

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

929 WRIT PETITION NO.8691 OF 2022

UDAYSING JAGMOHANSING DIKHAT - THAKUR
VERSUS
SHAIKH MUNJER SHAIKH MINAJODDIN AND OTHERS

Shri. P. R. Katneshwarkar, Advocate for the petitioner
Shri. H. V. Tungar, Advocate for respondent No. 1.

**CORAM : M. G. SEWLIKAR, J.
DATED : 24th AUGUST, 2022**

PER COURT :-

1. Rule. Rule made returnable forthwith. With the consent of the parties taken up for final hearing at the admission stage.
2. Facts in brief are that the petitioner filed Special Civil Suit No. 14 of 2022 in the Court of Civil Judge Senior Division, Beed for declaration, possession and cancellation of sale deed.
3. Defendant filed his written statement. The Defendant-respondent No.1 filed application under Order 7 Rule 11 of Civil Procedure Code of rejection of plaint.

4. Learned Trial Court after hearing both the parties rejected the plaint as learned Trial Court found that there was no cause of action. Petitioner has impugned this order in this writ petition.

5. Learned counsel Shri. Tungar for respondent No. 1 submits that writ petition is not maintainable against rejection of plaint. For this purpose he placed reliance on the case of ***Sayyed Ayaz Ali Versus Prakash G. Goyal*** reported in ***Laws (SC) 2021 7 19***.

6. I have heard learned counsel of both the sides extensively.

7. Section 2(2) of Code of Civil Procedure defines expression 'Decree' it reads thus:

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

(1)....

(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."

8. This definition makes it explicit that rejection of plaint is a decree within the meaning of expression decree. Appeal against decree is preferred under Section 96 of the CPC. Therefore, it is an appealable order.

9. Learned counsel Shri. Katneshwarkar for the petitioner submits that in order to be a decree there has to be a formal expression by the Court determining the rights of the parties conclusively. He submits that under Order 7 Rule 11 of the CPC plaint can be rejected on the ground of undervaluation and non correction despite the order of the Court, not supplying duplicate copy of the plaint. He submits that in these eventualities it cannot be said that there is formal expression by the Court of determining the rights of the parties conclusively. These submissions are stated to be rejected. As indicated earlier

the definition of decree covers rejection of plaint. Therefore, writ petition is not maintainable. This Court is fortified in its view by the judgment of the Hon'ble Supreme Court in the case of **Sayyed Ayaz Ali Versus Prakash G. Goyal** (supra) in paragraph No.12. The Hon'ble Supreme Court recorded following observations.

"12. Section 2(2) of the CPC defines the expression 'decree' in the following terms:

"(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;

Order 7 Rule 13 provides that the rejection of the plaint "on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

The definition of “decree” in Section 2(2) “shall be deemed to include the rejection of a plaint”. Hence, the order of the Trial Court rejecting the plaint is subject to a first appeal under Section 96 of the CPC. The writ petition filed by the appellant was liable to be rejected on that ground. We therefore affirm the judgment of the High Court rejecting the writ petition, though for the above reason leave it open to the appellant to pursue the remedy available in law.”

10. Thus, rejection of plaint is a decree within the meaning of Section 2(2) of the CPC. Therefore, writ petition is not maintainable. In view of this, writ petition is dismissed. Rule is discharged. No costs.

[M. G. SEWLIKAR, J.]

ssp