

AD -19
Ct No.16
14.01.2026
(SSS)

SAT 280 of 2025
with
CAN 1 of 2025

Taraknath Pyne
Vs.
Apurba Ash and Ors.

Mr. Partha Pratim Roy,
Mr. Kushal Chatterjee,
Mr. Sibashis Chowdhury
....For the appellant.

Mr. Pinaki Ranjan Mitra

....For the respondent no. 1.

1. Leave is granted to the learned advocate-on-record for the appellant to rectify the defect regarding the preamble of the memorandum of appeal during the course of the day.
2. At the outset, a question of maintainability arises with regard to the present second appeal.
3. The brief backdrop is that in a suit filed by the respondents herein, an application filed by the present appellant (defendant in the suit) under Order VII Rule 11 of the Code of Civil Procedure was allowed, thereby rejecting the plaint.
4. Against such deemed decree, a regular first appeal was preferred by the respondents which, by the impugned judgment, was allowed on contest by the First Appellate Court, thereby

setting aside the deemed decree of rejection of
 plaint, giving rise to the present second appeal.

5. Learned counsel appearing for the appellant, in support of the maintainability of the present second appeal, cites a three-Judge Bench decision of this Court in the matter of *Deputy Director, Employees' State Insurance Corporation vs. Ward Memorial Church School and Anr.* reported at 2023 SCC OnLine Cal 2914 where the Hon'ble Larger Bench *inter alia* observed, while finding that the issue arose as to when the First Appellate Court either affirms the order rejecting the plaint or reverses the order thereby restoring the suit to be tried on merits, what would be the remedy available to an aggrieved party, held that it is in effect an order of remand under Order XLI Rule 23 of the Code of Civil Procedure.

6. The Larger Bench further held that it is the nature of the jurisdiction that was emphasized and given predominance in the judgments discussed therein and ultimately found that the proper remedy in the said case would be to file a writ petition under Article 227 of the Constitution of India.

7. Although separate judgments were delivered by the Hon'ble Judges constituting the said Bench, the conclusion was the same, to the above effect.

8. Learned counsel further cites a judgment of a learned Single Judge of this Court in the matter of *The Lieutenant Governor of Andaman and Nicobar Islands and Others vs. Andaman Plantation and Development Corporation Pvt. Ltd. (CO 75 of 2025)* where it was held that, against an order whereby the First Appellate Court reversed the rejection of a plaint by the Trial Court, the exercise would be under Order XLI Rule 23 of the Code and as such, an appeal would lie against such order under Section 104, read with Order XLIII Rule 1(u), of the Code of Civil Procedure. While holding so, the learned Single Judge observed that the findings of the Larger Bench judgment referred to above, insofar as the contrary was held therein, were *obiter dicta*.

9. Lastly, learned counsel for the appellant cites *K. Valarmathi and Others vs. Kumaresan* reported at 2025 SCC OnLine SC 985 where the Hon'ble Supreme Court deprecated the invocation of constitutional powers for rejecting a plaint.

10. Heard learned counsel for the parties.

11. With utmost respect to the erudition of the members of the Larger Bench, in our opinion, the observation of the said Bench to the effect that an application under Article 227 of the Constitution of India will lie in the event the Appellate Court

rejects an Order VII Rule 11 application was *obiter dictum* in the context of the said case.

12. The factual matrix of the said case was diametrically opposite to the present one. The question which was referred to the said Bench, in answer to which the judgment was passed by the Larger Bench, was as follows:-

“Whether the remedy lies by filing Second Appeal, if the Revisional Court reverses the order of the Trial Court refusing to reject the plaint, as a corollary effect the plaint is rejected in view of the definition of “decree” given under Section 2(2) of the Code.”

13. Thus, in the said case, the Trial Court had rejected the application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, which was reversed by the First Appellate Court. As such, the order of the First Appellate Court rejecting the plaint was in the nature of a deemed decree.

14. Hence, the said judgment does not come to the aid of the appellant in the present case, not being a precedent on the issue which has arisen before us.

15. Insofar as the judgment of the learned Single Judge in *The Lieutenant Governor of Andaman and Nicobar Islands and Others* (supra) is concerned, it was held therein that where the First Appellate

Court reverses the rejection of plaint, the said order should be treated to be an order of remand and a further appeal lies against the same under Order XXIII Rule 1 (u) of the Code of Civil Procedure. However, in the facts of the said case, while rejecting the plaint, the trial court had framed a preliminary issue in that regard and had decided the same, which apparently prompted the learned Single Judge to hold that the First Appellate Court's judgment tantamounted to a remand order.

16. A perusal of the language of Order XLI Rule 23 would be beneficial in the context.

17. The said provision is set out hereinbelow:-

“23. Remand of case by Appellate Court. -

Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original

trial shall, subject all just exceptions, be evidence during the trial after remand.”

18. From a comprehensive reading of the said provision, it is amply clear that by the expression “preliminary point” used therein, the legislature intended to cover cases where a preliminary issue is decided (for example under Order XIV of the Code of Civil Procedure). Such construction would be in consonance with the rest of the provision, since in such a case, the Appellate Court has been empowered under Rule 23, if it thinks fit, to remand the case and further direct “what issue or issues shall be tried” in the case so remanded.

19. Furthermore, in Order XLI Rule 23, the language used is that where the court from whose decree an appeal is preferred “has disposed of the suit upon a preliminary point”. The expression “disposed of the suit”, obviously means that an issue has been decided in the preliminary form.

20. The rejection of a plaint under Order VII Rule 11 of the Code is a deemed decree merely because it is stated to be so in Section 2 of the Code of Civil Procedure, which defines a decree. However, *per se*, the rejection of a plaint does not involve the disposal of a suit or the decision on any issue whatsoever. For qualifying as an “issue”, an averment has to be made in the plaint, which has

to be controverted in the written statement, thereby prompting the Trial Court to formulate a specific issue. Unless such an issue is decided while disposing of the suit, the trappings of Rule 23 of Order XLI cannot apply. However, the rejection of a plaint simpliciter cannot be equated with disposal of a suit - either on a preliminary issue or otherwise.

21. Hence, in the event the First Appellate Court sets aside a deemed decree merely rejecting the plaint, without any issue being simultaneously decided by the trial court, the effect is that the application under Order VII Rule 11 of the Code stands rejected by the First Appellate Court, which acquires the character of an order and not a decree or an appealable order or a remand order.

22. In such view of the matter, in the event the First Appellate Court reverses a deemed decree rejecting a plaint without deciding any issue, such judgment of the First Appellate Court is to be treated as an order within the contemplation of the Code of Civil Procedure simpliciter and not a remand order in the true sense of the term.

23. In view of such order, if passed in favour of the challenger, having finally decided the suit by rejection of the plaint, the trappings of Section 115 (as amended) of the Code of Civil Procedure

are squarely applicable and as such, a revisional application under Section 115 of the Code of Civil Procedure is the remedy available to the aggrieved party against the order of the First Appellate Court rejecting the application under Order VII Rule 11 of the Code of Civil Procedure.

24. Thus, in any event, the proposition laid down in *The Lieutenant Governor of Andaman and Nicobar Islands and Others* (supra) does not come to the aid of the appellant, since in the said case an issue was decided by the learned trial Judge alongwith rejection of the plaint, which lent the judgment of the First Appellate Court the colour of a remand order.

25. In view of the above, we hold the maintainability issue against the appellant in the present case.

26. It is hereby observed that no second appeal, as preferred in the instant case, is maintainable against the impugned judgment and order of the First Appellate Court, whereby the rejection of the plaint by the Trial Court was reversed, thereby in effect rejecting the application under Order VII Rule 11 of the Code of Civil Procedure.

27. We make it clear that despite a decree having been drawn up by the First Appellate Court in the instant case, such decree was a misnomer and drawing up of a decree was totally misconceived

and superfluous, in view of the order of the First Appellate Court not being a decree from any perspective whatsoever.

28. The mere ministerial act of drawing up of a decree cannot govern the parent provisions of the statute and/or determine the appellability or otherwise of the judgment in respect of which such decree has been drawn up. Thus, the drawing up of a decree by the First Appellate Court is totally irrelevant in the context of the present case insofar as the issue of maintainability is concerned.

29. Accordingly, SAT 280 of 2025 is dismissed as not maintainable in view of the impugned judgment of the First Appellate Court being in the nature of an order simpliciter and not a decree. A revisional application under Section 115 of the Code of Civil Procedure, and not an appeal, would be the appropriate remedy against such order.

30. Consequentially, CAN 1 of 2025 is also disposed of.

31. There will be no order as to costs.

32. Leave is granted to the learned advocate-on-record for the appellant to take back the certified copies of the judgments of both the Courts below and the decree of the trial court from the Department, upon furnishing photocopies thereof for the records.

33. Since we are informed that the next date of final hearing fixed in the Trial Court in the parent suit is tomorrow, i.e. January 15, 2026, for the ends of justice, we grant stay of all further proceedings of the suit till January 22, 2026 in order to enable the appellant to prefer a revisional application before the appropriate Bench in the meantime.

34. The court fees paid in connection with the second appeal shall be refunded to the appellant by the Department, upon being so approached by the appellant.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)