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C.R.P.(NPD).No.3045 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.3045 of 2021

A.NARAYANASAMY

... Petitioner

VS

R.KAMALAM

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair order and decretal order dated 20.10.2021 passed in Un-numbered O.S.S.R.No.3801 of 2021 by the learned Principal District Munsif at Alandur, consequently, direct the Lower Court to number the plaint in Un-numbered O.S. S.R. No.3801 of 2021 and allow this Civil Revision Petition.

For Petitioner : M/s.Ilayarani Ponraj

For Respondent : Not Ready in Notice

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court rejecting the plaint presented by the petitioner even without numbering. Aggrieved by the same, the petitioner is before this Court.

2. Against the order of rejecting the plaint, an appeal shall lie before



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the regular Appellate Court as an order rejecting the plaint is a deemed decree.

3. The learned counsel appearing for the petitioner submitted that the plaint has been rejected even before numbering, therefore, it cannot be treated as deemed decree.

4. I had an occasion to consider this question, whether an order rejecting unnumbered plaint can be treated as deemed decree for the purpose of filing an appeal in ***T.Kumar Vs.Pavai Varam Educational Trust reported in AIR 2023 Mad 42 = Manu/TN/9817/2022***, wherein the relevant observation reads as follows:-

“7. 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) of CPC, he had chosen to bring it under the inclusive definition by including it in the second limb of definition. Therefore,



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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.

8. It is also useful to refer to the judgement of this Court reported in MANU/TN/2570/2016 (A.Ramanathan vs. Tamarai Mills Ltd) wherein this Court after referring to the unreported judgement of the Division Bench of this Court made in C.R.P.(PD). No. 1211 of 2013 dated 28.08.2014 observed as follows:-

"12. The Division Bench of this Court, in the unreported Judgment dated 28.08.2014 referred supra, has clearly held that if a Court of Law passes an order for rejection of plaint, under Order 7 Rule 11 of Civil Procedure Code, it has the force of "Decree" and therefore, regular "Appeal" lies under Civil Procedure Code and in fact, no "Revision" would lie."

9. In view of the discussions made above, this Court has no hesitation in holding that this Civil Revision Petition challenging the order passed by the Court below rejecting the



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plaint in unnumbered stage is not maintainable.”

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5. In view of the law laid down in the above mentioned case law, against the order impugned in this revision, an appeal shall lie before the regular Appellate Court.

6. Accordingly, the Civil Revision Petition is dismissed as not maintainable with liberty to the petitioner to challenge the order rejecting the plaint by way of filing a regular First Appeal before the Appellate Court. No costs.

05.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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Note to Registry:

The Registry is directed to return the original impugned order to the learned counsel for the petitioner.



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To

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The Principal District Munsif,
Alandur.



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S.SOUNTHAR, J.

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