

\$~8

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

C.R.P. No.254/2019

+ **RAJAT AGARWAL** Petitioner
Through: Petitioner in person.

versus

**DEPTY COMMSSIONER OF POLICE
TRAFFIC & ORS.** Respondents
Through: Mr.Tushar Sannu and Ms.Ankita
Bhadouriya, Advs.

% ***Date of Decision: 22.11.2022***

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The instant revision petition has been preferred under Section 115 of Civil Procedure Code, 1908 (hereinafter referred to as 'Code') for setting aside the order dated 09.09.2019 passed by Learned Addl. Senior Civil Judge in CS 808/2019 vide which the amended plaint filed by the petitioner/plaintiff was rejected under Order VII Rule 11(d) of Code.

2. The facts, in brief, are that the petitioner/plaintiff filed a civil suit for compensation and damages against Respondent No. 2. Vide order dated 06.07.2019, Learned ACJ *inter alia* held that the suit was not maintainable as the petitioner/plaintiff did not mention the amount of

compensation/damages. Liberty was granted to the petitioner/plaintiff to take necessary steps to fill the necessary lacuna. Thereafter, an application was filed by the petitioner/plaintiff under Order VI Rule 17 of the Code for amendment of the plaint which was rejected by way of the impugned order. In the impugned order it was concluded that the petitioner/plaintiff had failed to give an approximate value of the compensation and damages in the plaint and, thus, failed to comply with the provision of Order VII Rule 7 of the Code. Thus, the plaint was rejected under Order VII Rule 11 (d) of the Code.

3. In the reply to the petition, on merits, the respondents have relied on the case of ***Zubair Ul Abidin v. Sameena Abidin*** 214 (2014) DLT 340 and have submitted that Petitioner was seeking to avoid payment of Court Fees and has therefore not quantified the amount of compensation despite an opportunity having been granted by the Learned Trial Court to amend the suit and take appropriate steps to properly quantify the claims. The respondents have also taken an objection as to the maintainability of the revision petition. Learned counsel for the respondents submits that the revision petition against an order rejecting the plaint is not maintainable.

However, the petitioner, appearing in person, has insisted that since his suit has not been decided on merit, the revision petition is maintainable. Reliance has been placed on Order VII Rule 13 of the Code.

4. In ***Kartar Singh v Shanti & Others*** 2004 SCC OnLine Del 75 this court *inter alia* has held that the revision against the Order rejecting plaint under Order VII Rule 11 of the Code is not maintainable. It was *inter alia* held that rejection of a plaint as per the definition of a decree in Section 2(2)

of the Code is defined to include deemed rejection of a plaint and accordingly only an appeal would be maintainable against such an order.

5. In *Shamsher Singh v. Rajinder Prashad* AIR 1973 SC 2384, the Supreme Court has *inter alia* held that the order rejecting the plaint under Order VII Rule 11 of the Code amounts to a decree under Section 2(2) of the Code and the plaintiff has a right to appeal assailing the same.

6. A bare perusal of Section 2(2) of the Code indicates that a decree is a formal expression of adjudication by a Court of law, wherein, the rights of the parties are conclusively determined with regard to all or any of the matters in controversy in a suit. The term 'decree' would include within its ambit an order of rejection of the plaint under Order VII Rule 11 of the Code, as would be evident from the expression "shall be deemed to include the rejection of plaint" appearing in Section 2(2) of Code. It is pertinent to mention that a statutory remedy of appeal has been provided under Section 96 of the Code against a decree, therefore, even an order of rejection of the plaint under Order VII Rule 11 of the Code would be amenable to the remedy of appeal.

7. In view of the discussion above, this court is of the considered view that the order dated 09.09.2019 amounts to a decree as contemplated under Section 2(2) of the Code and the aggrieved party has a remedy of appeal under Section 96 of the Code. That being the position, the exercise of the revisional jurisdiction under Section 115 of the Code is not permissible.

8. Accordingly, the present civil revision petition is dismissed. However, it is made clear that the dismissal of the civil revision petition will not preclude the petitioner from initiating appropriate appeal proceedings before the competent forum as permissible under law.

DINESH KUMAR SHARMA, J

22nd NOVEMBER, 2022
‘pp’

