IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 26TH DAY OF JULY 2024 / 4TH SRAVANA, 1946

RP NO. 654 OF 2024

AGAINST THE JUDGMENT DATED 15.02.2024 IN OP(C) NO.1724 OF 2023 OF HIGH COURT OF KERALA

REVIEW PETITIONER/PETITIONER/PLAINTIFF:

ROSHANKURIAN
AGED 44 YEARS
S/O.LATE KURIAN, CHEMBAKASSERY HOUSE,
VAINTHALA DESOM, KALLUR VADAKKAMURI VILLAGE,
CHALAKUDY TALUK, THRISSUR DISTRICT, PIN - 680741

BY ADVS.
N.L.BITTO
MITHUL T ANTO

RESPONDENT/RESPONDENT/DEFENDANT:

MARIYAM ALIAS POULY
AGED 73 YEARS
W/O. LATE KURIAN, CHEMBAKASSERY HOUSE,
VAINTHALA DESOM, KALLUR VADAKKAMURI VILLAGE,
CHALAKUDY TALUK, THRISSUR DISTRICT, PIN - 680741

BY ADV.SRI.SREEKANTH K.M.

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 15.07.2024, THE COURT ON 26.07.2024 PASSED THE FOLLOWING:

C.JAYACHANDRAN, J.

R.P. No.654 of 2024
in O.P.(C.) No.1724 of 2023

Dated this the 26th day of July, 2024

ORDER

The petitioner herein seeks review of this Court's judgment dated 15.02.2024 in O.P.(C.) No.1724/2023 which found that the Original Petition is not maintainable. In holding so, this Court notice that once the plaint is rejected under Order 7, Rule 11(c), the appellate remedy contemplated therefrom treating such rejection of the plaint as a deemed decree will not undergo any change merely because a Review Petition was filed against such rejection and the same was dismissed. This Court relied upon the judgment of the Hon'ble Supreme Court in *Rahimal Bathu and others* v. *Ashiyal Beevi* [AIR 2023 SC 5674].

2. Now, the review is sought for on the premise

that a review is quite maintainable against a deemed decree rejecting a plaint; that rejection of plaint for non payment of court fee is only a deemed decree; and that the impact of the judgments of this Court in *Sahasrabda Chits (P) Ltd.* v. *Sudeep & others* [(2014) 4 KHC 67], *K.M. Joy* v. *Princy Shaji* [(2018) 2 KLT 364] and *Beena* v. *Kesavan* [(2016) 3 KLT 117] were not considered by this Court in dismissing the Original Petition vide the judgment under review.

3. Having heard the learned counsel for the review petitioner and the learned counsel for the respondent herein, it appears that the review petitioner missed the wood for the trees and that, he is misconceived. It is not by holding that the review is not maintainable as against rejection of plaint for non payment of court fee that the Original Petition was dismissed. Instead, the Original Petition took stock of the legal position that a review preferred from an order rejecting the plaint, which is a deemed decree in terms of Section 2(2) of

the Code of Civil Procedure, will not substitute the appellate remedy available as against a decree. In other words, merely because a review application is filed and dismissed against an order rejecting the plaint, such remedy available in law will not undergo any change, wherefore an Original Petition under Article 227 of the Constitution is not the appropriate remedy. Instead, the remedy should be one provided under Order 41, Rule 1. This aspect has been specifically held by the Hon'ble Supreme Court in Rahimal Bathu (supra) and taking stock of the same, this Court held that the Original Petition filed under Article 227 is not maintainable. The grounds raised in this Review Petition are not liable to be recognised in teeth of the said findings of this Court based on Rahimal Bathu (supra).

4. Since it is specifically averred that the impact of the three decisions have not been considered by this Court, this Court will do that exercise as well.

5. The first decision is *Sahasrabda Chits (P) Ltd.* v.

Sudeep & others [(2014) 4 KHC 67]. In that case filed under Article 227 of the Constitution, Ext.P4 order was under challenge, which dismissed an application for review on the premise that, there exists an error apparent on the face of the record and also that, court fee paid for the Review Petition was insufficient. A learned Single Judge of this Court held that, when the Court fee is paid within thirty days from the date of rejection, the application for review ought to have been considered by the trial court in favour of the petitioner therein. The principle held in *Sahasrabda Chits (P) Ltd.* (supra) is that, in a Review Petition, the petitioner shall not be saddled with the liability to pay half the *ad valorem* court fee. It was found by the learned Single Judge that the plaintiff in such a case will be put to severe financial loss. The dictum laid down by this Court in *Thanappan* v. *Hassan Kappor* [2003 (2) KLT 39] was followed. The said judgment is of little assistance insofar as the issue before this Court is concerned.

6. The second in line is a judgment of the Division Bench of this Court in *Beena* v. *Kesavan* [(2016) 3 KLT 117], wherein, the issue again was with respect to the rate at which court fee has to be paid in the appeal from a deemed decree, rejecting the plaint for non payment of balance court fee. The ratio in *Thanappan* (supra) was upheld and it was held that the appellant need only pay court fee as per Schedule II, Article 3 (iii) (A)(1) of the Kerala Court Fees and Suits Valuation Act. The said judgment also offers no solace to the petitioner having regard to the issue involved in this Review Petition.

7. The third one is a judgment by a learned Single Judge of this Court in *M. Joy* v. *Princy Shaji* [(2018) 2 KLT 364]. There the issue was with respect to dismissal of a Review Petition, which was directed against an order rejecting the plaint for non payment of court fee. The Review Petition was dismissed holding that the balance court fee was remitted after one year

and three months from the date of filing the Review Petition. The rejection of review on that question was found to be wrong. A specific contention was taken up in that case to the effect that the remedy of a person whose plaint stands rejected under Order 7, Rule 11(c) is to file an appeal and not a review. That contention was rejected holding that in appropriate cases where the plaintiff could make out grounds for review, then the appellate remedy would not stand in the way. There again, the issue was with respect to the maintainability of the Review Petition for reason of availability of an appellate remedy. However, in the instant case, the issue, as discussed earlier, is quite different. The issue is the remedy of the plaintiff, whose plaint stands rejected under Order 7, Rule 11(c) and whose petition to review the said order also stands dismissed. It is in such circumstances, the Hon'ble Supreme Court in *Rahimal Bathu* (supra) held that where Review Petition is dismissed, there is no question of any merger and the

aggrieved person shall have to challenge the original decree within the time stipulated; and not order dismissing the Review Petition. There, the Hon'ble Supreme Court also held that revisional court is not entitled to entertain a revision rejecting an application for review of an appealable decree as could be seen from paragraph no.25 of *Rahimal Bathu* (supra).

No ground for review is made out and this Review Petition will therefore stands dismissed.

Sd/-

C. JAYACHANDRAN

JUDGE

SKP/26-07

APPENDIX OF RP 654/2024

RESPONDENT'S EXHIBITS:

EXHIBIT R1	THE TRUE COPY OF THE RESTORATION PETITION IA NO.9/2022 IN I.A.NO.2932/2019 IN O.S. NO.215/2015 ON 27/07/2022 FILED BEFORE SUB COURT, IRINJALAKUDA
EXHIBIT R2	THE TRUE COPY OF THE DELAY CONDONATION PETITION IA NO.2/2022 IN I.A.NO.2932/2019 IN O.S. NO.215/2015 ON 27/07/2022 FILED BEFORE SUB COURT, IRINJALAKUDA
EXHIBIT R3	THE TRUE COPY OF THE E-COURT PROCEEDING IN RP NO.9/2022 IN IA NO.2932/2019 IN OS NO.215/2015 OF SUB COURT, IRINJALAKUDA DATED 09/10/2023

TRUE COPY

P.A. TO JUDGE