

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3152-3153 OF 2011

[Arising out of SLP(C) Nos.35503-35504 of 2010]

ARTI BHARGAVA & ANR.

.....APPELLANTS

Versus

MADHUR BHARGAVA & ORS.

.....RESPONDENTS

ORDER

Leave granted. Heard.

2. The respondents filed a suit against the appellants in the year 2000 for recovery of possession of the suit premises and *mesne profits*. The said suit was decreed on 23.8.2003 in so far as the prayer for possession. The prayer for mesne profits was rejected.

3. Four appeals were filed against the said judgment and decree. RFA No.732/2003 was filed by the respondents. RFA No.855/2003 was filed by the appellants. RFA Nos. 878/2003 and 912/2003 were filed by the tenants of the suit premises.

4. The High Court Rules (as they earlier stood before the amendment by notification dated 23.12.2008)

provided that Regular first appeals should be heard by a division bench of two Judges. In view of it, the appeals filed by the appellants and respondents were heard in part by a division bench, prior to 23.12.2008. The hearing of the other two appeals was not commenced.

5. The Delhi High Court Rules were amended by notification dated 23.12.2008 and it was provided that all regular first appeals, irrespective of the value of the subject matter, will be heard by a single Judge. The amendment to the Rules, however, made it clear that the amended rules shall apply to pending appeals *other than those in which regular hearing has actually commenced before the coming into force of the amendment to the Rules.*

6. When the appeals came up before the Division Bench of the High Court on 30.1.2009, the division bench noted that all four appeals were interconnected, arising out of the same suit. The division bench directed that RFA Nos.878/2003 and 912/2003 in which hearing had not commenced, to be listed before a single Judge. As RFA Nos. 732/2003 and 855/2003 had been substantially heard, they were retained on the file of the division bench for completing the hearing and disposal.

7. On 20.3.2009, the Division Bench, however, directed that RFAs Nos.732/2003 and 855/2003 should be

released from 'part heard' category and placed before a learned single Judge, on the ground that notes of arguments of the Division Bench were misplaced and the matters will have to be heard afresh.

8. When the matters thereafter came up before the learned single Judge, the appellants filed an application that the appeals will have to be heard by Division Bench. The learned single Judge on 5.5.2010, rejected the application on the ground that remedy of the appellants lied elsewhere. Thereafter, the appellants have filed this appeal by special leave, challenging the orders dated 30.1.2009 and 20.3.2009.

9. The amended rules make it clear that the rules as amended will apply only to appeals where hearing has not commenced. The amended Rules also provide that appeals where hearing has already commenced, will be governed by the rules that were in force before the amendment. In other words, if the appeals have been heard in part before 23.12.2008, hearing of such appeals will have to be completed and decided by the division bench.

10. The fact that the division bench has lost its notes of arguments is not a ground for relegating the parties for hearing of the appeals before a learned single Judge as that would be contrary to rules. What is material is the

hearing in part by the division bench and not the *notes*. Therefore RFAs. 732 and 855 of 2003 will have to be heard by the division bench.

11. Insofar as RFA Nos.878 and 912 of 2003 are concerned, even though the hearing in these appeals had not commenced, as they are also against the same judgment dated 23.8.2003, interest of justice would require that they should also be heard alongwith RFA Nos.732 and 855/2003 and decided by a common judgment, to avoid divergent and conflicting decisions.

12. We, therefore, allow these appeals, set aside the order of the Division Bench dated 20.3.2009 as also that part of the order dated 30.1.2009 directing that RFA No.878 and 912/2003 be heard by a single Judge. We request the Division Bench to hear the four appeals together and dispose them expeditiously.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
April 08, 2011.

.....J.
(A.K. PATNAIK)