



CRP.(NPD).No.1100/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.(NPD).No.1100/2019 and CMP.No.7237/2019

[Video Conferencing]

V.Vijayakumar

.. Petitioner/Defendant

Vs.

S.Pradeep Kumar

.. Respondent/Plaintiff

Prayer:- Civil Revision Petition filed under Section 115 of CPC to set aside the order and decreetal order in I.A.No.169/2018 in O.S.No.3769/2018 on the file of the XV Additional City Civil Court, Chennai.

For Petitioner : Mr.D.J.Venkatesan

For Respondent : Mr.S.Raveekumar

ORDER

- (1) This Civil Revision Petition is directed against the order and decreetal order in I.A.No.169/2018 in O.S.No.3769/2018 on the file of the XV Additional City Civil Court, Chennai.



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(2) A similar revision petition filed under Article 227 was dismissed by this Court following the judgment of the Hon'ble Supreme Court of India in the case of *Ajay Bansal V. Anup Mehta and Others* reported in **2007 [2] SCC 275**.

(3) In the above said judgment, the Hon'ble Supreme Court of India has held that a Revision under Article 227 of the Constitution of India is not maintainable where an Appeal lies. It is further held that as against the order dismissing the petition seeking a leave to defend, revision petition under Article 227 of the Constitution of India is not maintainable. It is also held that it is not necessary to apply the theory of "dependent order" as the decree that is passed may not go automatically.

(4) It has been observed by the Apex Court in the above cited judgment as follows:-

"13. Ordinarily, an application under Article 227 of the Constitution of India would not be maintainable where an appeal lies. An appeal lay from the decree under Section 96 of the Code. When an appeal could be filed, ordinarily, an application under Article 227 of the Constitution of India would not be entertained.



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14.A decree passed subsequent to the refusal of leave to defend could either be under Order 37 Rule 3(6) of the Code or it could be based on the affidavit evidence on the side of the plaintiff and the documents produced or even based on oral evidence formally proving, say, the execution of a promissory note by the defendant. It may not be proper or necessary to apply the theory of “dependent order” in such circumstances. For one, the theory may not apply. Even if this Court were to set aside the order of the court below and give the defendant leave to defend the suit, the decree that is passed may not go automatically. It may have to be set aside. Secondly, the defendant can always go to the court which passed the decree and move under Rule 4 of Order 37 of the Code to reopen the decree.

15.The theory of “dependant order” may not apply in a case of this nature because even if this Court were to set aside the order refusing leave to defend, the decree subsequently passed may not fall by itself. It has still to be set aside either by resort to Order 37 Rule 4 or by way of an appeal, or by some other mode known to law. In a given case like the present one as it may not be proper to interfere with the decree merely because in an appeal against an



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order refusing leave to defend, this Court is inclined to take a different view. (See V.S. Saini v. D.C.M. Ltd. [AIR 2004 Del 219] .)"

- (5) This Court has also held that the Civil Revision Petition under Article 227 of the Constitution of India is not maintainable against the order dismissing an application under Order 37 Rule 3(5) of CPC to grant leave to defend the Suit.
- (6) The present revision petition is also against the order dismissing the application filed by the revision petitioner to defend the Suit filed by him under Order 37 Rule 3 of CPC to grant leave to defend the Suit. However, it is open to the revision petitioner to file an appeal and it is also open to him to raise all grounds that are raised in the Civil Revision Petition, so that the petitioner can challenge the order which is now impunged in the revision petition before the Appellate Court. It is open to the revision petitioner to seek exclusion of time taken by him to prosecute the present revision when he files an appeal under Section 96 of CPC that he files against the judgment and decree in the Suit.



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(7) In the result, the Civil Revision Petition stands **dismissed as not maintainable.** No costs. Consequently, connected miscellaneous petition is closed.

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S.S.SUNDAR, J.,

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To

The XV Additional City Civil Court, Chennai.

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