SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction**]**

PRESENT:
Mohammad Azam Khan, C.J.
Ch. Muhammad Ibrahim Zia, J.

Civil Appeal No.32 of 2015
(Filed on 20.10.2015)

1. Muhammad Ishaq s/o Ghaffar Ju,
2. Khalid Iqbal,
3. Zahid Iqbal,
4. Nadeem Iqbal,
5. Zafar Iqbal,
6. Imran Iqbal, sons of Mohammad Ishaq Caste Sheikh r/o Rawalakot, Tehsil Rawalakot, District Poonch.

……APPELLANTS

VERSUS

1. Azad Govt. through its Chief Secretary, Muzaffarabad.
2. Secretary Buildings, Azad Government, Muzaffarabad.
3. Chief Engineer Buildings, Azad Government, Muzaffarabad.
4. SDO, Roads Division, Poonch, Rawalakot.
5. XEN, Roads, Rawalakot.

….. RESPONDENTS

[On appeal from the judgment & decree of the High Court dated 26.08.2015 in Civil Appeal No.24/2013]

FOR THE APPELLANTS: Nemo.

FOR THE RESPONDENTS: Ch. Shoukat Aziz, Additional Advocate-General.

Date of hearing: 07.03.2016.

ORDER:

Mohammad Azam Khan, C.J.– The above titled direct appeal has been filed from the judgment and decree of the High Court dated 26th August, 2015, whereby appeal filed by the appellants, herein, has been dismissed.

2. The background of the case is that the plaintiffs-appellants filed a suit for compensation of the land in the Court of District Judge (Poonch) Rawalakot amounting to Rs.14,000,000/- and rent of the land amounting to Rs.7,000,000/- total amounting to Rs.21,000,000/- against the defendants-respondents on 17th February, 2011, on various grounds. The suit was dismissed on 15th March, 2013. Dissatisfied, the plaintiffs-appellants filed an appeal in the High Court from the judgment and decree of the District Judge

Rawalakot, which was dismissed on 26th August, 2015, hence this direct appeal.

3. On the last date of hearing, Sardar Nazar Muhammad Khan, Advocate, counsel for the appellants requested for adjournment of the case and also requested for filing written arguments. He has filed written arguments.

4. At the very outset, Ch. Shouakt Aziz, Additional Advocate-General, while arguing on behalf of the respondents, submitted that direct appeal is not competent as the High Court has not altered the judgment and decree of the Court immediate below. The appeal merits dismissal.

5. We have perused the record carefully. The plaintiff-appellants filed a suit for recovery of Rs.21,000,000/- in the Court of District Judge (Poonch) Rawalakot on 17th February, 2011. The suit was dismissed. The plaintiff-appellants filed an appeal in the Azad Jammu & Kashmir High Court. The appeal was

dismissed through judgment and decree dated 26th August, 2015.

6. Under section 42(11)(d) of the Azad Jammu & Kashmir Interim Constitution Act, 1974, an appeal lies to the Supreme Court from any judgment, decree, final order or sentence of the High Court if the amount or value of the subject matter of the dispute in the Court of first instance was and also in dispute in appeal is not less than fifty thousand rupees or such other sum as may be specified in that behalf by Act of the Council and the judgment, decree and final order appealed from has varied or set aside the judgment, decree or final order of the Court immediately below. The value of the subject matter in appeal in the Court of first instance was more than Rs.50,000/- and in the High Court it was same. The High Court has dismissed the appeal and has not altered or varied the judgment and decree of the Court immediate below, therefore, direct appeal was not competent. The proposition came under consideration of this Court in a number of cases. This Court resolved that direct appeal is only competent if value of the subject

matter in the Court of first instance and in the appeal is not less than Rs.50,000/- and the High Court has varied or altered the judgment, decree or final order. The High Court has not altered or varied the judgment of the Court immediate below, therefore, direct appeal in this Court is not competent, it merits dismissal.

7. As the appeal is being dismissed on the ground of competency therefore, there is no need to dilate upon the merits of the case.

The result of the above discussion is that the appeal is not competent, it is hereby dismissed with no order as to costs.

CHIEF JUSTICE **JUDGE**

Muzaffarabad
07.03.2016.