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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 21st February, 2018

+ C.R.P. 84/2016 & CM 20815/2016

ASHOK KRIPLANI Petitioner

Through: Petitioner in person

versus

DR J N JETHWANI Respondent

Through: Mr. Vipul Jai, Advocate.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had instituted civil suit (suit no.682/2014, later registered as suit no.258/2015) on 03.06.2014 impleading the respondent as first defendant, he being his brother-in-law and Mr. Madan Lal Sharma, advocate representing the latter having been impleaded as second defendant. The suit prayed for damages against the said defendants on account of vengeance, mis-representation, concealment of facts, mental agony, defamation, abuse of power and possession, mindless collusion and dragging of case. On questions about maintainability of the suit against Mr. Madan Lal Sharma (second defendant), being raised as per proceedings recorded by the trial judge on 29.10.2014, the matter was heard. By order dated 28.11.2014, the Additional District Judge in *seisin* of the matter found the plaint not disclosing any cause of action against the respondent and, thus, dismissed the case qua him. The said order has been affirmed and the petition CRP 17/2015 bringing a challenge there-

against has been dismissed by a separate order of even date by this court.

2. The respondent, first defendant in the suit, moved an application seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) on the ground that the plaint did not disclose any cause of action. The said application was allowed by the Additional District Judge in *seisin* of the case by order dated 12.04.2016. It is the said order which is assailed by the revision petition at hand.

3. Having heard the petitioner and the learned counsel for the respondent and having perused the record, this court finds the objection to the maintainability of the revision petition to be correct.

4. The provision contained in Section 2(2) of the CPC defining the word “decree” reads as under :-

“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.

Explanation – A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication

completely disposes of the suit, it may be partly preliminary and partly final.”

(emphasis supplied)

5. Pertinent to note the rejection of plaint is deemed to be a “decree” within the meaning of the expression as per the above quoted definition. The provision contained in Section 96 CPC provides for the remedy of appeal from every decree passed by any court exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court, detailed provision in which regard may be found in Order XLI CPC.

6. The contention of the revisionist, however, is that the appropriate remedy in this case is civil revision, the jurisdiction in which regard is sought to be invoked by the petition at hand in terms of Section 115 CPC. He referred to sub-Section (1) of Section 115 which reads thus :-

“115(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit...”

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order

deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.”

7. The emphasis of the arguments of the petitioner was on the proviso to Section 115(1) extracted above, his plea being that since the trial court had acted in exercise of its jurisdiction illegally and with material irregularity, the issue can be raised in revisional jurisdiction of this court. He placed reliance on the decision of a learned single Judge of Allahabad High Court reported as *Dr. Chandra Mohan Singhal and Ors. Vs. State of U.P.*, 2003 ALL. L.J. 647, particularly the observations (appearing in para 19) as under :-

“19. The question whether the suit could proceed, or the plaint should be rejected go to very root of the matter. The exercise of powers in wrongly rejecting the plaint under Order 7 Rule 11 CPC or refusing to reject the plaint under the said provisions is jurisdictional matter. The court below therefore, committed an error of jurisdiction in not rejecting the plaint under Order 7 Rule 11 CPC and the said order could be interfered with in the revision.”

8. *Per contra*, the respondent places reliance on the ruling of the Supreme Court in *Rishab Chand Jain and Ors. Vs. Ginesh Chandra Jain*, (2016) 6 SCC 675. The matter had come up before the Supreme Court against the backdrop of facts wherein the civil suit of the petitioner had been dismissed on the ground that there was no cause of action and it was even otherwise barred by the rule of *res judicata*. On such decision being challenged before the High Court of Judicature at Patna, it was held that the order of the trial court was not appealable but would be subject to revisional jurisdiction under

Section 115 CPC. The Supreme Court allowed the appeal of the defendants holding thus :-

“16. The order passed by the trial court is a composite order on rejection of the plaint as there is no cause of action and dismissal of the suit as not maintainable on the ground of Res Judicata. Both aspects are covered by the definition of decree Under Section 2(2) of the Code and, therefore, the remedy is only appeal and not revision even if there is any irregularity in passing the order.”

9. In the considered view of this court, the ruling in *Dr. Chandra Mohan Singhal and Ors.* is being wrongly construed by the petitioner. It may be that the exercise of powers to reject the plaint under Order VII Rule 11 CPC or declining to do so is a jurisdictional matter but from this it cannot follow that the decision either way on such application can be subject matter of revision under Section 115 CPC. The proviso to Section 115(1) CPC, as quoted above, makes it amply clear that the High Court would exercise its revisional jurisdiction respecting the order made in the course of a suit or other proceedings only if the order sought by the revisionist would result in final disposal of such suit or proceedings. It is clear that dismissal of a prayer for rejection of the plaint under Order VII Rule 11 CPC would fall within the exclusionary clause of the proviso to Section 115 (1) and in the consequence the order of the civil court declining to reject the plaint under Order VII rule 11 may be assailed by revisional remedy provided a case meriting such interference is properly made out vis-à-vis the exercise of jurisdiction. But Section 2(2) CPC, which defines the word “decree”, as quoted earlier, leaves no room for doubt that

rejection of the plaint under Order VII Rule 11 CPC is deemed to be a “decree”, in as much as it results in final disposal of the suit. It is trite that a decree being subject to challenge by appeal under Section 96 CPC, cannot also be subject to challenge by revision under Section 115 CPC.

10. A similar view was taken by a learned single Judge of this court in decision reported as *Atma Parkash & Ors. Vs. Roshan Lal & Ors.*, 77 (1999) DLT 162.

11. In above view, this court holds that the revision petition at hand is not maintainable. At this stage, the petitioner was asked if he wanted to withdraw the revision petition and instead have the liberty to approach the appellate court. He declined to do so.

12. In view of the finding returned that the revision petition is not maintainable, it alongwith the applications filed therewith are hereby dismissed.

FEBRUARY 21, 2018
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R.K.GAUBA, J.