

D/L.37.
April 29, 2025.
MNS.

FMA No. 669 of 2025
+
CAN 1 of 2024

State Bank of India and others
Vs.
Sanjit Mandal and others

Mr. Debasish Saha,
Mr. Avirup Roy Sanyal,
Ms. Sucheta Pal

... for the appellants.

1. The present appeal has been preferred against a judgment and order by which the First Appellate Court reversed the Trial Court's deemed decree whereby the learned Trial Judge had rejected the plaint in a suit.
2. The brief facts of the case are that the respondents filed a suit, according to the appellants, challenging measures taken by the appellants under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
3. The defendant nos. 2, 3 and 4/appellants filed an application under Order VII Rule 11 of the Code of Civil Procedure (in short, "the Code") for rejection of the said plaint, which was allowed by the learned Trial Judge.
4. Within the definition of "decree" under Section 2 of the Code, an order rejecting a plaint is deemed to

be a decree. As such, the decision, by which the learned Trial Judge rejected the plaint by allowing the appellants' application under Order VII Rule 11 of the Code, was a deemed decree.

5. Being aggrieved by the same, the plaintiffs rightly preferred a title appeal, treating the said decision of the learned Trial Judge to be a decree.
6. The Appellate Court, however, reversed the judgment of the learned Trial Judge and rejected the application under Order VII Rule 11 of the Code filed by the present appellants.
7. In order to elaborate the position of law, learned counsel for the appellants cites an unreported Three-Judges Bench decision of this Court in *CO 3904 of 2017 (The Deputy Director, Employees' State Insurance Corporation Vs. Ward Memorial Church School and another)* where the majority view was to the effect that under such circumstances, the remedy would lie by way of a revision under Article 227 of the Constitution of India.
8. Upon a perusal of the cited judgment and the law on the subject, we are of the clear opinion that a revisional application, and not an appeal, is maintainable against the present impugned order of the first appellate court.
9. This is not a clear case of merger, since no issue has been conclusively adjudicated upon. Merely

the plaint was rejected, which was subsequently reversed.

10. Under Section 100, read with Order XLII of the Code, a Second Appeal is maintainable only against a “decree” passed by a First Appellate Court.

11. To come within the definition of a “decree”, however, it is not sufficient that the judgment was passed in a regular First Appeal. Merely because a decision is passed in a First Appeal does not transform the status of the said decision automatically to that of a decree.

12. In order to elaborate such proposition, we could cite the instance of a remand order whereby the First Appellate Court remands a matter to the Trial Court, in which case, although the judgment is passed in a regular First Appeal, the same is not a “decree” but an “order” of remand.

13. In the present case, although the Trial Court passed a decree by rejecting the plaint, within the ambit of Section 2 of the Code, the learned First Appellate Judge, while reversing such verdict, did not pass a decree, since the rejection of an application under Order VII Rule 11 of the Code does not tantamount to either a decree or an appealable order within the four corners of the Code.

14. Thus, the impugned decision, although passed in a First Appeal, was merely an “order” and not a “decree”. As such, there is no scope of any Second Appeal being maintainable against the same.

15. Even otherwise, the present appeal has been categorized as a First Miscellaneous Appeal. However, since the order of the First Appellate Court, rejecting the application under Order VII Rule 11 of the Code, is not appealable either under Order XLIII of the Code or under any other provision of law, no appeal, whether Miscellaneous Appeal or regular First Appeal, is maintainable against the said order.

16. Perusing the provisions of Section 115 of the Code, we find that this is a fit case where the rejection of the application of the appellants under Order VII Rule 11 of the Code passes muster as a “case decided” which, within the ambit of the proviso to sub-Section (1) of Section 115 of the Code, is a perfect example where the impugned order, if the same was passed in favour of the present appellants, would have finally decided the suit by rejection of the plaint.

17. As such, the present impugned order of the First Appellate Court is amenable to the Civil Revisional Jurisdiction under Section 115 of the Code.

18. Thus, we find that the present appeal is not maintainable, since the impugned order of the first appellate Court is not an appealable order at all.

19. Accordingly, FMA No. 669 of 2025 is dismissed as not maintainable without any order as to costs, with liberty to the appellants to prefer a proper Civil Revisional Application under Section 115 of the Code before the appropriate Bench taking up such matters.

20. Consequentially, CAN 1 of 2024 is also dismissed.

21. We make it abundantly clear that we have not touched the merits of the contentions of the parties, and it will be open for the appellants to take all points raised in the present appeal in the revisional application, as and when filed.

22. Leave is granted to the learned Advocate-on-record for the appellants to take back the certified copies of the impugned judgment and order of the First Appellate Court as well as the judgement and decree of the Trial Court upon furnishing photocopies of the same for the purpose of preferring the revisional application.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)