

Chitharanjan Vs. Ravi Mohan

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Court : Kerala

Decided On : Aug-02-2004

Reported in : AIR2005Ker10; 2004(2)KLT1163

Judge : Pius C. Kuriakose, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 33, 96, 100, 104 and 104(2) - Order 43, Rule 1

Appeal No. : Unnumbered R.S.A. of 2004

Appellant : Chitharanjan

Respondent : Ravi Mohan

Advocate for Pet/Ap. : Party-in-person

Judgement :

ORDER

Pius C. Kuriakose, J.

1. This Regular Second Appeal is instituted against the judgment of the District Judge, Kozhikode in a Civil Miscellaneous Appeal which was directed against an Interlocutory Application filed in a suit wherein the present appellant was the second defendant. An interlocutory application was filed under Order 11 of the Code for delivery of interrogatories and since the answers furnished to the

interrogatories were not in the form of affidavit as required by law, the learned Munsiff passed an order directing the answers to be furnished in oath form. The learned District Judge noticed on hearing the C.M.A. that the appellant had already answered the interrogatories by an affidavit as directed by the learned Munsiff in the order which was impugned in the C.M.A. and therefore the C.M.A. was to be dismissed not only on merits but also in that the appeal has become infructuous.

2. According to the Registry the Second Appeal is not maintainable in law obviously in view of Section 104(2) of the C.P.C. The appellant who appeared before me in person submitted that the Registry's view is incorrect. When the observation of the learned District Judge that the C.M. Appeal itself had become infructuous was brought to the notice of the appellant he submitted that it was subject to his filing of the appeal that he complied with the directions of the trial court and he wants to have the second appeal registered and considered by this Court. According to him, the second appeal is very much maintainable in law because what was delivered by the learned District Judge is a judgment. He invited my attention to Section 33 of the Code and submitted that in every case where the court delivers the judgment a decree shall also follow and submitted further that since this appeal involves substantial questions of law, this appeal is liable to be registered as a regular second appeal. According to him if decrees are not issued, the operative portion of the judgment itself shall be treated as decree for appeal purposes.

3. Second Appeal envisaged by Section 100 are appeals from appellate decree. The argument of the appellant is that what was pronounced by the lower appellate Court in the C.M. Appeal filed by him was a judgment and not an order and therefore in view of Section 33 of the Code of Civil Procedure a decree also should have followed and in cases where the Court passes judgment but does not issue decrees, the operative portion of the judgment shall be treated as decree and therefore the present Second Appeal in so far as it directed against an appellate judgment is maintainable.

4. The appellant's understanding of the distinction between judgments and orders is not correct. The distinction does not lie in how the verdict is described by the Court whether as a 'judgment' or as an 'order'. 'Decree' is defined in the Code as the formal expression of an adjudication conclusively determining the rights of parties regarding the matters in controversy in a suit and will certainly include appellate decrees and orders which are to be deemed as decrees by virtue of express deeming provisions in the Code. 'Judgment' is defined as the statement given by the Judge of the reasons or grounds of a decree or order. Section 33 referred to by the appellant significantly appears in Part I of the Code which applies to suits only. In order to accept the argument of the appellant that he is entitled to maintain a Second Appeal, he has first of all to show that the appeal where from the Second Appeal arises itself arose from a decree for the purpose of Section 96 of the Code. It was fairly conceded before me that appeal before the District Judge was only an appeal under Order 43, Rule 1.

5. Order 43, Rule 1 read with Section 104(2) bars all appeals arising from appellate orders and judgments passed under Section 104. In fact a Full Bench of this Court in *Fr. Abraham Mathews v. Ittan Pillai*, 1981 KLT 260 (F.B.) = AIR 1981 Kerala 129 (F.B.), decided so and the position is no longer res integra. I therefore uphold the objection of the Registry and hold that the Second Appeal preferred by the appellant under Section 100 of the Code against the judgment (order) of the lower appellate Court is not maintainable. Return the certified copy of the judgment of the lower appellate Court produced by the appellant to him forthwith so as to enable him to seek other remedies if necessary.

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