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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 24th March, 2025***
+ **CM(M) 3450/2024& CM APPL. 55727/2024**
M/S. GURUDUTT KAILASH CHAND SHARMA

.....Petitioner

Through: None.

versus

YASHANSH CONSTRUCTION PVT. LTD. & ORS.

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. None appears on behalf of the petitioner.
2. However, fact remains that a very short point is involved herein.
3. When the present petition was taken up by this Court on 23.09.2024, based on a query raised by the Court, the petitioner was given time to apprise as to how the present petition was maintainable. Fact remains, there is no representation from the side of the petitioner and no response to such query.
4. Petitioner had filed a suit and the same has been rejected under Order VII Rule 11 CPC.
5. Section 2(2) of CPC reads as under:-

“(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively



determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

6. In view of the abovesaid definition, evidently, a suit when rejected is also deemed to be a decree.

7. In such a situation, if anybody is aggrieved by the decree, the remedy is by filing appropriate appeal under Section 96 of CPC. It is also settled law that if there is alternate efficacious remedy available under law, Court would not interfere with such order by invoking its supervisory power under Article 227 of the Constitution of India.

8. Reference, in this regard be also made to a judgment of this Court i.e. *Rajan Lao v. NDMC:2022 SCC OnLine Del 1621* wherein it has been held, in no uncertain terms, that against the rejection of a plaint, petition under Article 227 of Constitution of India is not maintainable.

9. The relevant paras of the abovesaid judgment are as under:-

“7. Mr. Kalia sought to submit that even the rejection of a plaint, under the second part of Section 2(2) would have to take colour from the earlier part of the definition and would, necessarily, therefore, require to be a “formal expression of an adjudication”, which “conclusively determines the rights of the parties”. I am



unable to agree. Definition clauses in statutes commonly use the expressions either “means”, “includes” or “means and includes”. Over a period of time, the position in law, regarding the scope and ambit of these expressions, when used in definition clauses, stand settled in P. Kasilingam v. P.S.G. College of Technology, Bharat Co-operative Bank (Mumbai) Ltd. v. Coop. Bank Employees Union, Ramanlal Bhailal Patel v. State of Gujarat, National Insurance Co. Ltd. v. Kirpal Singh.

8. Insofar as definition clauses using the expression “means and includes” are concerned, it is well settled that the inclusive part of the definition expands the definition beyond what is envisaged by the “means” part and is intended, therefore, to expand the scope of the definition”. It is against the most basic principles of interpretation of definition clauses containing “means and includes” to contend that the inclusive part of the definition has to be conditioned by the “means” part. This submission of Mr. Kalia is, therefore, in my view, misconceived and is accordingly rejected. Clearly, in my view, by including, within the definition of “decree”, rejection of a plaint, the legislature intends to expand the definition of “decree” beyond what is otherwise envisaged by the earlier part of the definition. It would go against the very grain of the definition, and the obvious intent of the legislature in crafting the definition in a “means and include” format, to hold that the rejection of the plaint must also be by way of a formal expression of an adjudication which conclusively determines the rights of the parties before the court. In my opinion, any rejection of a plaint would be a “decree” within the meaning of Section 2(2).

9. Mr. Kalia also sought to submit that every deeming fiction should be limited to the purpose for which it is created, and cannot expand beyond it. There can be no quarrel with this proposition. Having said that, the expression when the deeming fiction is contained in a definition clause, the obvious intent is to apply that deeming fiction to every point of that statute where that expression finds place. The principle that a deeming fiction must be limited to the purposes for which it is created, cannot, therefore, be of any serious consequence insofar as the present dispute is concerned.



10. However, another aspect of deeming fiction, which is of significant import, is the principle that wherever a position of fact or law is statutorily deemed to exist, it would carry with it every consequence which would follow from, were that state of affairs to be in existence. One may refer in this context to *Karnataka State Road Transport Corpn. v. B.A. Jayaram*, *I. Nelson v. Kallayam Pastorate*, *M. Aamira Fathima v. Annamalai University*.

11. Applying the said principle to the definition of decree in Section 2(2) of the CPC, by deeming the rejection of a plaint to be a “decree”, every consequence which would follow, in law, were the rejection of the plaint to be a decree would also be deemed to follow.

12. One such consequence is that the decree would be appealable under the rejection of the plaint would become appealable under Section 96 of the CPC. Section 96 is clear in its term. It states, inter alia that an appeal shall lie from every decree passed by any court exercising original jurisdiction, to the court authorised to hear appeals from the decisions of such court. The intent of the legislature is transparent, from the use of the words, “shall” and “every decree”. No order or decision, which qualifies as a decree within the meaning of Section 2(2) of the CPC is, therefore, accepted from the ambit of Section 96.

13. Though Section 96 starts with the words “save where otherwise expressly provided in the body of this Court” it is nobody's case that there is any provision in the body of the CPC which excepts orders, allowing applications under Order VII Rule 11 and consequently, rejecting plaints from the ambit of Section 96.

14. Mr. Kalia also drew my attention to Section 2(14) of the CPC which defines “order” thus:

“2. Definitions.—

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(14) “order” means the formal expression of any decision of a Civil Court which is not a decree;”



10. In view of the above, the present petition is dismissed as not maintainable. It is, however, clarified that this Court has not made any observation with respect to the merits of impugned order as such.

11. Present petition, along with pending application, stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

MARCH 24, 2025/sw/SS