



2025:AHC-LKO:82861-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL DEFECTIVE No. - 387 of 2025

Vinay Mohan

.....Appellant(s)

Versus

Smt. Nidhi Singh and Anr.

.....Respondent(s)

Counsel for Appellant(s)	: In Person,
Counsel for Respondent(s)	:

AFR

Judgment reserved on:25.09.2025

Judgment delivered on:11.12.2025

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE PRASHANT KUMAR, J.**

(Per: Rajan Roy, J.)

1. Heard Shri Vinay Mohan -appellant in person and Shri Vikas Pandey, learned counsel appearing for the respondent no. 1.
2. This is an appeal under Chapter VIII, Rules 5 of the Allahabad High Court Rules, 1952 challenging a judgment and order dated 20.05.2025 passed by learned Single Judge of this Court in Transfer Application (Civil) No. 166 of 2022.

3. Though, the appellant appearing in person sought to address the Court on merits of the matter, but, first and foremost the question arose as to whether this appeal against the order impugned is maintainable under Chapter VIII, Rules 5 of the Allahabad High Court Rules, 1952 or not ? The aforesaid provision reads as under:-

"5. Special appeal.- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of Appellate Jurisdiction) in respect of a decree or order made by a Court subject to the Superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of Superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of Appellate or Revisional jurisdiction under any such Act of one Judge."

4. It is true that the order has been passed on an application under Section 24 of the Code of Civil Procedure, 1908 which is not in exercise

of any appellate or revisional jurisdiction but under the jurisdiction vested in the High Court under Section 24 of the CPC. First and foremost it has been held in a catena of decisions that such an order passed under Section 24 CPC is not a judgment within the meaning of the term as used in Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 and similar provisions contained in Letter Patent Appeal Rules etc. pertaining to other High Courts. We may in this context refer to a co-ordinate Bench judgment rendered in the case of ***Amit Khanna Vs. Smt. Suchi Khanna*** reported in ***2009 (1) AWC 929***, wherein this issue was considered at length and referring to various decisions including the judgment of Hon'ble the Supreme Court reported in ***AIR 1953 SC 198; Asrumati Debi v. Kumar Rupendra Deb Raikot*** it was opined that an order of transfer under Section 24 is not a judgment within the meaning of Clause 15 of Letters Patent (Calcutta) and, therefore, is not appealable under the said provision. Such an order neither affects the merit of the controversy between the parties to the suit nor does it terminate or dispose of the suit on any ground. Therefore, an order of transfer cannot be placed in the same category as an order rejecting a plaint or one dismissing a suit on a preliminary ground. In this context the Division Bench also considered the Supreme Court decision reported in ***(2006) 5 SCC 399; Midnapore Peoples' Coop. Bank Ltd. and Ors. Vs. Chunilal Nanda and Ors.*** and the decisions cited therein. The Division Bench ultimately opined that an order passed by the learned Single Judge of this Court on a transfer application falls in the category 4 or 5 (Para 11) as categorized in ***Midnapore's case*** (supra),

meaning thereby, it was either a routine order which was passed to facilitate the progress of the case till its culmination in the final judgment or it was an order which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties. Such an order is made only to facilitate the final decision but it in itself is not a decision at all to be called a judgment.

5. In view of this, as, an order passed under Section 24 CPC is not a judgment, therefore, an appeal is not amenable on this count under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952.

6. This apart, there is another aspect of the matter. Such an appeal is maintainable under the aforesaid provision only if it has not been expressly or impliedly taken away by appropriate legislation. The Division Bench in *Amit Khanna's case* (supra) relied upon a constitution Bench judgment of the Supreme Court rendered in the case of *South Asia Industries (P) Ltd. Vs. S.B. Sarup Singh and Ors.* reported in *AIR 1965 SC 1442* in this regard. Based on the discussion, it opined that an appeal against an order passed under Section 24 CPC is not prescribed under Section 104 CPC and it is specifically excluded by Section 105 CPC, according to which -"Save as otherwise expressly provided, no appeal shall lie from any Order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the

memorandum of appeal." Thus, no appeal is maintainable from any order of the Court passed in exercise of its original or appellate jurisdiction except against orders which have been made appealable under Section 104 CPC. Right to appeal is not inherent unless it is specifically provided by the statute. Since the Code of Civil Procedure does not specially provide for an appeal against an order passed on a transfer application under Section 24 CPC and at the same time by implication excludes an appeal against such an order by virtue of Section 105 CPC, therefore, the Division Bench opined that merely for the reason Rule 5 Chapter VIII of the Rules of the Court, 1952 is silent in this regard it would not confer jurisdiction of appeal, if any contrary interpretation is made and the appeal is held to be maintainable it would amount to conferring jurisdiction of appeal which otherwise is not specifically provided but is expressly as well as by implication excluded by Section 105 C.P.C. The Division Bench in *Amit Khanna* (supra), thus, opined that in the above scenario the right of special appeal as contemplated by Rule 5 Chapter VIII of the Rules of the Court, even though the same is independent to the provisions of C.P.C., against the order of the single judge passed on a transfer application under Section 24 C.P.C. stands impliedly excluded.

7. The Division Bench in *Amit Khanna* (supra) was followed by another Division Bench in *Special Appeal No. 1126 of 2018; Akshay Gupta Vs. Smt. Swati Gupta* decided on 16.11.2018. In this very context we may refer another judgment, also by a Division Bench of this Court, rendered in the case of *Mahendra Pratap Bhatt Vs. Saroj Mahana*

reported in **2016 (5) ADJ 282**, wherein, after considering the Division Bench judgment in ***Amit Khanna's case*** (supra) and certain other decisions, especially, the Supreme Court decision rendered in the case of ***Subal Paul Vs. Malina Paul and Anr.*** reported in **2003 (5) JT 193**, it was opined that in ***Amit Khanna*** (supra) the aforesaid decision in ***Subal Paul*** (supra) as regards the purport and application of Section 104 C.P.C. was not considered and ultimately the Division Bench opined that irrespective of the Division Bench judgment in ***Amit Khanna's case*** (supra), as, the case before it was one where the order impugned was without jurisdiction which was not the case in ***Amit Khanna*** (supra), and as it was of the opinion that essentially the impugned judgment was one passed in exercise of powers under Article 226 of the Constitution of India, therefore, it entertained the appeal. We are of the opinion that the said judgment turns on its own facts. In the case at hand, it is not, as, if the judgment impugned is without jurisdiction, therefore, the judgment rendered in ***Mahendra Pratap Bhatt*** (supra) does not apply in this appeal, instead, the judgments rendered in ***Amit Khanna*** (supra) and ***Akshay Gupta*** (supra) apply. In the case of ***Akshay Gupta*** (supra) not only the judgment in ***Amit Khanna*** (supra) but also ***Mahendra Pratap Bhatt*** (supra) have also been considered and it was opined that from a joint reading of the judgments in the said cases it would be evident that special appeal under Chapter VIII Rule 5 of the Rules, 1952 against an order passed by learned Single Judge on an application filed under Section 24 C.P.C. would not be maintainable except where the order

passed by the learned Single Judge is without jurisdiction, which is not case in this appeal before us.

8. We are, therefore, of the considered opinion that on both the grounds, firstly that an order passed under Section 24 C.P.C. is not a judgment so as to maintain an appeal against such an order under Chapter VIII Rule 5 of the Rules, 1952, secondly, such an appeal is barred by Section 105 C.P.C., therefore, holding that this appeal is maintainable will be contrary to the letter and intent of Section 104 read with Section 105 C.P.C. as held by the Division Bench in the case of *Amit Khanna* (supra) with which we concur.

9. As regards the Supreme Court decision in *Subal Paul* (supra) that was a case where special appeal arose out of proceedings under Section 299 of the Indian Succession Act, 1925 and Hon'ble the Supreme Court has held that the rigor of Section 104 C.P.C. would not apply to the said proceedings because the appeal was prescribed under special enactment and not the C.P.C. In the case at hand the factual position is different, as, the order which has been impugned, has been passed under Section 24 C.P.C. and not under any special enactment, therefore, the decision in *Subal Paul* (supra) also does not help the appellant herein.

10. The appellant has relied upon the decision reported in *AIR 2006 Kerala 58; K.V. Balan and Anr. Vs. Sivagiri Sree Narayana Dharma Sanghom Trust and Ors., 2001 (1) ECrc 109; Neelam Kanwar Vs. Devinder Singh Kanwar, AIR 2017 SC 1345; Krishna Veni Nagam Vs. Harish Nagam* and other judgment rendered by Hon'ble the Supreme

Court in the case of *Shyam Sel and Power Limited and Anr. Vs. Shyam Steel Industries Ltd.* decided on 14.03.2022 and judgment of Bombay High Court rendered in the case of *Amruta Vs. Sachin* decided on 01.08.2025. None of the decisions cited by the appellant appearing in person help his case in view of the above discussion.

11. For all these reasons, we are of the opinion that the special appeal is not maintainable.

12. Accordingly, the special appeal is **dismissed** as not maintainable.

(Prashant Kumar,J.) (Rajan Roy,J.)

December 11, 2025

R.K.P.