

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8383 OF 2013

Tukaram Dhuraji Jagtap .. Petitioner
VS.
Mrs. Varsharani Devendra Ballal & Ors. .. Respondents

Mr. Uday P. Warunjikar with Mr. Bhushan Deshmukh for Petitioner.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 30 MARCH 2015

P.C. :-

1] This petition questions the order dated 29 April 2013 made by the Additional Judge, Small Causes Court and Joint Civil Judge, Senior Division, Pune, rejecting the petitioner's claim under Order 7 Rule 11 of the CPC.

2] The operative portion of the impugned order, reads thus:

“ ORDER

1] The suit of the plaintiffs stands rejected under Order 7 Rule 11 of the Code of Civil Procedure with costs.

2] Decree be drawn accordingly.”

3] Section 2(2) of the CPC defines decree in the following terms :

“”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.”

From the aforesaid, it is clear that the term 'decree' shall be deemed to include the rejection of a plaint.

4] The impugned order, which rejects the plaint by resort to Order 7 Rule 11 of the CPC is therefore deemed to be a decree within meaning assigned to this term under Section 2(2) of the CPC. Accordingly, the petitioner shall have to file a substantive appeal questioning the impugned order and the decree that may have been drawn in pursuance thereof. There is no question of entertaining the present writ petition, in such circumstances.

5] This Court, in its order dated 6 January 2014, after adverting to the provisions contained in Order 43 Rule 1-A had issued Rule in the matter. However, the observations at the stage of issuance of Rule are *prima facie*. Further the provisions contained in Order 43 Rule 1-A of the CPC, indeed do not provide for an appeal from order rejecting a plaint under Order 7 Rule 11 of the CPC. The said

provisions however do not bar any substantive appeal against the decree. Further, the provisions contained in Order 43 Rule 1-A of the CPC merely provide that where any order is made under this Code against such party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced. That, not being the issue in the present case, there is no question of reference to Order 43 Rule 1-A of the CPC for deciding the issue of maintainability of the writ petition.

6] Be that as it may, there can be no doubts that the petitioner was bonafide pursuing his remedy as against the impugned order before this Court. Accordingly, although the petitioner shall have to be relegated to the remedy of the first appeal, the petitioner shall be entitled to contend that the period spent in this Court prosecuting the remedy of writ petition against the impugned order was spent bonafide. Such circumstance, shall be considered by the appeal court, in case the petitioner does prefer appeal against the impugned order within a period of six weeks from today.

7] Accordingly, the present petition is dismissed. The dismissal is not on merits but merely because the petitioner has alternate

remedy by way of instituting a substantive appeal against the impugned order and the decree that may have been made in pursuance thereof. The petitioner is granted liberty to institute the substantive appeal. If such substantive appeal is instituted within a period of six weeks from today then the appeal court to consider the circumstance that the petitioner was bonafide pursuing his remedy against the impugned order before this Court. All contentions of all parties are left open for consideration by the appeal court.

8] Petition is disposed of in the aforesaid terms. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka