

E.Jayakumar Vs. Sampoornam

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Court : Chennai

Decided On : Apr-02-2012

Judge : G.Rajasuria, J.

Acts : [Code of Civil Procedure,\(CPC\) 1908](#) - Order 7 Rule 11, Order 43 Rule 1

Appeal No. : C.R.P.(NPD).541 of 2012

Appellant : E.Jayakumar

Respondent : Sampoornam

Advocate for Pet/Ap. : Mr.S.Senthamil Selvan, Adv.

Judgement :

Civil revision petition preferred against the fair and final order dated 20.07.2011 in O.S.No.194 of 2009 on the file of the Court of the District Munsif, Palladam.

ORDER

1. Animadverting upon the order dated 20.07.2011 passed by the learned District Munsif, Palladam in O.S.No.194 of 2009, this civil revision petition is focussed.
2. Synoptically and succinctly, the germane facts absolutely necessary for the disposal of this revision would run thus:

The revision petitioner as plaintiff filed the suit seeking the following reliefs:

"(a) To grant permanent injunction restraining the defendants their men, agents and servants from causing any manner interfering and disturbance to the plaintiff peaceful possession and enjoyment of the suit property and not to restrain the plaintiff taking water by the plaintiff from the common borewell; and

(b) for costs."

3. Indubitably and indisputably, the fact remains that the written statement was filed. The issues were framed including the one relating to insufficient Court fee paid. When the matter has come up for trial, it appears the Court considered the Court fee issue and gave direction for paying additional Court fee. A time limit was fixed, however on the date fixed for paying the Court fee, the petitioner's Advocate was absent and within that time stipulated the additional Court fee was also not paid; whereupon the Court rejected the plaint and as against the said rejection of the plaint, this revision has been filed.

4. The point for consideration is as to whether an appeal would lie as against the rejection of the plaint?

5. The learned counsel for the revision petitioner/plaintiff would explain and expound that the plaintiff is having no grievance as against the direction of the Court in mandating him to pay the additional Court fee. However, he wanted more time to pay it. When this Court raised the query as to whether the plaintiff approached the same Court for recalling the said order, by way of granting them additional time to pay the Court fee or for condoning the delay in actually tendering the Court fee before the trial Court, the learned counsel for the revision petitioner would state that no such attempt was made.

6. At this juncture, I would like to refer to the definition of the term 'decree' in CPC.

"Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default."

7. Unambiguously and unarguably it is found specified therein that even rejection of a plaint under Order 7 Rule 11 of CPC would amount to a decree. It is quite obvious that under Order 41 of CPC an appeal would lie as against any decree passed by a Court, if no civil miscellaneous appeal is permitted under Order 43 Rule 1 of CPC. It is axiomatic that under Order 43 Rule 1 of CPC as against the rejection of the plaint, no CMA could be filed, as such only appeal is the remedy.

8. In this connection, I would like to fumigate my mind with the decision of the Hon'ble Apex Court reported in AIR 1973 SC 2384 [Shamsher Singh v. Rajinder Prashad and others]; certain excerpts from it would run thus:

"3.Before us a preliminary objection was raised based on the observations of this court in Rathnavarmaraja v. Smt.Vimala, AIR 1961 SC 1299 that the present appeal is not competent. In that case this court observed that whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State and that the defendants who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior courts by appeal or in revision against the order adjudging payment of court-fee payable on the plaint.
.....In the present case the plaint was rejected under Order 7 Rule 11 of the CPC. Such an order amounts to a decree under Section 2 (2) and there is a right of appeal open to the plaintiff. Furthermore, in a case in which this court has granted special leave the question whether an appeal lies or not does not arise. Even otherwise a second appeal would lie under Section 100 of the CPC on the ground that the decision of the 1st appellate court on the interpretation of Section 7 (iv) (c) is a question of law. There is thus no merit in the preliminary objection. "

9. It is therefore crystal clear that no revision would lie as against rejection of the plaint.

10. I would like to highlight here the relevant proviso appended to Order 7 Rule 11 of CPC.

"Rejection of plaint

The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9;

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

11. The aforesaid proviso would clearly highlight that the Court which passed the order stipulating the time for payment of additional Court fee could also extend it for the reasons to be recorded. Here no step also was taken by the petitioner to approach the very same Court seeking extension of time to pay the additional Court fee. Alternatively, the petitioner also has got the right to file appeal. I am of the view that approaching the lower Court itself for getting extension of time would

be the best remedy, and in the event of the petitioner approaching the lower Court for depositing the deficit Court fee, I am of the view that the Court could take a sympathetic view, subject to directing the petitioner to pay cost to the other side.

Accordingly, the Civil Revision Petition is disposed of. No costs.

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