

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 525 OF 2016

Himmatlal D. Sanghavi & anr. .. Petitioners
vs.
Jammu & Kashmir Bank Ltd. & ors. .. Respondents

Mr. Piyush Shah for the Petitioner.
Ms Bijal Vora i/b Clove Legal for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 19 OCTOBER 2016.

P.C. :-

1] Ms Bijal Vora, learned counsel for respondent No.1 raises a preliminary objection to the maintainability of this revision application. She submits that this revision is directed against the order dated 19 August 2016 made by the City Civil Court at Dindoshi rejecting the petitioners' plaint under Order 7 Rule 11(d) of the Code of Civil Procedure 1908 (CPC). She submits that in terms of Section 2(2) of the CPC, the expression “*decree*” is deemed to include the rejection of a plaint. She submits that as against the decree no revision would lie, but an appeal would be maintainable. She relies upon the decision of the Hon'ble Supreme Court in *S.Rajeswari v. S.N. Kulasekaran and ors.*¹, to submit that the revisional jurisdiction cannot be exercised, when, the impugned order is appealable and no appeal has been instituted by the aggrieved party.

2] The preliminary objection raise by the learned counsel for respondent No.1 is well taken and is required to be upheld.

¹ (2006) 4 SCC 412

3] Section 2 (2) of the CPC, which defines the expression “decree” reads thus:

2(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.”*

4] As against a decree, the remedy of an aggrieved party is to institute an appeal and not a revision. In *S. Rajeswari (supra)*, the Hon'ble Supreme Court, at paragraph 13, has observed thus:

“13. Learned Senior Counsel for the appellant obstructor submitted before us that the application filed under Section 151 CPC being not maintainable nothing survived for further consideration. Having regard to the fact that the executing court substantially followed the procedure laid down by Rules 98 to 100 and thereafter passed an adjudicatory order, we may hold in favour of Respondent 1 to the extent that the application though filed with the label of Section 151 CPC was in fact treated as one under Order 21 Rule 97. This, however, does not resolve the controversy before us because even if we treat the said application under Section 151 CPC as one under Order 21 Rule 97 CPC, the order passed in that proceeding must be treated as a decree against which only an appeal lay to the appellate court. Respondent 1 did not appeal to the High Court and instead preferred a revision petition under Section 115 CPC. We have no doubt that in view of the provisions of Order 21 Rule 103 CPC which provide for appeal against the order passed by the executing court in such matters, no revision could be entertained by the High Court against that order in view of the clear prohibition contained in Section 115(2) CPC, which in clear terms provides that the High Court shall not under Section 115 vary or reverse any decree or order against which an appeal lay

either to the High Court or to any other court subordinate thereto. The High Court appears to have interfered with the order of the executing court because it was under the impression that a long drawn out litigation, perhaps engineered by the judgment-debtor, would result in great injustice, and therefore, if some relief could be granted by cutting short the procedure of appeal, etc. the power under Section 115 could be exercised to do justice between the parties. In our view, the High Court could not have acted in a manner contrary to the express provision of Section 115(2) of the Code of Civil Procedure. Since an appeal was provided under Order 21 Rule 103 of the Code of Civil Procedure which treated the order passed by the executing court as a decree subject to the same conditions as to appeal against such decree, a revision petition under Section 115 CPC against such an order is not maintainable. We must, therefore, hold that the High Court exceeded its jurisdiction in entertaining a revision petition under Section 115 CPC against an order passed in proceeding under Order 21 Rule 97 CPC, even if we treat the application filed under Section 151 CPC to be an application under Order 21 Rule 97 CPC.”

5] In view of the aforesaid, this revision application is dismissed as not maintainable. However, this shall not preclude the petitioners from instituting an appeal against the impugned order. Further, in case such appeal is instituted, the petitioners shall be entitled to contend that the period spent between the institution of this revision application and its dismissal was a period spent bonafide in seeking a remedy against the impugned order.

6] This revision is accordingly dismissed. The interim order, if any, is hereby vacated. There shall be no order as to costs.

(M. S. SONAK, J.)