



2025 INSC 1406

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL Nos.14545-14546/2025
[SPECIAL LEAVE PETITION (C) Nos. 35171-72/2025]
(@ Diary No.68082/2025)**

ABHISHEK GUPTA

APPELLANT

VERSUS

DINESH KUMAR & ORS.

RESPONDENTS

J U D G M E N T

1. Permission, to file special leave petitions, is granted.
2. Delay condoned.
3. Leave granted.
4. Appellant was allotted, by grant of a license, a fair price shop in place of the respondent no.1, upon revocation of the license of such respondent on the ground of breach of lawful terms and conditions thereof.
5. Revocation of the license and an appellate order of its affirmance were the subject matter of challenge in a writ petition¹ presented by the respondent no.1 before the High Court of Judicature at Allahabad. In such writ petition, the appellant was not impleaded as a party.

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¹ Writ C No. 37063 of 2019

6. The writ petition of the respondent no.1 came to be allowed by an order dated 10th June, 2025² of a Single Judge. The order revoking the license of the respondent no.1 and the appellate order of affirmation stood set aside. In pursuance of such order, the respondent no.1 was required to be reinstated as a fair price shop licensee by the official respondents.

7. Sensing the imminent consequence of the order of the Single Judge, i.e., he would be compelled to step down and make way for the respondent no.1, the appellant approached a Division Bench of the High Court with an intra-court appeal³. His complaint was that the order passed by the Single Judge prejudicially affected his interest, without he being given an opportunity of hearing. Such appeal has been dismissed by the Division Bench *vide* judgment and order dated 30th October, 2025 as not maintainable, placing reliance on Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952⁴ and a Full Bench Judgment of the same High Court in ***Sheet Gupta v. State of U.P.***⁵ interpreting such rule. However, the appellant was granted liberty to apply for a review of the judgment and order under appeal before the Single Judge.

8. In the present appeals, the appellant has not only questioned the judgment and order of the Division Bench dated 30th October, 2025 but also questioned the judgment and order of the Single Judge dated 10th June, 2025.

9. At the outset, we reject the contention of learned counsel for the

³ Special Appeal Defective No. 908 of 2025

⁴ 1952 Rules

⁵ AIR 2010 All 46 (FB)

respondent no.1 that the appeals should be dismissed on the ground of suppression of material facts.

10. Looking to the impugned judgment and order of the Division Bench, we find that it neither reproduces Rule 5 of Chapter VIII of the 1952 Rules nor adverts to the specific answer given by the Full Bench in **Sheet Gupta** (supra) to the question which was referred. We, therefore, propose to note Rule 5 and the answer of the Full Bench.

11. Rule 5 of Chapter VIII of the 1952 Rules reads as follows:

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 the 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.

12. In **Sheet Gupta** (supra), the Full Bench has recorded as follows:

15. Having given our anxious consideration to the various plea (sic., pleas) raised by the learned counsel for the parties, we find that from the perusal of Chapter VIII Rule 5 of the Rules a special appeal shall lie before this Court from the judgment passed by one Judge of the Court. However, such special appeal will not lie in the following circumstances:

1. The judgment passed by one Judge in the exercise of appellate jurisdiction, in respect of a decree or order made by a Court subject to the Superintendence (sic., superintendence) of the Court;
2. the order made by one Judge in the exercise of revisional jurisdiction;
3. the order made by one Judge in the exercise of the power of superintendence of the High Court;
4. the order made by one Judge in the exercise of criminal jurisdiction;

5. the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution of India in respect of any judgment, order or award by
 - (i) the tribunal,
 - (ii) Court or
 - (iii) statutory arbitratormade or purported to be made in the exercise of 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;
6. the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or 227 of the Constitution of India in respect of any judgment, order or award of
 - (i) the Government or
 - (ii) any officer or
 - (iii) authority,made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act, i.e. 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.

13. On a plain reading of Rule 5, the Special Appeal of the appellant would appear to be barred. However, there is much more than what is plainly visible. In our considered opinion, the Special Appeal ought not to have been held not maintainable for the reasons we propose to assign.

14. While interpretation of Rule 5 by the Full Bench of the High Court is correct, we discern from **Sheet Gupta** (supra) that the Full Bench in course of answering the reference had not been called upon to examine whether an appeal with an application seeking leave to appeal, by a non-party to a writ petition under Article 226, would or would not be maintainable if the order - appellate or revisional - under challenge in such petition is passed by the Government or officer or authority under a Central/State legislation. Since this was not a question which the Full Bench was required to examine, whatever has been laid down in **Sheet**

Gupta (supra) on interpretation of Rule 5 may not be decisive in a situation under consideration. This aspect of the matter escaped the attention of the Division Bench which, erroneously, dismissed the appeal as not maintainable.

15. Although Rule 5, *inter alia*, ordains that no Special Appeal shall lie from an order passed by a Single Judge of the High Court in writ proceedings under Article 226 of the Constitution where an appellate/revisional order of the Government or any officer or authority under any of the specified enactments is under challenge, in our considered opinion, Rule 5 has to be read and understood in a manner that advances the cause of “access to justice” and not thwart it. The object and purpose behind enactment of Rule 5 have to be borne in mind while embarking on its interpretation. The object seems to be that when two tiers of adjudication – quasi-judicial and judicial - are available, i.e., (i) a determination by the appellate/revisional forum under a specified Central/State legislation on a particular *lis* raised by a party and defended by the adversary at the first instance, is (ii) followed by an adjudication by a Single Judge on a writ petition under Article 226 of the Constitution as to whether such appellate/revisional order is legal, valid or proper, a third tier for ruling on the same *lis* in the shape of a special appeal before the Division Bench ought not to be made available to the aggrieved party. The purpose is clear: to achieve a sort of finality at the level of the High Court and not to add to the agony of the concerned litigant. The unwritten rule is that any party aggrieved by the adjudication made by the Single Judge will have to seek remedy under Article 136 of the

Constitution before this Court or seek a review under the High Court's inherent jurisdiction.

16. In the circumstances before us, the bar created by Rule 5 must yield to the foundational principles of natural justice, namely, the right to be heard and the right to a fair hearing. It is trite law that the principle of non-joinder, though originating from the Code of Civil Procedure, 1908, applies with equal force to writ proceedings. An order passed in writ jurisdiction without impleading an affected or necessary party is liable to be invalidated on that ground alone. Since the courts exist to administer justice, the rigours of Rule 5 would not apply and stand relaxed in a case of the present nature where the order under challenge is one, passed by a Single Judge on a petition under Article 226 of the Constitution, adversely affecting the rights of a party who was not a party-respondent before the Single Judge.

17. In our further considered opinion, the law laid down by this Court in ***Smt. Jatan Kanwar Golcha v. Golcha Properties (P) Ltd.***⁶ and ***State of Punjab v. Amar Singh***⁷ that an appeal could be preferred with an application for leave to appeal, provided the non-party appellant demonstrates that either the order under challenge is prejudicial to his interest or adversely affects him or is binding on him, would be applicable.

18. Also, the maxim *ubi jus, ibi remedium* cannot be ignored. A party suffering an adverse order in judicial proceedings where he is not noticed,

⁶ AIR 1971 SC 374

⁷ AIR 1974 SC 994

because he was not a party, cannot be left without a remedy. Although he can apply for a review, the scope of a review is much narrower than an appeal and would not provide a remedy as effective as an appeal.

19. For the foregoing reasons, we hold that where an allegation of non-joinder of a necessary party is raised in an intra-court appeal, the High Court, if satisfied that such allegation has merit, should either remand the matter to the Single Judge or decide it on the merits. Such an approach while not militating against the object and purpose of Rule 5 would, at the same time, accord with the maxim *ubi jus, ibi remedium*.

20. Even otherwise, the appellant by way of abundant caution has appealed against the judgment and order of the Single Judge dated 10th June, 2025. Had we concurred with the Division Bench that the appellant's appeal before it was not maintainable, nothing would have prevented us to hear such appeal against the said judgment and order.

21. In such view of the matter, we set aside the impugned judgment and order of the Division Bench and restore the Special Appeal of the appellant to its original file and number. The same may now be heard by the Division Bench and disposed of expeditiously, since we are not inclined to allow the appellant to run the fair price shop for the present.

22. We leave it open to the respondent no.1 to seek dismissal of the Special Appeal in the light of the affidavit sworn by the appellant at the time he was allotted the fair price shop in place of the respondent no.1. Equally, we leave it open to the appellant to counter such contention in such manner and on such ground(s) as he may be advised. No opinion is expressed by us on the merits of the rival claims.

23. We are informed that the fair price shop has been allotted in favour of the respondent no.1 in compliance with the order of the Single Judge; hence, the same shall abide by the result of the Special Appeal.
24. The appeals stand disposed of on the aforesaid terms.
25. Pending application(s), if any, shall also stand disposed of.

.....J.
[DIPANKAR DATTA]

.....J.
[AUGUSTINE GEORGE MASIH]

**NEW DELHI;
DECEMBER 03, 2025.**