

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.837 of 2013

(Arising out of order dated 8-10-2013 in Civil Suit No.1 A/2013 of the learned District Judge, Balod)

Rajesh Kumar, S/o Khetmal, Caste Sankhala, aged about 33 years, (now about 35 years), Occupation Business, R/o Sadar Line Balod, Tahsil and Post Balod, P.S. Balod, Civil and Revenue District Balod (C.G.)

(Plaintiff)
---- Petitioner

Versus

1. Mahavir Prasad, S/o Kesharimal, Caste Tuwani, aged about 52 years, Occupation Service, R/o House No.4-B, Sadak No.2, Sector-09, Bhilai, Civil and Revenue District Durg (C.G.)
2. Sarita Kabara, D/o Kesharimal Tuwani, widow of Rajesh Kumar Kabara, aged about 45 years,
3. Kumari Santosh, D/o Kesharimal Tuwani, caste Tuwani, aged about 49 years, Occupation House Wife,

No.2 & 3 are R/o Sadar Line Balod, Tahsil and Revenue District Balod, Civil District Durg (C.G.)

4. Akhilchand, Caste Tawari, aged about 70 years, Occupation Business,
5. Dinesh Kumar, S/o Akhilchand, Caste Tawri, aged about 40 years, Occupation Business,
6. Ramesh Kumar, S/o Akhilchand, Caste Tawri, aged about 35 years, Occupation Business,
7. Kirti Bajaj, D/o Akhilchand, Caste Tawri, Occupation House wife,
8. Archana Bajaj, D/o Akhilchand, Caste Tawari, Occupation House wife,
9. Vandana, D/o Akhilchand, Caste Tawri, Occupation House wife,

No. 4 to 9 are R/o Vyankatesh Offset, Sitabardi, Modi No.1, Nagpur, Civil and Revenue District Nagpur (Maharashtra)

10. Smt. Chandrakanta Hurkat, D/o Kesharimal Tuwani, wife of Shri Ashok Hurkat, aged about 59 years, Occupation House wife, R/o Bage, Near Shri Juna Ok High School, Kalyan, Thane, Civil and Revenue District Thane (Maharashtra)
11. Smt. Leela Rathi, D/o Kesharimal Tuwani, wife of Shri Hargopal Rathi, aged about 57 years, Occupation House Wife, R/o Budhapara, Raipur, Civil and Revenue District Raipur (C.G.)

12. Smt. Tarakela, D/o Kesharimal Tuwani, wife of Shri Shankar Lalji Kela, aged about 55 years, Occupation House wife, R/o Village Kurud "Charra", Revenue District Dhamtari, Civil District Raipur (C.G.)
13. Smt. Sunita Malu, D/o Kesharimal Tuwani, wife of Shiv Kumar Malu, aged about 47 years, Occupation House wife, R/o Nandai Road, Rajnandgaon, Civil and Revenue District Rajnandgaon (C.G.)
14. State of Chhattisgarh, Through the Collector, Durg, Civil and Revenue District Durg (C.G.)

(Defendants)
---- Respondents

For Petitioner:	Mr. Raj Kumar Pali, Advocate.
For Respondent No.2:	Mr. Hari Agrawal, Advocate.
For Respondent No.14 / State: -	Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/09/2018

1. The trial Court by the impugned order has decided issue No.4, whether the suit for specific performance is barred under Order 2 Rule 2 of the CPC, against which this writ petition has been filed.
2. Learned counsel for the petitioner / plaintiff submits that the trial Court is absolutely unjustified in answering issue No.4 against the plaintiff and in favour of the defendants.
3. Learned counsel for respondent No.2 would support the impugned order.
4. I have heard learned counsel for the parties.
5. The fact remains that the trial Court has dismissed the suit finally, though under Order 2 Rule 2(3) of the CPC, and dismissal of suit has the force of decree and remedy of the petitioner / plaintiff is to file appeal under Order 96 read with Section 41 of the CPC.
6. The Supreme Court in the matter of Rishabh Chand Jain v. Ginesh

Chandra Jain¹ has held that order rejecting application under Order 7 Rule 11 of the CPC has a force of decree and the only remedy is appeal under Section 96 read with Section 41 of the CPC and no revision lies under Section 115 of the CPC.

7. Likewise, the question as to whether the order rejecting the plaint would have force of decree and would be covered by Section 2(2) of the CPC also came up for consideration before the Supreme Court in the matter of **Shamsher Singh v. Rajinder Prashad and others**² in which Their Lordships have held as under: -

“3. ... In the present case the plaint was rejected under Order 7, Rule 11 of the C.P.C. Such an order amounts to a decree under Section 2(2) and there is a right of appeal open to the plaintiff.”

8. The Supreme Court in the matter of **Rajni Rani and another v. Khairati Lal and others**³ has held that order of dismissal of counterclaim on ground of being barred under Order 2 Rule 2 of the CPC amounts to decree. It has been observed as under: -

“13. ... When an opinion is expressed holding that the counterclaim is barred by principles of Order 2 Rule 2 CPC, it indubitably adjudicates the controversy as regards the substantive right of the defendants who had lodged the counterclaim. It cannot be regarded as an ancillary or incidental finding recorded in the suit.

16. We have referred to the aforesaid decisions to highlight that there may be situations where an order can get the status of a decree. A court may draw up a formal decree or may not, but if by virtue of the order of the court, the rights have finally been adjudicated, irrefutably it would assume the status of a decree. As is evincible, in the case at hand, the counterclaim which is in the nature of a cross-suit has been dismissed. Nothing else survives for the defendants who had filed the counterclaim. Therefore, we have no hesitation in holding that the order passed by the learned trial Judge has the status of a decree and the challenge to the same has to be made before the appropriate forum where appeal could lay by paying the requisite fee. It could not have been unsettled by the High

1 (2016) 6 SCC 675

2 (1973) 2 SCC 524

3 (2015) 2 SCC 682

Court in exercise of the power under [Article 227](#) of the Constitution of India. Ergo, the order passed by the High Court is indefensible.”

9. In view of the provisions contained in the CPC and the authoritative pronouncement of the Supreme Court in **Shamsher Singh** (supra), **Rishabh Chand Jain** (supra) and **Rajni Rani** (supra), I unhesitatingly and unreservedly hold that against the order rejecting a plaint under Order 2 Rule 2 of the CPC by trial court, the only remedy to the plaintiff against the order is to file first appeal under Section 96 read with Section 41 of the CPC, as such, the writ petition filed is not maintainable.
10. As a fallout and consequence of the aforesaid discussion, the writ petition as framed and filed is dismissed as not maintainable reserving liberty in favour of the plaintiff / petitioner to file appeal in accordance with law. No order as to cost(s).
11. Certified copy of the impugned order and other relevant documents be returned to learned counsel for the petitioner on his furnishing attested photocopies of the same.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma