

THE HON'BLE SRI JUSTICE A.V. SESA SAI
CIVIL REVISION PETITION Nos.189, 192, 201
and 402 of 2016

COMMON ORDER:

Since these four revisions raise common issues, this Court deems it appropriate to dispose of these revisions by way of this common order.

Plaintiffs in O.S.Nos.302 of 2005, 20 of 2005, 50 of 2004 and 216 of 2003 on the file of the Court of Addl. Senior Civil Judge, Ongole are the petitioners in these revisions. These revisions challenge the orders passed by the Court below, rejecting the plaints.

Heard Sri V. Venkata Ramana, learned Senior Counsel, appearing the petitioners in C.R.P.Nos.189, 192 and 201 of 2016 and Smt. A. Chaya Devi, learned counsel for the petitioners in C.R.P.No.402 of 2016 and Sri V.L.N.G.K. Murthy, learned counsel for the respondents, apart from perusing the material available before this Court.

When the matters are taken up for hearing, learned counsel for the respondents has taken objection, touching the very maintainability of the revisions before this Court. In the said direction it is submitted by learned counsel that as against the orders, rejecting the plaint, regular appeal lies under Section 96 of the Code of Civil Procedure but not revisions under Section 115 of the Code of Civil Procedure. In support of the said contention, learned counsel for the respondents takes the support of the following judgments:

1. (2003) 3 Supreme Court Cases 524. (para No.6)
2. 2009 (4) ALD 655. (para No.13)
3. 2010 (6) ALD 531. (para No.7)
4. 2011 (5) ALD 522 (FB). (para No.17)

Strenuously and emphatically repelling the said objection of the learned counsel for the respondents on maintainability, the learned Senior Counsel contends that there cannot be any restriction nor absolute bar on the maintainability of the present revisions as the Court below passed the impugned orders in deviation to the settled proposition of law.

In support of the said submission learned Senior Counsel takes the support of the judgment of the Hon'ble Apex Court reported in 2015 (1) ALT 27 (SC).

In the above backdrop, now the issue which this Court is called upon to answer in these revisions in view of the above objection taken by the learned counsel for the respondents is "whether the petitioners herein can maintain the present revisions under Section 115 of the Code of Civil Procedure against the orders, rejecting the plaints".

The provision of law which is germane and relevant for the purpose of dealing with the issue for a decision in these revisions is Section 2 (2) of the Code of Civil Procedure, which reads as under:

*"(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 [3] * **
** section 144, but shall not include-."*

A reading of the above provision of law makes it quite limpid that the term decree includes an order rejecting the plaint also.

In this context it would be essential and necessary to refer to the judgment cited by the learned counsel for the petitioners and the respondents. In case of **Sameer Singh and another v. Abdul Rab and others**^[1], relied upon by the learned Senior Counsel for the petitioners, the Hon'ble Apex Court at paragraph Nos.8, 9 and 23 held as under:

“8. The aforesaid order came to be assailed before the High Court in W.P.C. No. 348 of 2011 under Article 227 of the Constitution of India. A preliminary objection was raised on behalf of the 1st respondent that an order passed under Order XXI, Rule 98 to 100 of C.P.C. is a decree as per the provisions contained under Order XXI, Rule 103 of C.P.C. and, therefore, an appeal would lie and the writ petition was not maintainable. The preliminary objection was resisted by proposing a contention that only those orders which adjudicate the dispute between the parties would be treated as decree but as in the case at hand, the Court had not decided the lis in question as it had expressed an opinion that it had no jurisdiction after having become functus officio, an appeal would not lie.

9. The learned Single Judge accepted the preliminary objection on the foundation that dispute between parties regarding jurisdiction of executing court could be determined under Order XXI, Rule 100 of C.P.C. and that when a decision had been rendered on that score it would be a deemed decree under Order XXI, Rule 103 of C.P.C. and hence, the writ petition was not maintainable. Expression of aforesaid view entailed dismissal of the writ petition. Hence, the present appeal by special leave.

... ..

23. In view of the forgoing analysis, we conclude and hold that the High Court has fallen into error by opining that the decision rendered by the executing court is a decree and, therefore, an appeal should have been filed,

and resultantly allow the appeal and set aside the impugned order. The High Court shall decide the matter as necessary under Article 227 of the Constitution of India. As a long span of time has expired we would request the High Court to dispose of the matter within a period of three months. There shall be no order as to costs.”

Coming to the judgments cited by learned counsel for the respondents - in case of **Sadhana Lodh v. National Insurance Co. Ltd., and another**^[2], the Hon'ble Apex Court at paragraph No.6 held as under:

“6. The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act (see National Insurance Co. Ltd, Chandigarh vs. Nicolletta Rohtagi and others 2002(7) SCC 456). This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 of CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of an illustration, where a trial Court in a civil suit refused to grant temporary injunction and an appeal against refusal

to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision under Section 115 C.P.C., in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State legislature has barred a remedy of filing a revision petition before the High Court under Section 115 C.P.C., no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of High Court under Article 226 of the Constitution.”

In case of **Kotapati Ramalakshmi @ Radhika v. Doneparthi Hymavathi and another**^[3], the Hon’ble Apex Court at paragraph No.13 held as under:

“13. Inasmuch as a final expression of view on certain facets of the suit emerges out of an order of rejection, remedy by way of a regular appeal is provided under CPC. This emerges from the definition of decree under Section 2(2) CPC, which includes an order of rejection of plaint. Once the order is equated to decree, the only remedy provided under CPC is the one under Section 96 CPC.”

In case of **Neela Swaroopa v. Gunda Radhika and another**^[4], the Hon’ble Apex Court at paragraph No.7 held as under:

“7. In view of the contentions advanced by learned Counsel for the parties, the primary question which is required to be considered is; in view of the relief sought in the suit by the plaintiff, whether the suit is maintainable without issuance of notice as contemplated under Section 685 of the Act. Though learned Counsel for the petitioner has relied on the judgment in the case of Devi Singh's case (supra), but, in the said case, suit was filed for injunction against the Municipality to restrain it from interfering with the plaintiffs peaceful possession and enjoyment of Bazar in the suit. As such, the whole controversy was whether the Bazar was the property of the plaintiff or not. In that context, the Hon'ble Supreme Court has held that no notice need be issued before filing

of the suit. Even in the case of Viqarunnissa Begum's case (supra), it was the case of the plaintiff that there is illegal interference with the possession of the property owned by her, by the Corporation; as such, injunction was sought. In that context, the learned Single Judge has held that no notice need be issued before filing of the suit. In the instant case, it is to be noted that it is the case of the petitioner-plaintiff that she has applied for building permission, but there was no refusal within the statutory period; as such on the ground of deemed sanction, she proceeded with the construction. Even according to the petitioner, the alleged interference by the respondents with the proposed construction is on the ground that no permission as required under the Act was obtained. In that view of the matter, the steps that were being taken by the respondents are in the context of execution of the provisions of the Act, within the meaning of Section 685(1) of the Act. Hence, both the judgments relied on by learned Counsel for the petitioner would not render any assistance in support of his argument, that no notice need be issued to pursue the suit against the respondents. In contrast of the fact in the above-referred judgments relied on by learned Counsel for the petitioner, in this case, interference by the respondents, if any, is only on account of not obtaining permission from the competent authority. Hence, this Court is of the view that no suit is maintainable without issuing notice under Section 685 of the Act, as made applicable to Municipal Corporation of Warangal. It is further to be noticed that in view of the definition under Order II Rule 2 CPC (sic Section 2(2)), rejection of the plaint is a decree; as such an appeal lies under Section 96 CPC. When a regular appeal is provided against the order of rejection of plaint, the petitioner cannot challenge the validity of the impugned order in this revision filed under Article 227 of the Constitution of India. Further, the judgment relied on by the learned Counsel for the respondents in the case of Mohd. Abdul Basith's case (supra), wherein the learned Judge has taken a view that rejection of the plaint on any ground even other than the ground mentioned under Order VII Rule 11 CPC, amounts to decree with the meaning of Section 2(2) of the Code of Civil Procedure, 1908; hence, a regular appeal lies, but such an order cannot be questioned in a revision petition, supports the case of the respondents."

In case of **Molugu Ram Reddy and others v. Molugu Vittal**

Reddy and others^[5], the Hon'ble Apex Court at paragraph No.17

held as under:

“17. Whether the suit is dismissed after full trial or whether the plaint is rejected either because there are non-curable defects or curable defects (which remain unrectified), the remedy of the plaintiff is only to prefer an appeal under Section 96 of the C.P.C. There are mainly four reasons for this. First, reading of Section 2(9) with Sections 2(2) and 2(14), judgment of the Court rejecting the plaint under Order VII Rule 11 is a ‘deemed decree’ not an ‘order’ against which the remedy is by way an appeal under Section 96. Secondly, from reading of Section 104(1)(i) and Order XLIII(1) together it is irresistible that judgment or the order rejecting the plaint is not appealable by way of miscellaneous appeal, as is the case in appeals against order. Thirdly, Section 104(1)(i) read with Order XLIII(1)(a) provides a miscellaneous appeal only when “plaint is returned under Order VII Rule 10” except when the procedure under Rule 10A of Order VII was followed. Fourthly, the judgment of the Court rejecting the plaint not being one under Sections 35A, 91, 92 or 95, or an order under Section 94(a) read with 104(h), no miscellaneous appeal would lie, when a plaint is rejected under Order VII Rule 11. Thus, a judgment rejecting the plaint; not being an order appealable by way of miscellaneous appeal under any of the provisions as contemplated under Section 104 read with Order XLIII – is only appealable under Section 96. This view is well supported by a decision of the Privy Council, three judgments of the Supreme Court as well as two Full Bench judgments of this Court and that of Kerala High Court.”

In the judgment 1st cited above the Hon’ble Apex Court ruled that a revision can be entertained when the Court below does not decide the issue on merits. In this connection it is required to be noted that the Hon’ble Apex Court at paragraph No.22 of the said judgment held as under:

“22. Whether the executing court, in the obtaining circumstances, has correctly expressed the view that it has become functus officio or not and thereby it has jurisdiction or not, fundamentally pertains to rectification of a jurisdictional error. It is so as there has been no

adjudication. If a subordinate court exercises its jurisdiction not vested in it by law or fails to exercise the jurisdiction so vested, the said order under Section 115 of the Code is revisable as has been held in Joy Chand Lal Babu v. Kamalaksha Chaudhury and others[9]. The same principle has been reiterated in Keshardeo Chamria v. Radha Kissan Chamria and others[10] and Chaube Jagdish Prasad and another v. Ganga Prasad Chaturvedi[11]. Needless to emphasise, the said principle is well-settled. After the amendment of Section 115, C.P.C. w.e.f. 1.7.2002, the said power is exercised under Article 227 of the Constitution as per the principle laid down in Surya Dev Rai (supra). Had the executing court apart from expressing the view that it had become functus officio had adjudicated the issues on merits, the question would have been different, for in that event there would have been an adjudication.”

In the instant cases, the Court below recorded the findings on merits also, as such, the said judgment of the Hon'ble Apex Court 1st cited above would not render any assistance to the case of the petitioners for maintaining these revisions.

On the other hand, the principles laid down in the judgments cited by learned counsel for the respondents are squarely applicable to the cases on hand, therefore, the conclusion that can be safely arrived at is against the maintainability of the present revisions.

For the aforesaid reasons, these revisions are dismissed with a liberty to the petitioners to avail the remedy of appeal, in accordance with law and the office to return the certified copies of the orders and decrees to the petitioners. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.V. SSHA SAI, J

February 05, 2016

Pn

—

THE HON'BLE SRI JUSTICE A.V. SETHA SAI

—

—

1

—

CIVIL REVISION PETITION Nos.189, 192, 201
and 402 of 2016

February 05, 2016

PN

[\[1\]](#) 2015 (1) ALT 27(SC)

[\[2\]](#) (2003) 3 Supreme Court Cases 524

[\[3\]](#) 2009 (4) ALD 655

[\[4\]](#) 2010 (6) ALD 531

[\[5\]](#) 2011 (5) ALD 522 (FB)