

INDIA / JUDGMENT

HARI SHANKAR RASTOGI versus SHRI SHAM MANOHAR AND ORS.

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HARi SHANK.AR RASTOGI v .. SHRI SHAM MANOHAR AND ORS.

MARCH 16, 2005

[S.N .. VARIA VA AND H.K. SEMA, JJ.]

Code of Civil Procedure, I 908 :

Order 41, Rules I and 22-Cross-objection in second appeal-Appeal C withdrawn-Status of cross-objection-Held, a cross-objection is in the nature of an appeal-Even if the appeal is withdrawn or dismissed, cross-objection can be heard and determined.

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Respondent filed a second appeal in the High Court. Appellant filed D cross-objections in that appeal. Later, the respondent withdrew the appeal. The High Court dismissed the cross-objections holding that on the appeal being withdrawn, the cross-objection did not survive. Aggrieved, the appellant filed the present appeal .

. Allowing the appeal, the Court

HELD : A cross-objection is in the nature of an appeal. Even when the appeal is withdrawn or is dismissed, cross-objection can still be heard and determined. The High Court was wrong in holding that the cross objection did not survive on the appeal being withdrawn. [952-D-G]

Superintending Engineer and Ors. v. B. Subba Reddy, [1999] 4 SCC

423, relied on.

Municipal Corporation of Delhi and Ors. v. International Security and

Intelligence Agency ltd, [2004] 3 SCC 250, referred to.

CIVIL AP PELLA TE JURISDICTION : Civil Appeal No. 1787 of 2005.

From the Judgment and Order dated 22.1.2004 of the Delhi High Court

in R.S.A.No. 157 of 2001.

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H.S. RASTOGI v. S. MANOHAR [VARI;\ VA • .I.]

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Mohit Khanna and M.K. Dua for the Appellant.

Suresh Chandra Tripathy for t~e Respondents.

The Judgment of the Court was delivered by

S.N. V ARIA VA, J. Leave granted.

Heard parties.

This Appeal is against the Judgment dated 22nd January, 2004 passed by the High Court of Delhi. The Respondent had filed the Second Appeal. The Appellant (herein) filed cross-objections in that Appeal. When the Appeal reached hearing, the Respondent withdrew his Second Appeal. By the impugned Judgment, it has been held that as the Appeal has been withdrawn the ci:oss objections emanating from the Regular Second Appeal automatically cease to survive. On this reasoning, the cross objection has been dismissed.

The question whether the cross objections are maintainable, even when the Appeal has been withdrawn was considered by this Court in Superintending Engineer and Ors. v. B. Subba Reddy, reported in [1999] 4 SCC 423. After considering various Judgments, it was held as follows : -

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"From the examination of these judgments and the provisions of E

Section 41 of the Act and Order 41 Rule 22 of the Code, in our view, the following principles emerge :

(1) Appeal is a substantive right. It is a creation of the statute.

Right to appeal does not exist unless it is specifically conferred.

(2) Cross-objection is like an appeal. It has all the trappings of an appeal. It is filed in the form of memorandum and the provisions of Rule I of Order 41 of the Code, so far as these relate to the form and contents of the memorandum of appeal apply to cross-objection as well.

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(3) Court fee is payable on cross-objection like that on the memorandum of appeal. Provisions relating to appeal by an indigent person also apply to cross-objection.

(4) Even where the appeal is withdrawn or is dismissed for default, H

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cross-objection may nevertheless be heard and determined.

(5) The respondent even though he has not appealed may support the decree on any other ground but if he wants to modify it, he has to file cross-objection to the decree which objections he could have taken earlier by filing an appeal. Time for filing objection which is in the nature of appeal is extended by one month after service of notice on him of the day fixed for hearing the appeal. This time could also be extended by the court like in appeal.

(6) Cross-objection is nothing but an appeal, a cross-appeal at that. It may be that the respondent wanted to give a quietus to the whole litigation by his accepting the judgment and decree and order even if it was partly against his interest. When, however, the other party challenged the same by filing an appeal the statute gave the respondent a second chance to file an appeal by way of cross-objection if he still felt aggrieved by the judgment and decree or order."

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Thus, it is clear that cross objection is like an Appeal. It has all the trappings of an Appeal. Even when the Appeal is withdrawn or is dismissed, cross-objection can still be heard and determined.

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On behalf of the Respondents, reliance was placed upon the authority of this Court in *Municipal Corporation of Delhi and Ors. v. International Security and Intelligence Agency Ltd*, reported in [2004] 3 SCC 250, However, in our view this authority does not lay down any contrary proposition . In the Judgment, it has also been held that right to prefer cross objection partakes of the right to prefer an Appeal. It has been held that a party may rest content with partial success with a view to giving a quietus to the litigation. However, if he finds that the other party is not interested in burying the hatchet, then he may also like to exercise his right of Appeal which he may do by filing cross objections. It has been held that the substantive right is the right of Appeal and the form of cross objection is merely a matter of procedure.

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As a cross objection is in the nature of an Appeal, the High Court was wrong in holding that the cross-objection did not survive on the Appeal being withdrawn.

In this view of the matter, we set aside the impugned Judgment and we remit the cross objections back to the High Court for disposal on merits. The

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Respondent, herein will be entitled to take up all contentions in support of the Judgment appealed against, even though he may have withdrawn his Appeal.

The Appeal stands disposed of accordingly. There will be no order as to costs.

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Appeal allowed.

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Prepared on 30 October 2026 · Esheria