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

+ CM(M) 481/2022 & CM APPL. 24746/2022, CM APPL. 24747/2022

RAJAN LAO

..... Petitioner

Through: Mr. J.M. Kalia and Mr.Dhruv Kalia, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS.

..... Respondents

Through: Ms.Pavitra Kaur, Adv. for R-GNCTD

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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

% **27.05.2022**

1. This petition, under Article 227 of the Constitution of India, assails an order dated 12th May, 2022, passed by the learned Additional Senior Civil Judge in CS 1219/22 (*Rajan Lao v. NDMC*), in which the present petitioner and respondent are plaintiff and defendant respectively.

2. The impugned order rejects the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, as being bereft of cause of action.

3. The matter was listed today for arguments on whether, such an order appears to be appealable under the CPC, a petition under Article



227 of the Constitution would lie. I may note that the issue of maintainability of a petition under Article 227 of the Constitution, where the order is passed by a Civil Court, and a provision for appeal is available to another Civil Court, stands settled by the recent decision of the Supreme Court in *Virudhnagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society*¹ which holds, in unmistakable terms, that such an appeal would not lie. Additionally, one may also refer to my recent decisions in *Lucina Land Development Ltd. v. Union of India*², *Rajesh Singh v. Rakesh Kumar Mittal*³ etc.

4. The learned ASCJ, who has passed the impugned order, is unquestionably a “civil court”, within the meaning of the CPC. If, therefore, the impugned order was appealable under the CPC to another Civil Court, the availability of Article 227 would stand foreclosed.

5. Section 96 of the CPC deals with appeals from original decrees, and reads thus:

“Section 96 CPC Description

(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 the Court authorized to hear appeals from the decisions of such Court.

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

¹ (2019) 9 SCC 538

² 2022 SCC OnLine Del 1274

³ 2022 SCC OnLine Del 1320



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 cognisable by Courts of Small Cause, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.

“Decree” is defined, in Section 2(2) of the CPC, thus:

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

(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 ² *** 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;”

6. A reading of the definition of decree reveals that it is in two parts. The first part of the definition defines “decree” as meaning the formal expression of an adjudication which, conclusively determines the rights of the parties before the Court. The second part of the



definition deems the definition of “decree” to include, *inter alia*, the rejection of a plaint.

7. Mr. Kalia sought to submit that even the rejection of a plaint, under the second part of Section 2(2) would have to take colour from the earlier part of the definition and would, necessarily, therefore, require to be a “formal expression of an adjudication”, which “conclusively determines the rights of the parties”. I am unable to agree. Definition clauses in statutes commonly use the expressions either “means”, “includes” or “means and includes”. Over a period of time, the position in law, regarding the scope and ambit of these expressions, when used in definition clauses, stand settled in ***P. Kasilingam v. P.S.G. College of Technology***⁴, ***Bharat Co-operative Bank (Mumbai) Ltd., v. Coop. Bank Employees Union***⁵, ***Ramanlal Bhailal Patel v. State of Gujarat***⁶, ***National Insurance Co. Ltd. and Ors. v. Kirpal Singh and Ors***⁷.

8. Insofar as definition clauses using the expression “means and includes” are concerned, it is well settled that the inclusive part of the definition expands the definition beyond what is envisaged by the “means” part and is intended, therefore, to expand the scope of the definition”. It is against the most basic principles of interpretation of definition clauses containing “means and includes” to contend that the inclusive part of the definition has to be conditioned by the “means” part. This submission of Mr. Kalia is, therefore, in my view,

⁴ 1995 Supp (2) SCC 348

⁵ AIR 2007 SC 2320

⁶ AIR 2008 SC 1246



misconceived and is accordingly rejected. Clearly, in my view, by *including*, within the definition of “decree”, rejection of a plaint, the legislature intends to expand the definition of “decree” beyond what is otherwise envisaged by the earlier part of the definition. It would go against the very grain of the definition, and the obvious intent of the legislature in crafting the definition in a “means and include” format, to hold that the rejection of the plaint must also be by way of a formal expression of an adjudication which conclusively determines the rights of the parties before the court. In my opinion, any rejection of a plaint would be a “decree” within the meaning of Section 2(2).

9. Mr. Kalia also sought to submit that every deeming fiction should be limited to the purpose for which it is created, and cannot expand beyond it. There can be no quarrel with this proposition. Having said that, the expression when the deeming fiction is contained in a definition clause, the obvious intent is to apply that deeming fiction to every point of that statute where that expression finds place. The principle that a deeming fiction must be limited to the purposes for which it is created, cannot, therefore, be of any serious consequence insofar as the present dispute is concerned.

10. However, another aspect of deeming fiction, which is of significant import, is the principle that wherever a position of fact or law is statutorily deemed to exist, it would carry with it every consequence which would follow from, were that state of affairs to be in existence. One may refer in this context to ***Karnataka State Road***

⁷ AIR 2014 SC 1440



***Transport Corpn. v. B.A. Jayaram*⁸, *I. Nelson v. Kallayam Pastorate*⁹, *M. Aamira Fathima v. Annamalai University*¹⁰.**

11. Applying the said principle to the definition of decree in Section 2(2) of the CPC, by deeming the rejection of a plaint to be a “decree”, every consequence which would follow, in law, were the rejection of the plaint to be a decree would also be deemed to follow.

12. One such consequence is that the decree would be appealable under the rejection of the plaint would become appealable under Section 96 of the CPC. Section 96 is clear in its term. It states, *inter alia* that an appeal *shall* lie from *every decree* passed by any court exercising original jurisdiction, to the court authorised to hear appeals from the decisions of such court. The intent of the legislature is transparent, from the use of the words, “shall” and “every decree”. No order or decision, which qualifies as a decree within the meaning of Section 2(2) of the CPC is, therefore, accepted from the ambit of Section 96.

13. Though Section 96 starts with the words “save where otherwise expressly provided in the body of this Court” it is nobody’s case that there is any provision in the body of the CPC which excepts orders, allowing applications under Order VII Rule 11 and consequently, rejecting plaints from the ambit of Section 96.

⁸ 1984 Supp SCC 244

⁹ (2006) 11 SCC 624

¹⁰ (2018) 9 SCC 171



14. Mr. Kalia also drew my attention to Section 2(14) of the CPC which defines “order” thus:

“2. Definitions.—

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree;”

15. To my mind, the reliance, by Mr. Kalia, on Section 2(14) is completely misplaced. What Section 2(14) states is that the formal expression of any decision of a Civil Court which is not a decree would be an “order”. Decrees are, therefore, accepted from the ambit of the expression “order” within the meaning of Section 2(14). As the impugned decision dated 12th May, 2022, passed by the learned ASCJ qualifies, per definition as a “decree” within the meaning of Section 2(2), per sequitur, it would be amenable to appeal under Section 96 of the CPC.

16. In view thereof, applying the principles enunciated in *Virudhnagar Hindu Nadargal Dharma Paribalana Sabai*¹, I am of the opinion that this petition, under Article 227 of the Constitution of India would now lie.

17. Reserving liberty with the petitioner to seek any other appropriate remedy as may be available to him in law, the petition is accordingly dismissed as not maintainable.

C. HARI SHANKAR, J.

MAY 27, 2022/kr