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

+ **CM(M) 166/2022 & CM APPL. 8774/2022**

RAJESH SINGH

..... Petitioner

Through: Mr. M.C. Dhingra and Mr. S. Chakraborty, Adv.

versus

RAKESH KUMAR MITTAL

..... Respondent

Through: Mr. Ajay Harshana, Adv. with Respondent-Mr. Rakesh Kumar Mittal in person

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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05.05.2022

1. This petition, under Article 227 of the Constitution of India, assails the decision of the learned Additional District Judge ("the learned ADJ") dated 13th December, 2021 in CS DJ 404/2020 (*Rakesh Kumar Mittal v. Rajesh Singh*).

2. The petitioner was the defendant in the said suit and the respondent was the plaintiff.

3. The respondent filed the aforesaid suit against the petitioner as a summary suit under Order XXXVII of the Code of Civil Procedure, 1908 (the CPC) for recovery of an amount of ₹ 38 lakhs.

4. An application was filed by the petitioner, as the defendant

before the learned ADJ, seeking leave to defend the suit.

5. It is not necessary to enter into the details of the impugned order. Suffice it to state that, the learned ADJ has, in paras 16 to 19 of the impugned order, held thus:

“16. There is no denial by the defendant with respect to receipt of Rs.20 lakhs from the plaintiff. His only defence is with respect to the interest part. In view of the aforesaid implied admission by the defendant as well as on the basis of cheques and bank statement relied upon by the plaintiff it stands proved that the defendant has received an amount of Rs.20 lakhs from the plaintiff.

17. The suit of the plaintiff with respect to Rs.20 lakhs is hereby decreed. In so far as claim of the plaintiff with respect to interest is concerned, the defendant is granted conditional leave to defend the same as it is not denied by the defendant that no interest was agreed to be paid by him to the plaintiff.

18. In view of proviso to clause 5 of Rule 3 of Order 37 CPC, the defendant will deposit amount of Rs.20 lakhs within one month from today and once the said amount is deposited he will be permitted to file his written statement.

19. The application of defendant seeking leave to defend the suit is partly allowed and the suit of the plaintiff is partly decreed in the sum of Rs. 20 lakhs to be paid by the defendant within one month from the date of the order. Decree sheet be prepared accordingly.”

6. Clearly, the learned ADJ has partly decreed the suit for an amount of ₹ 20 lakhs and has granted leave to defend in respect of the remainder of the claims in the suit.

7. Mr. Dhingra, learned Counsel for the petitioner, submits that such a course of action could not have been adopted by the learned ADJ, as part decreeing of a suit even while the suit remains pending in respect of the remaining part is alien to the CPC. He also submits that, though the final paragraph of the impugned order refers to the suit having been partly decreed for an amount of ₹ 20 lakhs, the same order refers to the said decision, elsewhere, as an “order”. He, therefore, submits that the learned ADJ is also not clear as to whether there is a decree for ₹ 20 lakhs or a mere order. If it is an order, he submits that it cannot be treated as a judgment which is appealable under the CPC.

8. Mr. Mittal, the respondent, who appears in person, submits that the impugned judgment is unequivocal in decreeing the respondent’s suit partly to the extent of ₹ 20 lakhs. He submits that, in fact, a decree sheet was also drawn up by the court below for the aforesaid amount of ₹ 20 lakhs.

9. Having perused the record and applied myself to the submissions advanced at the Bar, it is clear that the learned ADJ has unequivocally decreed the respondent’s suit partly for an amount of ₹ 20 lakhs and has granted leave to defend in respect of the remainder of the claim in the suit.

10. I do not propose to enter into the issue of whether such a course of action could or could not have been adopted, for the simple reason that, applying the recent decision of Hon’ble the Supreme Court in

Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society¹, the present petition under Article 227 of the Constitution of India would be barred. Paras 11 to 13 of the report in the said case read thus:

“11. Secondly, the High Court ought to have seen that when a remedy of appeal under section 104 (1)(i) read with Order XLIII, Rule 1 (r) of the Code of Civil Procedure, 1908, was directly available, the respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In ***A. Venkatasubbiah Naidu v. S. Chellappan & Ors²***, this Court held that "though no hurdle can be put against the exercise of the Constitutional powers of the High Court, it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a Constitutional remedy".

12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in ***Surya Dev Rai vs. Ram Chander Rai³***, pointed out in ***Radhey Shyam Vs. Chhabi Nath⁴*** that "orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than

¹ (2019) 9 SCC 538

² (2000) 7 SCC 695

³ (2003) 6 SCC 675

⁴ (2015) 5 SCC 423

judicial/civil courts.

13. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”

(Emphasis supplied)

11. The Supreme Court has, in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai¹***, clearly held that, where the order under challenge is passed by a civil court under the CPC, and a remedy thereagainst lies to another civil court under the CPC, there is a near total bar to invocation of Article 227 by the party aggrieved by the order.

12. Section 96 of the CPC reads thus:

“96. Appeal from original decree.

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law,

from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.”

13. “Decree” is defined in Section 2(2) of the CPC 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”

14. Reading these provisions in conjunction, the impugned order, insofar as it holds the respondent entitled to an amount of ₹ 20 lakhs out of the total claim in the suit, and decrees the suit to the said extent, has clearly adjudicated finally in respect of the entitlement of the respondent to the said amount. Section 2 (2) of the CPC clearly holds that any formal expression or adjudication, by the court expressing it, conclusively determining the rights of the parties with regard to all or any of the matters in controversy in the suit, whether preliminary or final, would amount to a “decree”. Inasmuch as the impugned order conclusively adjudicates the rights of the respondent, as ventilated in

the suit filed by him, to the extent of ₹ 20 lakhs, said adjudication amounts to a “decree” within the meaning of the expression as defined in Section 2(2) of the CPC.

15. The sequitur is apparent. Section 96 clearly holds that, against every decree passed by a court exercising original jurisdiction, an appeal would lie to the court authorised to hear the appeals under the CPC.

16. Clearly, therefore, an appeal would lie against the impugned order, to the extent it partly decrees the suit of the respondent to the extent of ₹ 20 lakhs.

17. Indeed, Mr. Dhingra, learned Counsel for the appellant, with all the experience of civil law at his command, has not been able to clearly make out a case that no appeal would lie, against the impugned order, to extent it decrees the respondent to the extent of ₹ 20 lakhs. The gravamen of his argument is, instead, that the learned ADJ could not have passed such an order. That, however, is something which would have to be decided by the court competent to adjudicate on the issue, and does not affect the appealability of the impugned order.

18. In my view, the impugned order, insofar as it decrees the respondent’s suit to the extent of ₹ 20 lakhs, is appealable under Section 96 of the CPC read with Section 2(2) thereof.

19. Applying the law as enunciated by the Supreme Court in paras

11 to 13 of the report in *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai*¹, the availability of such a remedy of appeal would operate as a near total bar to the exercise of jurisdiction by this Court under Article 227 of the Constitution of India.

20. No such exceptional circumstance, as would compel this Court to exercise Article 227 jurisdiction, despite the availability of a remedy of appeal, has been brought to my notice in the instant case.

21. For the aforesaid reasons, I am of the opinion that the present petition would not lie under Article 227 of the Constitution of India.

22. Reserving liberty with the petitioner to take other remedies as may be available to him in accordance with law against the impugned order, the present petition is accordingly dismissed as not maintainable.

MAY 5, 2022

dsn

C. HARI SHANKAR, J