

**SUPREME COURT OF INDIA**

MGMT. of M/s. Devi Theatre

Vs.

Vishwanath Raju

C.A.Nos.2582-2583 of 2004

(Brijesh Kumar and Arun Kumar JJ.)

08.04.2004

**ORDER**

1. Delay condoned.
2. Leave granted.
3. The appellant before us preferred a first appeal under Section 96 of Civil Procedure Code before the High Court of Karnataka on which the following order was passed :

"Admit subject to the condition the appellant depositing Rs. 75,000/- within a period of eight weeks, failing which the appeal stands dismissed without further orders."

4. It appears that the amount as required to be deposited was not deposited. The application which was moved for extension of time remained undisposed of. The impugned order passed showed that since the deposit has not been made the inevitable consequence was that the appeal stood dismissed.

5. The learned counsel for the appellant submits that appeal lies from every decree passed by any Court exercising original jurisdiction. The jurisdiction of the Court in first appeal extends to examine the questions of facts as well as that of law. It is though true as pointed out by the learned counsel for the respondent that under Order 41, Rule 11, CPC it would be open for the Court to dismiss the appeal in limine at the time of admission but even examining the matter from that point of view we find that the Court while considering the question of admission of appeal filed under Section 96, CPC, may admit the appeal if considered fit for full hearing having prima facie merit. Otherwise, if it finds that the appeal lacks merits it may be dismissed at the initial stage itself. But admission of the appeal, subject to condition of deposit of some given amount, is not envisaged in the provision as contained under Section 96 read with Order 41, Rule 11, CPC. The deposit of money would obviously have no connection with the merits of the case, which alone would be basis for admitting or not admitting an appeal filed under Section 96, CPC. Further, imposition of

condition that failure to deposit the amount, would result in dismissal of the appeal compounds the infirmity in the order of conditional admission.

6. It is a different matter, in case the appellant prays for stay of the execution of the decree or for any order by way of an interim relief during the pendency of the appeal, it is open for the Court to impose any condition as it may think fit and proper in the facts and circumstances of the case. Otherwise imposing a condition of deposit of money subject to which an appeal may be admitted for hearing on merits, is not legally justified and such order cannot be sustained.

7. In the result the appeal is allowed, the impugned order passed by the High Court insofar it impose condition of deposit in admitting the appeal is set aside. The order of admission of the first appeal in High Court would be treated without condition of deposit. It is, however, clarified that it would be open to the High Court to impose any condition including for deposit of any amount, in case any kind of interim relief is granted during pendency of the appeal. Consequently, the first appeal stands restored to the file of the Court which shall be considered and decided on merits expeditiously.

8. No costs.

Appeal allowed.