing counsel the Court made the following
ORDER

The appeal is allowed in terms of the signed order. No order as to
costs.

(Ajay Kr. Jain)
Court Master

(Vijay Dhawan)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7167 OF 2004

Makbul Ali (Dead) Th. Lrs. & Ors.

.... Appellants

Versus

Sukhamay Paul (Dead) Th. Lrs. Lrs.
& Ors.

.... Respondents

ORDER

This appeal by special leave is directed against the judgment and order
dated 2.7.2004 passed by the Gauhati High Court in appellant-defendants Second
Appeal No. 49/1998 whereby the learned Single Judge framed the following
question of law :-

"Whether the First Appellate Court committed the jurisdictional error in admitting and entertaining a time barred appeal ex-parte as a result of which the subsequent impugned judgment and decree has been vitiated."

Relying upon Rule 6A of Order XX of the Code of Civil Procedure, the learned Single Judge found that the first appeal filed by the appellant-defendant was barred by time and, therefore, set aside the order of the first appellate court and held that the order passed in the first appeal was bad as the appeal filed by the appellant-defendant was barred by time.

We have heard learned counsel for the parties and perused the record. The admitted fact is that the Trial Court decided the suit on 20.3.1993 and defendant applied for judgment and decree on 26.3.1993. The decree was prepared and became ready on 5.6.1993 and the same was delivered to the defendant-appellant on 7.6.1993. The appellant filed an appeal before the first appellate court challenging both the judgment and decree passed in the suit on 24.6.1993.

The Stamp Reporter of the first appellate court examined the matter and found that the appeal is within limitation as the time taken for preparation of the decree was deducted and on that basis he prepared a report that the first appeal was in time. The appeal was entertained by the first appellate court and the judgment and decree of the trial court was set aside. Aggrieved against the order of the first appellate court, the respondent-plaintiff filed a second appeal before the High Court of Gauhati, which was allowed by the learned Single by the order impugned herein. Aggrieved against the order passed in the second appeal, the appellant-defendant has filed the present appeal by special leave .

We have heard learned counsel for the parties. We fail to understand as to how the learned Single Judge has invoked Rule 6A of Order XX of the CPC in the present case when the appeal has been filed against both the judgment and decree of the trial court. Rule 6A of Order XX comes into play when an appeal is filed without a decree. But, in the present case, it is an admitted position that the first appeal was filed against both the judgment and decree passed by the trial court, as is also clear from the order of the first appellate court. Therefore, in the present case, the invocation of Rule 6A Order XX by the learned Single Judge in the impugned order is totally misconceived. Hence, we have no option but to set aside the impugned order passed in the Second Appeal and remit the matter to

the High Court to frame a proper question of law under Section 100 CPC, if it finds that there is one.

The appeal is accordingly allowed. No order as to costs.

(A.K.MATHUR)

.....J.

(MARKANDEY KATJU)

.....J.

New Delhi
August 21, 2007