



2025:AHC:176692

HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. - 723 of 2025

Tarkeshwar Pandey

.....Appellant(s)

Versus

Deena Nath Yadav And 6 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Indra Prakash, Ram Brij Napit
Counsel for Respondent(s)	:	Bhriugu Jee Singh

A.F.R.

Court No. - 36

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

1. Heard Sri Ram Brij Napit, learned counsel for the appellant and Sri Bhriugu Jee Singh, learned counsel appearing for the respondent no.1.
2. This is a plaintiff's second appeal under Section 100 of the Code of Civil Procedure, 1908 (C.P.C.), directed against an order dated 20.3.2025 passed by the District Judge, Ballia in Civil Appeal No. 123 of 2023 [Tarkeshwar Pandey Vs. Deenanath and Others]. The aforesaid Civil appeal had been filed against an order dated 25.7.2023 whereby the application bearing paper no.6C2 seeking injunction filed by the appellant (the plaintiff in the suit), had been rejected.
3. Stamp Reporter has submitted a report stating that the instant appeal appears to be not maintainable as it is filed against an order passed in a miscellaneous appeal.
4. Counsel for the appellant has sought to urge that since the order which is sought to be challenged has been passed by a Court exercising appellate jurisdiction, the second appeal filed under Section 100 C.P.C. would be maintainable.
5. Counsel appearing for the respondents has controverted the aforesaid submission by stating that an appeal under Section 100 C.P.C. would lie from a decree passed in an appeal, and the said remedy would not be available against an order passed in miscellaneous appeal.
6. Section 100 C.P.C., as amended by Act No. 104 of 1976, provides that an

appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court if the High Court is satisfied that the case involves a substantial question of law. Such appeal also lies against an appellate decree passed *ex parte*.

7. A 'decree' and an 'order' are distinct concepts under the C.P.C. A 'decree' has been defined under Section 2(2) C.P.C. to mean the formal expression of an adjudication which, so far as regards the Court expressing it conclusively determines the rights of parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. An 'order' under Section 2(14), means the formal expression of any decision of a Civil Court which is not a decree.

8. Order XLIII Rule (1) specifies the orders which are appealable; these appeals are preferred under Section 104(1) and once decided, Section 104(2) closes the door to any further appeal. The bar under Section 104(2) is complete and absolute. It states: 'no appeal shall lie from any order passed in appeal under this Section'. This is to say that there is no remedy of a second miscellaneous appeal and no second appeal under Section 100, against an order passed in an appeal under Section 104(1).

9. An order passed in miscellaneous appeal under Order XLIII Rule 1(r) is an 'order in appeal under Section 104', from which Section 104(2) bars any further appeal.

10. The language of Section 100 C.P.C. is explicit and it states that a second appeal lies from a decree passed in an appeal by any Court subordinate to the High Court subject to the condition that the High Court is satisfied that the case involves a substantial question of law.

11. An order passed under Order XLIII Rule 1 C.P.C. is, by definition, not a decree; therefore, a second appeal under Section 100 would not be competent.

12. The order sought to be challenged in the present case having been passed in a miscellaneous civil appeal under Section 104(1) read with Order XLIII Rule 1(r), is not a decree; therefore the second appeal would not be maintainable.

13. Counsel for the appellant, at this stage, submits that he may be permitted

to withdraw the appeal with liberty to avail the appropriate legal remedy.

14. The appeal is **dismissed** in terms of the prayer so made.

15. Office to return the certified copies of the orders to the counsel for the appellant after retaining the photostat copies of the same.

(Dr. Yogendra Kumar Srivastava,J.)

October 6, 2025

Arun K. Singh