

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 474 of 2017**

Fulbaasan, wife of Sukhdev Gond, aged about 65 years,
Occupation – Farmer, resident of village – Kodejunga, Tahsil –
Kanker, Civil & Revenue District – Uttar Bastar, Kanker (C.G.)
.....Plaintiff

---- Petitioner**Versus**

1. Prem Singh, son of Gokul, aged around 65 years,
2. Neerabai, daughter of Prem Singh, aged around 45 years,
3. Anjubai, daughter of Prem Singh, aged around 40 years,
4. All of the above, by occupationn- farmer and resident of Village-
Kodejunga, presently residing at Village – Govindpur, Tahsil –
Kanker, Civil & Revenue District – Uttar Bastar Kanker (C.G.)
5. State of Chhattisgarh, through Collector- Kanker, District – Uttar
Bastar, Kanker (C.G.)

---- Respondents

For Petitioner	: Mr. Hari Agrawal, Advocate.
For Respondents No. 1 to 3:	Mr. R.K. Sharma, Advocate.
For Respondent 4	: Mr. Syed Majid Ali, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****24/08/2017**

Heard.

(1) The defendants' application under Order 7 Rule 11 of the Code of Civil Procedure (for short 'CPC') for rejection of the plaint has been rejected by the trial Court.

(2) Feeling aggrieved against that order, the defendants filed an appeal under Order 43 Rule 1 (a) of the CPC before the first Appellate

Court, which has been considered and allowed by the first appellate Court by its order dated 09.05.2017, against which this writ petition under Article 227 of the Constitution of India has been filed questioning the same.

(3) Learned counsel for the petitioner would submit that order rejecting application under Order 7 Rule 11 of the CPC has no force of decree and is not appealable under any provision of Order 43 of the CPC. It was further submitted that an appeal under Order 43 Rule 1 (a) of the CPC lie from an order under Rule 10 of Order VII returning a plaint to be presented to the proper court and, therefore, the order impugned is unsustainable and bad in law, which is liable to be set aside.

(4) On the other hand, counsel for respondents No. 1 to 3 would support the order impugned.

(5) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(6) The trial Court has exercised the appellate jurisdiction under Order 43 Rule 1(a) of the CPC, which states as under :-

“1. Appeals from orders.- An appeal shall lie from the following orders under the provisions of Section 104, namely:-

(a) an order under Rule 10 of Order VII returning a plaint to be presented to the proper court.

(b) Xxxx xxxxx xxx

(c) Xxxx xxxxx xxx

(7) A focused glance of the provisions of Order 43 Rule 1(a) would show that an order under Rule 10 of Order VII returning a plaint to be

presented to the proper court is appealable under the said provisions and order rejecting application under Order 7 Rule 11 CPC is not covered under Order 43 Rule 1 of the CPC, therefore, the misc. appeal under that provision was not maintainable.

(8) Taking the view, I am fortified and supported the decision of Madras High Court in the matter of **A. Jawaharlal Vs. Thayammal**¹, in which it has been held that application seeking rejection of plaint is not maintainable. Paragraph 19 & 20 of the report as under: -

“**19.** Order 43 of Code of Civil Procedure, 1908 does not make an appealable order dismissing the prayer made either by filing a petition or without filing a petition for rejection of the plaint. There is no special enactment or any other provision in the Code of Civil Procedure, 1908 making such an order appealable. Therefore, I am not in a position to agree with the view expressed in the judgment cited by the learned counsel appearing for the respondent and with due regard, I defer from the same and at the same time, I express my view that the same could be disregarded as a view per incuriam.

20. The above discussions will make it clear that the order dismissing the prayer for rejection of plaint shall not be deemed to be a decree and it shall be only in the form of an order and hence, no appeal shall lie assuming the same to be a decree. The provisions regarding appeal against any order found in Order 43 of Code of Civil Procedure, 1908 also do not make the said order an appealable one. Therefore, without any hesitation, this Court comes to the conclusion that the learned lower Appellate Judge has committed an error in law in entertaining the appeal against the order dismissing the application

1 2015 SCC Online Mad. 8833

filed under Order 7 Rule 11 C.P.C. and that the appeal itself should have been rejected as not maintainable. Since a decree has been passed in such an appeal by the lower Appellate Court, the same cannot be allowed to stand and it deserves to be set aside. Accordingly, the substantial question of law is answered.”

(9) In view of above settled legal position, order passed by the learned appellate Court entertaining the application filed under Order 7 Rule 11 CPC is hereby set aside; consequently, the defendants' application under Order 7 Rule 11 CPC stands dismissed.

(10) Further, the Supreme Court in the matter of **Smt. Ganga Bai Vs. Vijay Kumar and others**² has held that right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. Para 15 of the report states as under:-

“ 15. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why they right of appeal is described as creature of statute.”

(11) The aforesaid principle of law has been followed recently by the Supreme Court in the matter of **Arcot Textile Mills Limited Vs. Regional Provident Fund Commissioner and others**³ and held as under:

“**20**..... It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision providing for appeal should neither be construed too strictly nor too

2 (1974) 2 SCC 393

3 (2013) 16 SCC 1

liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. (See *Ganga Bai v. Vijay Kumar*⁴, *Gujarat Agro Industries Co. Ltd. Vs. Municipal Corpn. Of the City of Ahmedabad*⁵, *State of Haryana v. Maruti Udyog Ltd.*⁶, *Super Cassettes Industries Ltd. v. State of U.P.*⁷, *Raj Kumar Shivhare V. Directorate of Enforcement*⁸, *Competition Commission of India v. Sail*⁹).

(12) In view of above settled legal position, it is held that misc. appeal against an order rejecting an application under Order 7 Rule 11 of the CPC was not maintainable under Order 43 Rule 1(a) of the CPC.

(13) Accordingly, the writ petition succeeds and the order of misc. appellate Court dated 9.5.2017 is hereby set aside. However, this will not bar the respondents to proceed in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

4 (1974) 2 SCC 393
5 (1999) 4 SCC 468
6 (2000) 7 SCC 348
7 (2009) 10 SCC 531
8 (2010) 4 SCC 772
9 (2010) 10 SCC 744

