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C.R.P.(PD).No.3751 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.3751 of 2017

S.Sathiyamarayanan

... Petitioner

VS

1.M.Tamizharasi

2.S.Kamala

3.Kuthbudeen

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the order and decretal order dated 28.04.2017 made in Un Numbered O.S. No. of 2017 on the file of Sub Judge, Mannargudi.

For Petitioner : Mr.J.Nandagopal

For R1 and R2 : Not Ready in Notice

For R3 : No Appearance



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ORDER

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The Civil Revision Petition is filed challenging the order passed by the Court below rejecting the unnumbered plaint.

2. The learned counsel appearing for the petitioner submitted that since the plaint is rejected even without numbering, it cannot be treated as a deemed decree and the civil revision petition is maintainable.

3. 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:-

“6. The contention of the learned counsel for the petitioner cannot be accepted in the light of the clear wordings of Section 2(2) of Code of Civil Procedure. The definition of the expression 'decree' contains three limbs:

(i) The first limb of the definition defines the expression decree by words;



(ii) *The second limb of definition is an inclusive definition, it brings an order rejecting the plaint and an order determining any one of the questions under Section 144 of CPC within the fold of definition of decree.*

(iii) *The third limb of definition is an exclusive definition, it excludes any adjudication from which an appeal shall lie as an appeal from an order and any order dismissing the suit for default from the purview of definition of expression 'decree'.*

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, 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 plaint in unnumbered stage is not maintainable."

4. 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. Therefore, the civil revision petition is not maintainable.

5. Accordingly, the Civil Revision Petition is dismissed with liberty to



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the petitioner to file regular appeal challenging the impugned order rejecting the plaintiff. It is also made clear that the petitioner is entitled to exclude the time during which the civil revision petition was pending before this Court (i.e., from 04.10.2017 to date of receipt of copy of this order) while calculating the limitation for filing regular appeal. No costs.

26.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

Note: The Registry is directed to return the copy of the original impugned order dated 28.04.2017 made in O.S.No. of 2017 to the learned counsel for the petitioner.

To

The Sub Judge,
Mannargudi.



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S.SOUNTHAR, J.

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