

AFR

Neutral Citation No. - 2024:AHC-LKO:4450

Court No. - 7

Case :- WRIT - C No. - 275 of 2024

Petitioner :- Sushil Kumar And Others

Respondent :- Additional Commissioner Judicial- I, Lucknow
And Others

Counsel for Petitioner :- Sarvesh Kumar Shukla, Arjun Prasad
Mishra, Harsh Mohan

Counsel for Respondent :- C.S.C., Dilip Kumar Pandey

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the petitioners, Sri Hemant Kumar Pandey, learned counsel for the State as also Sri Dilip Kumar Pandey, learned counsel for the Gaon Sabha concerned.

2. Present petition has been filed for the following main reliefs:-

"Issue a writ, order or direction in the nature of CIRTIORARI to quash the impugned order dated 30-10-2023, 17.08.2023 passed by opposite party Nos. 1 & 2. Contained as Annexure No.1 & 7 to this writ petition.

Issued a writ, order or direction in the nature of MANDAMUS commanding the opposite parties not to disturb the peaceful possession of the petitioner during the pendency of this writ petition."

3. Brief facts of the case are to the effect that during pendency of the suit instituted under Section 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 (in short "Act of 1950"), pending as Case No. RST/00635/2019, Computerized Case No. T201910640200635 (Mullu vs. Sarju Prasad), an application under Order 7 Rule 11 of Code of Civil Procedure

(in short "CPC") was filed by the petitioners and vide order dated 17.08.2023, the opposite party No. 2/Sub-Divisional Magistrate, Sadar, Sitapur, declined to dispose of the same. The order dated 17.08.2023 reads as under:-

"आज यह पत्रावली प्रस्तुत हुई। पत्रावली का अवलोकन किया गया। जिससे यह विदित होता है कि प्रस्तुत घोषणात्मक वाद वादीय भूमि गाटा संख्या 774 रकबा 0.1548 हे० व गाटा संख्या 851 रकबा 0.409 हे० स्थित ग्राम करियामऊ परगना रामकोट तहसील व जिला सीतापुर वादी मुल्लू पुत्र मैकू द्वारा प्रतिवादीगण सरजू प्रसाद पुत्र छेदू आदि के विरुद्ध योजित किया गया है। प्रस्तुत वाद में पूर्व पारित आदेश दिनांक 28-03-2003 निरस्त किया गया। तत्पश्चात् मुल्लू मृतक के वारिसान कमलेश कुमार द्वारा न्यायालय अपर आयुक्त न्यायिक, मण्डल लखनऊ अपील वाद संख्या 629/02-03 योजित की गयी। जिसमें मा० न्यायालय द्वारा पारित आदेश दिनांक 16-12-2008 के अन्तर्गत आदेश दिनांक 28-03-2003 निरस्त कर पुनः पक्षों को साक्ष्य / सुनवाई का अवसर प्रदान करते हुए वाद निस्तारण गुण-दोष के आधार पारित किये जाने के निर्देश दिये गये हैं। प्रश्नगत वाद में उभय पक्षों द्वारा अपना-अपना साक्ष्य प्रस्तुत किया जा चुका है। ऐसी स्थिति में वादीय भूमि पर उभय पक्षों के मध्य कब्जे के सम्बन्ध में आख्या प्राप्त कर वाद का निस्तारण गुण-दोष के आधार किया जाना न्यायोचित होगा। प्रतिवादी द्वारा एक प्रार्थना पत्र दिनांक 31-07-2023/03-08-2023 को प्रस्तुत किया गया। इस स्तर पर निर्णय न करके अन्तिम निर्णय के समय संज्ञान लिया जायेगा। इस आदेश की प्रति आख्या हेतु राजस्व निरीक्षक को भेजी जाये। पत्रावली वास्ते प्रतीक्षा आख्या दिनांक 28-08-2023 को पेश हो।"

4. Being aggrieved, the petitioners filed the revision under Section 333 of the Act of 1950, registered as Case No. 2584 of 2023, Computerized Case No. C202310000002584 (Sushil and others vs. Kamlesh Kumar and others).

5. By means of the impugned order 30.10.2023, the opposite party No. 1/Additional Commissioner (Judicial-I), Lucknow Division, Lucknow, dismissed the revision at the admission stage filed by the petitioners against the order dated 17.08.2023. The order dated 30.10.2023 reads as under:-

"यह निगरानी न्यायालय सहा०कले०प्र०श्रे०/उपजिलाधिकारी, सदर सीतापुर के द्वारा वाद सं०-टी201910640200635 अन्तर्गत धारा-229 बी ज०वि०अधिनियम, दमुल्लू बनाम सरजू प्रसाद में पारित आदेश दिनांक 17.08.2023 के विरुद्ध इस न्यायालय में ज०वि०अधिनियम की धारा-333 में दिनांक 05.09.2023 को योजित की गयी है।

2- नियत तिथि पर पत्रावली प्रस्तुत हुई। निगरानीकर्तागण के अधिवक्ता उपस्थित हुए, उनके तर्कों को सुना गया। निगरानीकर्तागण द्वारा प्रस्तुत तर्कों तथा पत्रावली पर उपलब्ध अभिलेखों के परीक्षणोपरान्त प्रश्रुत निगरानी का निस्तारण ग्राह्यता स्तर पर गुण-दोष के आधार पर किया जा रहा है।

3- निगरानी पत्रावली का अनुशीलन किया गया। निगरानी पत्रावली के अवलोकन से विदित होता है कि अवर न्यायालय के समक्ष प्रचलित धारा-229 बी ज०वि० अधिनियम के वाद में निगरानीकर्तागण अनिल कुमार आदि द्वारा प्रार्थना पत्र दिनांक 31.07.2023/03.08.2023 बावत अन्तर्गत आदेश-7 नियम-11 जा०दी० प्रस्तुत किया, जिसमें अवर न्यायालय द्वारा पारित आदेश दिनांक 17.08.2023 के विरुद्ध इस न्यायालय में निगरानी दाखिल की गयी है। सहा०कले०प्र०श्रे०/उपजिलाधिकारी, सदर सीतापुर द्वारा पारित आदेश दिनांक 17.08.2023 के अवलोकन से विदित होता है कि "प्रतिवादी द्वारा एक प्रार्थना पत्र दिनांक 31.07.2023/03.08.2023 को प्रस्तुत किया गया। इस स्तर पर निर्णय न करके अन्तिम निर्णय के समय संज्ञान लिया जायेगा। इस आदेश की प्रति आख्या हेतु राजस्व निरीक्षक को भेजी जाये। पत्रावली वास्ते प्रतीक्षा आख्या हेतु नियत तिथि पर पेश "हो", जो कि अन्तरवर्ती प्रकृति का है। दोनों पक्षों को अपना-अपना साक्ष्य प्रस्तुत करने एवं दावे को गुण-दोष के आधार पर निर्णीत कराये जाने के संबंध में पूर्ण अवसर उपलब्ध है। ऐसी स्थिति में निगरानी पोषणीय नहीं है।

उक्त विवेचना के परिपेक्ष्य में निगरानी ग्राह्यता स्तर पर ही पोषणीय न होने के कारण निरस्त की जाती है। इस आदेश की एक प्रति अवर न्यायालय को भेजी जाये। बाद आवश्यक कार्यवाही इस न्यायालय की पत्रावली अभिलेखागार में संचित की जाये।"

6. Based upon the judgment passed by the Hon'ble Apex Court in the case of **Dahiben v. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366** and **Rajendra Bajoria v. Hemant Kumar Jalan, (2022) 12 SCC 641**, it is stated that the suit is liable to be dismissed and the opposite party No. 2 has committed

material illegality and has failed to exercise his jurisdiction in declining to dispose of the application under Order 7 Rule 11 of CPC preferred by the petitioners and as such, the revision was maintainable and in not entertaining the same, the opposite party No. 1 erred in law.

7. It is also submitted that the application under Order 7 Rule 11 of CPC can be preferred at any stage of the proceedings and if filed the same shall be disposed of by the concerned court/authority.

8. Considered the aforesaid and perused the record.

9. It appears from the record that prior to passing the order dated 17.08.2023, no notice was given to the private opposite parties and the opposite party No.1/Additional Commissioner (Judicial-I), Lucknow Division, Lucknow, dismissed the revision at the admission stage and taking note of this aspect of the case as also the law on the subject, this Court is of the view that no prejudice would be caused to the private opposite parties by the order proposed to be passed and accordingly, the issuance of notice to private opposite parties is dispensed with and the present petition is being disposed of finally at the admission stage.

10. This Court is not entering into the merits of the application under Order 7 Rule 11 of CPC and is only considering the issue of maintainability of the revision filed under Section 333 of the Act of 1950, as the opposite party No. 1/Revisional Authority has dismissed the revision being not maintainable at the admission stage, wherein, the order dated

17.08.2023 passed on the application under Order 7 Rule 11 of CPC was challenged, by which the opposite party No.2 declined to dispose of the said application.

11. Before proceeding further, it would be apt to take note of para(s) 23 and 24 of the judgment passed by the Hon'ble Apex Court in the case of **Dahiben (supra)**, wherein the law related to dealing with an application under Order 7 Rule 11 of CPC has been indicated. Para(s) 23 & 24 of the report extracted hereinunder:-

"23.1. We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:

***"11. 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 written 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-papers 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-papers, 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.”

23.2. *The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.*

23.3. *The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.*

23.4. *In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)*

“12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. *The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.*

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [*Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.7. Order 7 Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

“14. Production of document on which plaintiff sues or relies.—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this Rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”

23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]*

23.11. *The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)*

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. *In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941] .*

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.*

23.14. *The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as*

held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra* [*Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557] . The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain case* [*Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315. Followed in *Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba*, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] .

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.

24. “Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.1. In *Swamy Atmananda v. Sri Ramakrishna Tapovanam* [*Swamy Atmananda v. Sri Ramakrishna Tapovanam*, (2005) 10 SCC 51] this Court held : (SCC p. 60, para 24)

“24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

24.2. In *T. Arivandandam v. T.V. Satyapal* [*T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467] this Court held that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)

“5. ... The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing...”

24.3. Subsequently, in *ITC Ltd. v. Debts Recovery Appellate Tribunal* [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Rama Chandra Murthy v. Syed Jalal* [Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court."

12. The Hon'ble Apex Court in the case of **Saleem Bhai vs. State of Maharashtra, (2003) 1 SCC 557** observed as under:-

"A direction to file the written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court."

13. The Hon'ble Apex Court in the case of **R.K. Roja vs. U.S. Rayudu, (2016) 14 SCC 275** observed as under:-

"The procedure adopted by the court is not warranted under law. Without disposing of an application under Order VII Rule 11 of the Code of Civil Procedure, the court cannot proceed with the trial. In that view of the matter, the impugned order is only to be set aside. Ordered accordingly."

14. In the case of **R.K. Roja (Supra)**, it was held by the Hon'ble Apex Court that the application filed under Order 7

Rule 11 of CPC can be filed at any stage. The only restriction is that consideration of application for rejection should not be made on the basis of allegations made by the defendant in his written statement or on the basis of the allegations in application for rejection of plaint, the Court has to consider only plaint as a whole and in case entire plaint comes under situations covered under Order 7 Rule 11(a) to (f) of CPC, the same has to be rejected. It is further held that without disposing of an application filed under Order 7 Rule 11 of CPC the court could not proceed with the trial. Relevant para(s) of the aforesaid judgment namely para Nos. 4 and 5 are reproduced below:-

"4. We are afraid that the stand taken by the High Court in the impugned order cannot be appreciated. An application under Order VII Rule 11 of the CPC can be filed at any stage, as held by this Court in Sopan Sukhdeo Sable v. Assistant Charity Commissioner, (2004) 3 SCC 137...

"The trial court can exercise the power at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. ...".

The only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order VII Rule 11(a) to (f) of the CPC, the same has to be rejected.

5. Once an application is filed under Order VII Rule 11 of the CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (Election Petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement. In case, the application is rejected, the defendant is entitled to

file his written statement thereafter (See Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557. But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court. To quote relevant portion from paragraph-20 of Sopan Sukhdeo Sable case (supra):

“20. ... Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. ...”

15. It is settled law that if a plaint is rejected by an order passed on an application under Order 7 Rule 11 of CPC, an appeal would lie. It is for the reason that if the plaint is rejected then, it would amount to dismissal of the suit amounting to 'decree'. Reference can be made to the Full Bench judgment passed by the High Court of Calcutta in the case of **Deputy Director, Employees' State Insurance Corporation vs. Ward Memorial Church School and Another; 2023 SCC OnLine Cal 2914**, wherein, the issue was "whether the remedy lies by filing Second Appeal, if the Revisional Court reverses the order of the Trial Court refusing to reject the plaint, as a corollary effect the plaint is rejected in view of the definition of 'decree' given under Section 2(2) of the Code" and Full Bench considered the relevant provisions of CPC and pronouncements on the issue and as per observations made in this judgment the appeal would lie against an Order rejecting the plaint on an application under Order 7 Rule 11 of CPC and petition under

Article 227 of the Constitution of India, would lie if the revisional Court reverse the order of trial Court refusing to reject the plaint.

16. On the aforesaid aspect, this Court in the case of **Om Prakash Agarwal vs. Lacchi Ram and Ors.; 2021 SCC OnLine All 245**; observed as under:-

17. Against the order impugned by which an application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure was dismissed a remedy is available to the petitioner to approach the appellate/revisional forum. As per Section 96 of the CPC, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court. Therefore, unless the order rejecting an application filed under Order 7 Rule 11 CPC is held to be a decree, an appeal will not lie under Section 96 of the CPC. Order XLIII Rule 1 of the CPC provides for appeals from orders. As per Order XLIII of the CPC, an appeal is not provided for as against an order allowing or dismissing an application filed under Order 7 Rule 11 of the Code of Civil Procedure. Section 2(2) of the CPC reads as follows:—

“2. Definitions. -.....

(2) “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.

Explanation. - A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.”

18. A reading of the aforesaid provision makes it clear that an order rejecting a plaint shall be deemed to be a decree, but it has not been provided in the said section that an order dismissing an application to reject a plaint is deemed to be a decree. The word "deemed" is commonly used for creating a statutory fiction for extending the meaning to a subject-matter which it does not specifically designate.

19. In the case of CIT v. Bombay Trust Corporation reported in [AIR 1930 PC 54](#), it is stated that when a person is "deemed to be" something, the only meaning possible is that whereas he is not in reality that something, the Act of Parliament or the Legislature requires him to be treated as if he were.". An adjudication not fulfilling the requisites of Clause 2 of Section 2 of the Code cannot be said to be a "decree". By a legal fiction, however, certain orders and determinations are deemed to be "decree" within the meaning of Section 2(2). When a statutory fiction is created by a Legislature, it cannot be ignored. The effect of such legal fiction is that a position which otherwise is not present, it is deemed to be present under the specified circumstances. As stated above, Section 2(2) of the Code specifically provides that rejection of a plaint shall be deemed to be a decree, but the Legislature has consciously not included the order dismissing an application for rejection of plaint filed under Order 7 Rule 11 of the CPC within the deeming provision and therefore, it is clear that an order seeking rejection of the plaint cannot be deemed to be a decree within the meaning of Section 2(2) of the CPC. When an order cannot be deemed to be a decree under Section 2(2) of the Code, though the order decides an important aspect of the trial affecting the very valuable right of the defendant, it cannot be held that an appeal will lie against such an order, especially when no appeal is provided against such an order under Order 43 CPC."

17. In view of the issue involved in the present case, before proceeding further, this Court finds it appropriate to refer Section(s) 331 and 333 of the Act of 1950, under which, the order dated 30.10.2023 dismissing the revision was passed. Section(s) 331 and 333 of the Act of 1950 read as under:-

"331. Cognizance of soils, etc. under this Act.

(1) Except as provided by or under this Act no court other than a court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application, or proceedings mentioned in Column 3 thereof [,] [or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application :]

[Provided that where a declaration has been made under Section 143 in respect or any holding or part thereof, the provisions of Schedule II insofar as they relate to suits, applications or proceedings under Chapter VIII shall not apply to such holding or part thereof.]

[Explanation. - If the cause of action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical to that which the revenue court would have granted.]

[(1-A) Notwithstanding anything in sub-section (i), an objection, that a court mentioned in Column 4 of Schedule II, or, as the case may be, a civil court, which had no jurisdiction with respect to the suit, application or, proceeding, exercised jurisdiction with respect thereto shall not be entertained by any appellate or revisional court unless the objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.]

(2) Except as hereinafter provided no appeal shall lie from an order or [decree] passed under any of the proceedings mentioned in Column 3 of the Schedule aforesaid:

[(3) An appeal shall lie from any decree or from an order passed under Section 47 or an order of the nature mentioned in Section 104 of the Code of Civil Procedure, 1908 (V of 1908) or in Order 43, Rule 1 of the First Schedule to that Code passed by a court mentioned in Column No. 4 of Schedule II to this Act in proceedings mentioned in Column 3 thereof to the court or authority mentioned in Column No. 5 thereof.]

(4) A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or

decree, passed in an appeal under sub-section (3), to the authority, if any, mentioned against it in Column 6 of the Schedule aforesaid.

[333. Power to call for cases. - (1) The Board or the Commissioner or the Additional Commissioner may call for the record of any suit or proceeding [other than proceeding under sub-section (4-A) of Section 198] decided by any court subordinate to him in which appeal lies or where an appeal lies but has not been preferred, for the purpose of satisfying himself as to the legality or propriety of any order passed in such suit or proceeding and if such subordinate court appears to have;

(a) exercised a jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction so vested, or

(c) acted in the exercise of jurisdiction illegally or with material irregularity;

the Board or the Commissioner or the Additional Commissioner, as the case may be, may pass such order in the case as he thinks fit.

(2) If an application under this section has been moved by any person either to the Board or to the Commissioner or to the Additional Commissioner, no further application by the same person shall be entertained by any other of them.]"

18. It appears from Section 333 of the Act of 1950, quoted above, that the same contains expression "legality or propriety of the order passed or proceeding."

19. In the judgment dated 15.02.2023 passed in **Writ- B No. 778 of 2022 (Jagdish Prasad vs. State Of U.P. Thru. The Secy. Revenue Civil Sectt. Lko. And Others)**, the expression "legality or propriety of any order passed in such suit or proceeding", which also finds place in Section 333 of the Act of 1950, was considered by this Court while dealing with the issue of maintainability of revision under Section 219 of U.P. Land Revenue Act, 1901 (in short "Act of 1901") in the context of challenging an order passed on an application seeking

amendment in pleadings. Section 219 of the Act of 1901 provides remedy of revision, which reads as under:-

"219. Revision. - (1) The Board or the Commissioner or the Additional Commissioner or the Collector or the Record Officer, or the Settlement Officer, may call for the record of any case decided or proceeding held by any revenue Court subordinate to him in which no appeal lies or where an appeal lies but has not been preferred, for the purpose of satisfying himself as to the legality or propriety of the order passed or proceeding held and if such subordinate revenue Court appears to have -

(a) exercised a jurisdiction not vested in it bylaw, or

(b) failed to exercise a jurisdiction so vested, or

(c) acted in the exercise of jurisdiction illegally or with material irregularity,

The Board or the Commissioner or the Additional Commissioner or the Collector or the Record Officer, or the Settlement Officer, as the case may be, pass such order in the case as he thinks fit.

(2) If an application under this section has been moved by any person either to the Board, or to the Commissioner, or to the Additional Commissioner, or the Collector or to the Record Officer or to the Settlement Officer, no further application by the same person shall be entertained by any other of them."

20. In the case of **Jagdish Prasad (supra)**, this Court after taking note of the law on the issue particularly the observation made by the Five Judge Bench of this Court in the case of **Rama Shanker Tiwari vs. Mahadeo; 1967 SCC OnLine All 210** and the Hon'ble Apex Court in the case of **Shiv Shakti Coop. Housing Society vs. Swaraj Developers; (2003) 6 SCC 659** observed as under:-

"12. From the aforesaid observation(s) of the Co-ordinate Bench of this Court, it is apparent that the order allowing or rejecting the application seeking amendment would come within the purview of expression "case decided", if the amendment sought

has or is likely to have direct bearing on the rights and obligations of the parties and affects or is likely to affect the jurisdiction of the Court, even if an order is passed under the proceedings initiated under the Act of 1901. The expression "case decided" finds place in Section 219 of the Act of 1901. As such, revision against an order passed on application seeking amendment would be maintainable.

13. Moreover the expression "legality or propriety of the order passed or proceeding held" in Section 219 of the Act of 1901, empowers the revisional authority to consider the legality or propriety of an order passed by the revenue court subordinate to him if the same is allowed to stand, results in failure of justice or causes irreparable injury to the party against whom it is made. Further, if an order passed by subordinate revenue court on any application is allowed to stand affecting the rights of the parties, it would cause failure of justice or cause irreparable injury to the party against whom it is made, therefore, if the said condition is present, the revision against any order passed by the subordinate revenue court would be maintainable under Section 219 of the Act of 1901. As per Section 219 of the Act of 1901, if the subordinate revenue court exceeds its jurisdiction, or exercise its jurisdiction illegally or with material irregularity, the revision would be maintainable."

21. This Court considered the issue of maintainability of revision under Section 210 of the U.P. Revenue Code, 2006 (in short "Code of 2006") in the judgment dated 03.04.2023 passed in **Writ- C No. 2505 of 2023 (Balmiki Pandey And Others vs. State Of U.P. Thru. Secy. Revenue Deptt. Lko. And Others)**, wherein, a challenge was made to the order passed by the revisional authority in revision filed under Section 210 of the Code of 2006, whereby, the revisional authority dismissed the revision, which was filed challenging the order passed on an application under Order 7 Rule 11 of CPC, by which the said application was rejected after observing that the order rejecting

the application under Order 7 Rule 11 CPC is an interlocutory order, as such, the revision is not maintainable.

22. In the aforesaid judgment, this Court considered Section 210 of the Code of 2006, which contains the expression "legality of propriety of any order passed in such suit or proceeding" and the judgment passed in the case of **Jagdish Prasad (supra)**, wherein, this Court considered Section 219 of the Act of 1901, which contains the expression "legality or propriety of the order passed or proceeding held" and after due consideration held that the revision would lie against the order rejecting the application preferred under Order 7 Rule 11 of CPC. Section 210 of the Code of 2006 reads as under:-

"210. Power to call for the records. -(1) The Board or the Commissioner may call for the record of any suit or proceeding decided by any sub-ordinate Revenue Court in which no appeal lies, for the purpose of satisfying itself or himself as to the legality or propriety of any order passed in such suit or proceeding; and if such subordinate Court appears to have-

(a) exercised a jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction of vested; or

(c) acted in the exercise of such jurisdiction illegally or with material irregularity;

the Board, or the Commissioner, as the case may be, may pass such order in the case as it or he thinks fit.

(2) If an application under this section has been moved by any person either to the Board or to the Commissioner, no further application by the same person shall be entertained by the other of them.

Explanation. - For the removal of doubt it is, hereby, declared that when an application under this section has been moved either to the Board or to the Commissioner, the application shall not be permitted

to be withdrawn for the purpose of filing the application against the same order to the other of them.

(3) No application under this section shall be entertained after the expiry of a period of sixty days from the date of the order sought to be revised or from the date of commencement of this Code, whichever is later."

23. At this stage, it would be appropriate to take note of the word/expression "proceeding", which finds place in above referred provisions. This Court considered word/expression "proceeding" in the judgment passed in the case of **Paltoo Ram Yadav v. State of U.P.; 2023 SCC OnLine All 646**, wherein, the challenge was made to the order of remand in writ jurisdiction and this Court after taking note of Section(s) 116, 207 and 210 of the Code of 2006 and the word/expression "proceeding", in the facts of the case, held that revision would lie and thereafter dismissed the petition challenging the order of remand passed by the appellate authority in exercise of power under Section 207 of the Code of 2006. Relevant para(s) of the judgment passed in the case of **Paltoo Ram Yadav (supra)** read as under:-

"20. In order to appreciate the rival contentions, the relevant statutory provisions would be required to be adverted to, which are as follows:

"Section 116. Suit for division of holding.-(1) A Bhumidhar may sue for the division of the holding of which he is a co-sharer.

[(2) In every such suit, the Court may also divide the trees, wells and other improvements existing on such holding but where such division is not possible, the trees, wells and other improvements aforesaid and valuation thereof shall be divided and adjusted in the manner prescribed.]

(3) One suit may be instituted for the division of more holdings than one where all the parties to the suit other than the Gram Panchayat are, jointly interested in each of the holdings.

(4) To every suit under this section, the Gram Panchayat concerned shall be made a party.

Section 207. First appeal.-(1) Any party aggrieved by a final order or decree passed in any suit, application or proceeding specified in Column 2 of the Third Schedule, may prefer a first appeal to the Court or officer specified against it in Column 4, where such order or decree was passed by a Court or officer specified against it in Column 3 thereof.

(2) A first appeal shall also lie against an order of the nature specified-

(a) in Section [47](#) of the [Civil Procedure Code, 1908](#); or

(b) in Section 104 of the said Code; or

(c) in Order XLIII, Rule 1 of the First Schedule to the said Code.

(3) The period of limitation for filing a first appeal under this section shall be thirty days from the date of the order or decree appealed against.

Section 209. Bar against certain appeals.- Notwithstanding anything contained in Sections 207 and 208, no appeal shall lie against any order or decree-

(a) made under Chapter XI of this Code;

(b) granting or rejecting an application for condonation of delay under Section [5](#) of the [Limitation Act, 1963](#);

(c) rejecting an application for revision;

(d) granting or rejection an application for stay;

(e) remanding the case to any subordinate Court;

(f) where such order or decree is of an interim nature;

(g) passed by Court or officer with the consent of parties; or

(h) where order has been passed ex-parte or by default:

Provided that any party aggrieved by order passed exparte or by default, may move application for setting aside such order within a period of thirty days from the date of the order:

Provided further that no such order shall be reversed or altered without previously summoning the party in whose favour order has been passed to appear and be heard in support of it.

Section 210. Power to call for the records.-(1) *The Board or the Commissioner may call for the record of any suit or proceeding decided by any subordinate Revenue Court in which no appeal lies, for the purpose of satisfying itself or himself as to the legality or propriety of any order passed in such suit or proceeding; and if such subordinate court appears to have-*

(a) exercised a jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction of vested; or

(c) acted in the exercise of such jurisdiction illegally or with material irregularity;

the Board, or the Commissioner, as the case may be may pass such order in the case as it or he thinks fit.

(2) If an application under this section has been moved by any person either to the Board or to the Commissioner, no further application by the same person shall be entertained by the other of them.

Explanation.—For the removal of doubt it is, hereby, declared that when an application under this section has been moved either to the Board or to the Commissioner, the application shall not be permitted to be withdrawn for the purpose of filing the application against the same order to the other of them.

(3) No application under this section shall be entertained after the expiry of a period of sixty days from the date of the order sought to be revised or from the date of commencement of this Code, whichever is later.”

21. For ease of reference, the relevant rules under the U.P. Revenue Code Rules, 2016, corresponding to the statutory provisions relating to division of holdings, are also being extracted below:

“Rule 108. Suit for division for several holdings (Section 116).- Where the suit relates to the division of more than one holding, the particulars specified in Rule 107 shall be mentioned in the plaint in respect of all such holdings.

Rule 109. Preliminary and Final decrees (Section 117).- (1) If the plaint referred to in Rule 107 or Rule 108 is in order, it shall be registered as a suit and the defendants shall be called upon to file their written statements. The suit shall then be decided according to the provisions of the [Civil Procedure Code, 1908](#).

(2) Before making a division the Court shall-

(a) determine separately the share of the plaintiff and each of the other co-tenure holders;

(b) record which, if any, of the co-tenure holders wish to remain joint; and

(c) make valuation of the holding (or holdings) in accordance with the circle rate fixed by the Collector applicable to each plot in the holding.

(3) If the suit is decreed, the Court shall pass a preliminary decree declaring the share of the plaintiff.

(4) After the preparation of preliminary decree the Sub Divisional Officer shall get the Kurra prepared through the Lekhpal.

(5) The Lekhpal shall submit the Kurra report within a period of one month from the date of receiving the order in this regard and at the time of preparation of Kurra he shall observe the following principles-

(a) the plot or plots shall be allotted to each party in proportionate to his share in the holding;

(b) the portion allotted to each party shall be as compact as possible;

(c) as far as possible no party shall be given all the inferior or all the superior classes of land;

(d) as far as possible existing fields shall not be split up;

(e) Plots which are in the separate possession of a tenure holder shall, as far as possible, be allotted to such tenure holder if they are not in access of his share;

(f) If the plot or any part thereof is of commercial value or is adjacent to road, abadi or any other land of commercial value, the same shall be allotted to each tenure holder proportionately and in the case of second condition the same shall be allotted proportionately adjacent to road, abadi or other land of commercial value; and

(g) If the co-tenure holders are in separate possession on the basis of mutual consent or family settlement, the Kurra shall, as far as possible, be fixed accordingly.

(6) When the report regarding Kurra is submitted by the Lekhpal, the objection shall be invited thereon and thereafter the appropriate order shall be passed by the Sub-Divisional Officer after affording opportunity of hearing to the parties and considering the objection, if any, filed against the report submitted by the Lekhpal.

(7) If the report and Kurra is confirmed by the Sub-Divisional Officer, the final decree shall follow it.

(8) At the stage of the final decree, the Court shall:

(a) Separate the share of the plaintiff from that of the defendant by metes and bounds.

(b) Place on record a map showing in different colours the properties given to plaintiff as distinct from those given to the defendant.

(c) Apportion the land revenue payable by the parties.

(d) Direct the record of rights and map to be corrected accordingly.

(9) If, for adjusting the equities between the parties, payment of compensation regarding trees, wells or other improvements becomes necessary, the Revenue Court concerned may also pass necessary orders at the stage of final decree.

(10) The Sub-Divisional Officer shall make an endeavour to decide the suit within the period of six months and if the suit is not decided within such period, the reason shall be recorded.”

22. *The facts of the case regarding which there appears to be no dispute between the contesting parties is that one-half of the undivided share of a plot of land jointly held by two brothers, was purchased by respondent no. 6 by means of a registered sale-deed executed by one of the co-owners. The remaining half of the share was purchased by the petitioner through another sale deed by the other co-sharer. The petitioners as well as the contesting respondents got their names mutated in the revenue records as co-sharers of the plot in question.*

23. *Thereafter, the petitioner preferred a suit under Section 116 of the Revenue Code for division of the holding in the Court of the Sub-Divisional Officer. The private respondents, though parties in the suit did not file their written statements, and a preliminary decree was made in terms of the order dated 23.01.2019, and thereafter, the suit was finally decreed by an order dated 26.10.2019. A restoration application dated 13.12.2019, filed by respondent no. 6 seeking recall of the aforestated order, was rejected by the Sub-Divisional Magistrate by an order dated 27.12.2021. The Court while rejecting the restoration application, also made certain observations on merits.*

24. *The aforestated final order dated 26.10.2019, in terms of which the suit had been decreed, was subjected to an appeal filed by respondent no. 6 under Section 207 of the Revenue Code. An appeal against the said order was also filed by respondent no. 5. The respondent no. 6 also preferred an appeal under Section 207 of the Revenue Code against the order dated 27.12.2021 in terms of which the restoration application filed by the said respondent had been rejected.*

25. *The three appeals were heard and decided by a common order dated 18.11.2022 passed by the Commissioner, Azamgarh. The orders dated 26.10.2019 and 27.12.2019 were set aside and the case was remanded to the Court below to grant an opportunity of hearing to the parties concerned to decide the case afresh on merits.*

26. *It is against the aforesaid order dated 18.11.2022 passed by the Commissioner that the present petition has been filed, wherein an objection has been raised on behalf of the private respondents with regard to entertainability of the petition by pointing out that against the order passed in appeal, the petitioner would have an efficacious statutory remedy of filing a revision.*

27. *The argument sought to be raised on behalf of the petitioner to refute the aforesaid preliminary objection is that the remand order is without any observation on merits, and therefore, the same is a ‘remand simpliciter’, and the order being of an interlocutory nature, a revision thereagainst would not be maintainable.*

28. *In order to test the aforesaid argument the order passed in appeal would be required to be examined. The order passed by the Commissioner while exercising appellate powers takes notice of the fact that the court below has rejected the restoration application filed by respondent no. 6 by making observations on merits. The appellate court has also taken notice of the fact that the registered sale deed which was available on the record of the case was indicative of the fact that the land in question was not the ancestral property of the parties, but the same had been purchased by both the parties from the original tenure holder by means of registered sale deeds, showing separate boundaries. The appellate court, after discussing the findings returned by the court below, has held the same to be legally unsustainable. Further, since the court below had decreed the suit ex parte without granting opportunity of hearing and adducing evidence to the parties, the case has been remanded with a direction to the court below to pass a fresh order after giving due opportunity of hearing to the parties concerned. The remand order passed by the Commissioner, thus, containing a detailed consideration on merits of the case and thereafter recording a conclusion that the findings returned by the court below, were legally unsustainable, cannot be held to be ‘remand simpliciter’.*

29. *The decision in the case of Ram Bhajan (supra), which is sought to be relied upon on behalf of the petitioner, thus, would not be applicable in the facts of the case. Moreover, the said judgment cannot be held to be good law in light of the subsequent Division Bench decision of this Court in Deena*

Nath (supra), wherein while deciding the reference on the point, it was held that an order passed in appeal under Section 11 of the U.P. Consolidation of Holdings Act, 1953, by the Settlement Officer (Consolidation) deciding the appeal finally by setting aside the order of the Consolidation Officer and remanding the matter would not be an interlocutory order and the revision against the said order would not be barred.

30. The order of remand, in the present case, in terms of which the case has been remanded after making certain observations on the merits of the case, and issuing directions to the court below to grant the parties opportunity of hearing and of adducing evidence, cannot be held to be a ‘remand simpliciter’ or an order of an ‘interlocutory nature’. This is more so since the order passed by the Commissioner has a finality attached to it in the sense that it has the effect of disposing of the appeal.

31. The order passed by the Commissioner while exercising powers of the first Appellate Court under Section 207 of the Revenue Code, having resulted in a remand, the bar contained under Clause (e) of Section 209 would be attracted and the remedy of a further statutory appeal would not be available.

32. The bar under Section 209 against filing of an appeal, having been attracted, it would be required to be seen as to whether the revisional jurisdiction under Section 210, can be invoked against the order passed by the Commissioner in appeal. The language of Section 210 indicates that the powers of revision may be exercised in respect of any order passed in a suit or ‘proceeding decided’.

33. The word ‘proceeding’ though not defined under the Revenue Code, when applied to a suit, is generally used, to express the separate steps taken in the course of a suit.

34. The word ‘proceeding’ has been defined in the Webster’s Third International Dictionary⁶ as meaning a particular step or series of steps adopted for doing or accomplishing something.

35. Black’s Law Dictionary⁷ defines ‘proceedings’ as the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment.

36. *Shorter Oxford English Dictionary*⁸ defines the word ‘proceeding’ as ‘the fact or manner of taking legal action; a legal action; an act done by authority of a court of law; a step taken by a party in a case’.

37. *The Law of Pleading Under the Codes of Civil Procedure*⁹ describes ‘proceeding’ in the following terms:

“‘Proceeding’ is a word much used to express the business done in Courts. A proceeding in court is an act done by the authority or direction of the court, express or implied. It is more comprehensive than the word ‘action,’ but it may include in its general sense all the steps taken or measures adopted in the prosecution or defence of an action, including the pleadings and judgment. As applied to actions, the term ‘proceeding’ may include- (1) the institution of the action; (2) the appearance of the defendant; (3) all ancillary or provisional steps, such as arrest, attachment of property, garnishment, injunction, writ of ne exeat; (4) the pleadings; (5) the taking of testimony before trial; (6) all motions made in direction; (7) the trial; (8) the judgment; (9) the execution; (10) proceedings supplementary to execution, in court practice; (11) the taking of the appeal or writ of error; (12) the remittitur, or sending back of the record to the lower Court from the appellate or reviewing Court; (13) the enforcement of the judgment, or a new trial, as may be directed by the Court of last resort.”

38. The word ‘proceeding’ has been described in *Words and Phrases, Permanent Edition*¹⁰, as a comprehensive term meaning a prescribed course of action for enforcing a legal right and hence embracing the requisite steps by which a judicial action is invoked.

39. The foregoing discussion is indicative that the word ‘proceeding’ ordinarily relates to the modes in which judicial transactions are conducted. The word has to be understood as a comprehensive term and would generally mean a prescribed course of action for enforcing a legal right. It would also be held to embrace the requisite steps by which a judicial action is invoked and would include the form and the manner of conducting judicial business before a Court of law. The word ‘proceeding’ would thus be seen to be wider than the word ‘case’.

40. *Section 210 of the Revenue Code which provides the remedy of a revision empowers the Board or the Commissioner to call for the record of ‘any suit or proceeding decided’ by any subordinate Revenue Court in which no appeal lies for the purpose of satisfying itself as to the legality or propriety of any order passed in suit or proceeding.*

41. *A plain reading of Section 210 of the Revenue Code indicates that a revision would be entertainable on the cumulative satisfaction of the following circumstances:*

I. (i) impugned order amounts to a ‘suit or proceeding decided’;

(ii) such an order must have been passed by any Revenue Court subordinate to the Board of Revenue or Commissioner;

(iii) such an order must not be appealable.

II. there must be an assertion with regard to jurisdictional error by the subordinate revenue court, i.e. to say:

(i) exercise of jurisdiction not vested in it by law, or

(ii) failure to exercise a jurisdiction so vested, or

(iii) acting in the exercise of such jurisdiction illegally or with material irregularity.

42. *The section comprises two parts, the **first** prescribes the condition under which jurisdiction of the Board or the Commissioner arises, i.e. there is a ‘suit or proceeding decided’ by a subordinate Revenue Court in which no appeal lies, the **second** sets out the circumstances in which the jurisdiction may be exercised.*

43. *The question regarding maintainability of the revision by the Board or the Commissioner would be distinct and independent of the question as to when the Board or the Commissioner would, in exercise of revisional jurisdiction, interfere with the orders passed by the courts subordinate thereto. The former concerns the power to call for records of courts subordinate to it by the Board or the Commissioner and relates to existence of condition precedent on the basis of which such exercise of jurisdiction under Section 210*

depends. The latter relates to spelling out the circumstances under which the jurisdiction under Section 210 may be exercised.

44. *The **maintainability of a revision** would therefore depend on **two conditions**; **first**, that it must relate to a suit or proceeding decided by any Revenue Court subordinate to the Board or Commissioner and **second**, it must be in connection with any ‘suit or proceeding decided’, against which no appeal lies. Once these twin conditions are satisfied, it cannot be said that the revision would not be maintainable. The question, whether in a given case, the Court chooses to exercise the jurisdiction to interfere with the orders passed by the subordinate Revenue Court in a suit or proceeding decided would depend upon the facts and circumstances indicative of jurisdictional error in a particular case.*

45. *It is well settled that an appeal is a continuation of the suit. Whenever an appeal lies against any decree and when an appeal is filed, the finality of the decree of the trial court ceases. Thereafter, it is the judgment and decree of the appellate court which would replace the decree and judgment of the trial court.*

46. *It can therefore be said that the word ‘proceeding’ would also include the ‘proceedings’ at the appellate stage. This would be more so for the reason that the pursuit of a legal remedy, suit, appeal or second appeal are steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.*

47. *The meaning to be attributed to the word ‘proceeding’ thus would depend upon the scope of the enactment wherein the expression is used and with reference to the particular context wherein it occurs. In general sense, the word ‘proceeding’ is to be held to mean the form and manner of conducting judicial business before a court. It can be seen as a stage in the journey of a litigation - a step in the ladder of the judicial process.*

48. *The word ‘proceeding’, in the expression ‘proceeding decided’ occurring in Section 210 of the Revenue Code would therefore have to be construed as being wide enough to comprehend within its ambit a proceeding initiated pursuant to an appellate order also. It would, in fact, include any suit, appeal or application. The expression ‘proceeding’ with reference*

to a party vis-a-vis a court of law would have to be held to include each and every step or action taken before or during the course of the progress of the suit, including the appellate stage.

49. The condition precedent in order to invoke the revisional jurisdiction under Section 210 has been seen to include within its ambit 'proceeding decided' other than a 'suit decided'. It cannot be restricted to the entirety of proceedings in the journey of a suit. To interpret 'proceeding decided' as entire proceedings and not a part of a proceeding would amount to restricting the exercise of revisional jurisdiction which is not as contemplated under Section 210.

50. The revisional court has the power to rectify an order of a subordinate revenue court at any stage of the suit or proceedings, even if, the order does not finally dispose of the suit or the proceeding. The expression 'proceeding decided' would include a part of a proceeding and an interlocutory order directly affecting the rights and obligation of parties would also have to be held to be included within its scope.

51. The order passed by the Commissioner having decided the appeal finally, the same would have to be held to be within the ambit of the expression 'proceeding decided', occurring in Section 210 of the U.P. Revenue Code, and therefore the remedy of a revision there against cannot be said to be excluded."

24. In regard to issue involved in this case, a reference can also be made to the judgment passed by the Full Bench of this Court in the case of **Kiran Bala Srivastava vs. Jai Prakash Srivastava; reported MANU/UP/2771/2004**. The question before the Full Bench of this Court is as to "Whether an appeal under Section 19 of the Family Court Act, 1984 would lie against an order passed under Section 24 of Hindu Marriage Act for grant of interim maintenance". While considering the question, referred above, the Full Bench of this Court considered the relevant provision(s)/expression(s) of the Code of Civil Procedure, 1908, i.e. 'Decree', 'Judgment' and 'Order' as indicated under Section(s) 2(2), (9) and (14) and also Section

19 of Family Court Act, 1984 and the Section 28 of Hindu Marriage Act, 1955 as also various pronouncements related to expression(s) namely 'Final Judgment', 'Preliminary Judgment', 'Intermediary Judgment', 'Interlocutory Judgment', 'Interlocutory Order' and 'Order'. Following can be summarized from the observations made by the Full Bench of this Court in the judgment, referred above:-

(i) An 'order', which affects the valuable rights of party, would be a 'final order'.

(ii) An 'order' which decided the matter of moment or which affected valuable rights of the party or which tended to work serious injustice to the party concerned would fall within the expression 'judgment'.

(iii) An 'order' or 'interlocutory order' possessing the characteristics and trappings of finality or affecting valuable rights of the party or deciding the important aspect of the case/trial in main or ancillary proceeding will be 'judgment'.

(iv) Any 'order', which substantially affects the rights of the party or decides certain rights of the parties cannot be said to be an 'interlocutory order'.

25. Considered the law enunciated above and the relevant provisions i.e. Section(s) 331 including Sub-Section 4 and 333 of the Act of 1950 and Section(s) 207 and 210 of the Code of 2006 and upon due consideration, this Court is of the view that:-

(i) The remedy under Order 7 Rule 11 of CPC is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. [See Para 23.2 of the judgment passed in the case of **Dahiben (Supra)**]

(ii) An application under Order 7 Rule 11 of CPC can be preferred at any stage of the proceedings and the same shall be disposed of by the authority/court concerned before proceeding further with the trial/case.

(iii) If a plaint is rejected by an order passed on an application under Order 7 Rule 11 of CPC, an appeal would lie. It is for the reason that if plaint is rejected then, it would amount to dismissal of suit amounting to 'decree' and Section 331(4) of the Act of 1950 and Section 207 of the Code of 2006, provides that an appeal shall lie challenging the 'decree' and as per these provisions, an appeal shall also lie challenging an order of nature specified therein.

(iv) The remedy of appeal is not available against the order rejecting an application under Order 7 Rule 11 of CPC or an order declining to dispose of an application under Order 7 Rule 11 of CPC. It is for the reason that Order 41 Rule 1 of CPC referred in Section 331(4) of the Act of 1950 and Section 207 of the Code of 2006 provides remedy of appeal against an order passed under Rule 10 of Order 7 of CPC.

(v) Non-disposal of an application under Order 7 Rule 11 of CPC amounts to rejection of prayer to reject the plaint without going into the merits of the case. It is for the reason that a frivolous/vexatious meaningless litigation/case should be weeded out at the very threshold.

(vi) Without disposing of an application under Order 7 Rule 11 of CPC, the court or authority, as the case may be, cannot proceed with the trial.

(vii) In declining to dispose of the application under Order 7 Rule 11 of CPC, the court/authority would fail to exercise the jurisdiction so vested in it and would commit illegality and material irregularity.

(viii) An order rejecting an application under Order 7 Rule 11 of CPC or an order declining to dispose of the application under Order 7 Rule 11 of CPC affects valuable right (right to get the plaint/case rejected without going into the merits of the case) of the concerned defendant/opposite party and being so, the same cannot be termed as an 'interlocutory order'. Reference can be made to the observations made by the Full Bench of this Court in the case of **Kiran Bala Srivastava (supra)**.

(ix) An order rejecting an application under Order 7 Rule 11 of CPC or an order declining to dispose of an application under Order 7 Rule 11 of CPC, would be revisable. It is for the following reason(s):-

(a) An appeal would not lie against the order(s) indicated above.

(b) The remedy under Order 7 Rule 11 of CPC is an independent and special remedy and being so the order(s) indicated above, would be covered under the expression "proceeding" mentioned in above referred provision(s) i.e. Section 333 of the Act of 1950 and Section 210 of the Code of 2006;

(c) The revisional authority/court is empowered to consider the illegality or propriety of an order passed by the authority/court subordinate to it if the same is allowed to stand, results in failure of justice or causes irreparable injury to the party against whom it is made;

(d) The revision against an order passed by the subordinate court/authority, would be maintainable if the subordinate court/authority exceeds its jurisdiction or exercise its jurisdiction illegally or with material irregularity.

26. Having observed as above, this Court finds that in declining to dispose of an application under Order 7 Rule 11 of CPC preferred by the petitioners, the opposite party No.1 failed to exercise its jurisdiction so vested in it and being so committed illegality and material irregularity.

27. Thus, the revision would be maintainable and being so, interference in the impugned order dated 30.10.2023 is required as by the impugned order dated 30.10.2023 the

opposite party No.1 dismissed the revision at admission stage being not maintainable.

28. For the foregoing reasons, the petition is partly **allowed**. The impugned order dated 30.10.2023 is hereby set aside. The matter is remanded back to the opposite party No.1 to decide the same afresh expeditiously, as per law, by means of reasoned and speaking order.

Order Date :- 16.1.2024

Vinay/-