



C.R.P.No.3133 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.11.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3133 of 2022

1.S.Yuvaraj
2.R.Dhanabal

...Petitioners

Versus

M/s.Senthil Aggregates Cement Products,
Represented by its Managing Director,
Mr.A.Senthilkumar,
Senthil Towers, 6th Floor,
1078, Avinashi Road,
Coimbatore – 641 018.

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order in I.A.No.1 of 2022 in F.No.OS/2652/2022 (unnumbered suit) dated 19.07.2022, on the file of Principal Subordinate Judge, Coimbatore, as well as direct the Principal Subordinate Judge, Coimbatore, to number the suit.

For Petitioners :M/s.S.Pooja Shree



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O R D E R

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The Civil Revision Petition is filed challenging the order passed by the Court below rejecting the plaint even before numbering.

2. The petitioners herein filed a suit for bare injunction restraining the respondents or any other person acting under them from coming to their house and creating any flutter in the suit property. Since the Court below entertained a doubt with regard to the maintainability of plaint, the matter was called in open Court and after hearing the Advocate for plaintiff, the Court below was pleased to reject the plaint on the ground that it does not disclose any cause of action.

3. As per the definition of the expression “decree” in the Code of Civil Procedure, an order rejecting the plaint is a deemed decree. It would be useful to refer the definition of the expression decree in Code of Civil Procedure which reads as follows:

“(2) "decree" means the formal expression of an



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*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 ¹[** *] 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;”

Therefore, as per the definition of the expression 'decree' as found in Code of Civil Procedure, by virtue of inclusive definition, the expression 'decree' deemed to include the rejection of plaint. Once we come to the conclusion an order of rejection of plaint is a deemed decree under Code of Civil Procedure, a regular appeal will lie against any decree under Section 96 of Code of Civil Procedure. Therefore, the petitioners are not entitled to invoke the supervisory jurisdiction of this Court, when a regular



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appeal remedy is available under Section 96 of Code of Civil Procedure.

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4. The learned counsel for the petitioner submitted that only in cases where the plaint is rejected after numbering of the suit, it can be treated as deemed decree. In the case on hand, the plaint has been rejected even without numbering and therefore, the petitioners are entitled to invoke the supervisory jurisdiction under Article 227 of Constitution of India.

5. The contention of the learned counsel for the petitioner cannot be accepted in the light of the clear wordings of Section 2(2) of Code of Civil Procedure. The definition of the expression 'decree' contains three limbs:

(i) The first limb of the definition defines the expression decree by words;

(ii) The second limb of definition is an inclusive definition, it brings an order rejecting the plaint and an order determining any one of the questions under Section 144 of CPC within the fold of definition of decree.



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(iii) The third limb of definition is an exclusive definition, it excludes any adjudication from which an appeal shall lie as an appeal from an order and any order dismissing the suit for default from the purview of definition of expression of decree.

6. A close scrutiny of the definition of the expression 'decree' would make it clear that the draft man himself had a doubt that order of rejection of plaint may not come within the wordly definition of the expression 'decree'. Since it will not come within the definition as found in first limb of Section 2(2), he had chosen to bring it under the inclusive definition by including it in the second limb of definition. Therefore, Section 2(2) of Code of Civil Procedure does not make any distinction between the rejection of plaint before numbering and after numbering. In such case, an order of rejection of plaint even before numbering of the same, shall be treated as a deemed decree and consequently the revision is not maintainable, in view of availability of regular appeal remedy under Section 96 of CPC.



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7. It would be useful to refer to the observation of Apex Court in this regard in *Rishabh Chand Jain Vs. Ginesh Chandra Jain* 2016 (6) SCC 675 = MANU/SC/0496/2016, wherein, it was observed as follows:

“14. In terms of Section 2(2) of the Code, in case, the court adjudicating the case, conclusively determines the rights of the parties with regard to any one or more or all of the matters in controversy in the suit, the requirement of decree is satisfied. Such determination can be preliminary or final. Rejection of a plaint is deemed to be a decree Under Section 2(2) of the Code. Only two orders are excluded-(i) any adjudication from which an appeal lies as an appeal from an order and (ii) any order of dismissal for default. Order XLIII of the Code has provided for appeals from orders. The impugned order does not come under Order XLIII. The order has conclusively determined the rights of the parties with regard to one of the matters in controversy in the suit, viz., Res Judicata. True, it is not an order passed on framing an issue. But at the same time, there is adjudication on the controversy as to whether the suit is barred by Res



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Judicata in the sense there is a judicial determination of the controversy after referring to the materials on record and after hearing both sides.

15. The impugned order dismissing the suit on the ground of Res Judicata does not cease to be a decree on account of a procedural irregularity of non-framing an issue. The court ought to treat the decree as if the same has been passed after framing the issue and on adjudication thereof, in such circumstances. What is to be seen is the effect and not the process. Even if there is a procedural irregularity in the process of passing such order, if the order passed is a decree under law, no revision lies Under Section 115 of the Code in view of the specific bar under Sub-section (2) thereof. It is only appealable Under Section 96 read with Order XLI of the Code.

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



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To
The Principal Subordinate Judge,
Coimbatore.



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S.SOUNTHAR, J.

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