

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2023  
(ARISING OUT OF S.L.P (CIVIL) NO(S). 4698-4700 OF 2018)

SHAHID HUSSAIN

APPELLANT(S)

VERSUS

MAHTABA BEGUM AND ORS. AND ETC.

RESPONDENT(S)

O R D E R

Application for substitution is allowed, subject to all just exceptions, after condoning the delay and setting aside the abatement.

Leave granted.

Heard learned counsel appearing for the parties.

An appeal was preferred before the High Court against an order of remand passed by the District Court in the first appeal against the decree of the Trial Court. The appeal was filed by invoking clause (u) of Rule 1 of Order XLIII of the Code of Civil Procedure, 1908 (for short, "CPC").

As far as such an appeal filed against the order of remand is concerned, the law is well-settled. Such an appeal can be heard provided a substantial question of law within the meaning of Section 100 of the CPC arises. Amongst several decisions, this Court has taken the said view in the case of *Narayanan vs. Kumaran & Ors.*<sup>1</sup>. However, we find that the appeal against the order of remand was decided by the learned Single Judge of the High Court without examining whether a substantial question of law arose and without framing any substantial question of law. In fact, the learned Single

<sup>1</sup> (2004) 4 SCC 26

Judge interfered with the order of remand. The requirement of framing substantial question of law was brought to the notice of the High Court by filing a review, which failed.

When there is an order of remand by the First Appellate Court, an appeal from the said order under clause (u) of Rule 1 of Order XLIII of the CPC is not available as a matter of right. This is consistent with the public policy and, therefore, the view taken by this Court is that for all purposes, an appeal under clause (u) of Rule 1 of Order XLIII of the CPC will be treated as a second appeal under Section 100 of the CPC.

Hence, these Appeals are allowed and the impugned orders are set aside and the CIMA Nos. 515 of 2012 and 516 of 2012, are restored to the file of the High Court. Normally, this Court ought not to fix a time bound schedule for the disposal of the case before the High Court. However, the appeals which are restored under this order are of the year 2012 and that also against an order of remand. Therefore, we are sure that the High Court will give necessary out of turn priority to the disposal of the said appeals considering the aforesaid peculiar facts.

The Appeals are allowed in the above terms, leaving all questions open to be decided by the High Court.

.....J.  
(ABHAY S.OKA)

.....J.  
(PANKAJ MITHAL)

NEW DELHI;  
September 12, 2023.

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 4698-4700/2018

(Arising out of impugned final judgment and order dated 30-05-2017 in CIMA No. 515/2012 and in CIMA No. 516/2012 and impugned final order dated 27-07-2017 in RN No. 4/2017 in CIMA No.516/2012 passed by the High Court Of Jammu & Kashmir and Ladakh at Jammu)

SHAHID HUSSAIN

Petitioner(s)

VERSUS

MAHTABA BEGUM AND ORS. AND ETC.

Respondent(s)

(IA No. 60746/2023 - APPLICATION FOR CONDONATION OF DELAY IN FILING THE APPLICATION FOR SETTING ASIDE THE ABATEMENT, IA No. 53185/2023 - APPLICATION FOR SUBSTITUTION, IA No. 53186/2023 - CONDONATION OF DELAY IN FILING SUBSTITUTION APPLICATION, IA No. 57726/2023 - SETTING ASIDE AN ABATEMENT AND IA NO.57764/2023 - FOR DELETION OF RESPONDENT NO.1)

Date : 12-09-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s) Mr. Ayushman Kotwal, Adv.  
Mr. Yadav Narender Singh, AOR

For Respondent(s) Mr. Anupam Raina, AOR  
Mr. Nishant Kumar, Adv.  
Ms. Oshenn Bhat, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

Application for substitution is allowed, subject to all just exceptions, after condoning the delay and setting aside the abatement.

The Civil Appeals are allowed in terms of the signed order.  
Pending application(s) stands disposed of accordingly.

(ASHISH KONDLE)  
COURT MASTER (SH)

(AVGV RAMU)  
COURT MASTER (NSH)

[THE SIGNED ORDER IS PLACED ON THE FILE]