IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1218-2022
Decided on : 19.07.2022

Nimrata Shergill and another

. . . Petitioner(s)

Versus

Shop Owners Welfare Association

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Rajesh Garg, Sr. Advocate with
Ms. Neha Matharoo, Advocate
for the petitioner(s).

Mr. Gaurav Datta, Advocate and
Ms. Shrishti Sharma, Advocate
for the respondent(s)..

****

MANJARI NEHRU KAUL, J.

The instant revision petition has been preferred under Article 227 of the Constitution of India, for setting aside of order dated 09th March, 2022 (Annexure P-3), passed by Addl. Civil Judge (Sr. Divn.), Chandigarh, vide which, application filed under Order 7 Rule 11 of the Code of Civil Procedure (hereafter called as 'Code') for rejection of plaint in a summary suit, by the respondent-defendant, was allowed.

It would be apposite to give a brief sequence of events leading to the filing of the instant revision petition by the petitioners, who are plaintiffs before the Court below. Parties hereinafter shall be referred to by their original positions before the Court below.

Plaintiffs, who are practicing Advocates, filed a summary suit under Order XXXVII of Code for grant of a decree for recovery of Rs.49,66,510/- (i.e. Rs. 10,11,900/- towards plaintiff No.1 and Rs. 39,54,610/- towards plaintiff No.2) along with interest pendente lite @ 12%

p.a., during the pendency of the suit and future interest @ 12% p.a. till its actual realization, along with costs and legal fee dues from the defendant for various cases contested on its behalf. It has been pleaded that notice in the aforementioned suit filed by the plaintiffs/petitioners was issued to the defendant/respondent on 26.09.2019. Summons were served upon the defendant on 23.10.2019, however, the defendant failed to put in appearance in the Court within the stipulated 10 days, as envisaged under Order XXXVII Rule 3(1) of Code. Thereafter, statutory summons for judgment under Order XXXVII Rule 3(4) of Code were served upon the defendant on 03.01.2020. Application for leave to defend was required to be filed by the defendants within 10 days as per the provisions of Order XXXVII Rule 3(5) of Code, however, they failed to file any application for leave to defend within the statutory period of 10 days. Instead, they filed an application under Order 7 Rule 11 of Code on 23.12.2021, seeking rejection of the plaint on the ground that the suit did not fall within the ambit of summary suit as contemplated under Order XXXVII Rule 1 (2) of Code. The said application was allowed vide impugned order dated 09.03.2022 and the plaint rejected. Hence, the instant revision petition.

At the outset, a pointed query was put to the learned senior counsel for the petitioners qua the maintainability of the instant revision petition since a statutory remedy of appeal against the order of rejection of plaint is provided for and was available to him. On the query put, learned senior counsel submitted that the trial Court had on the face of it committed grave illegality while passing the impugned order. He submitted that statutory summons for judgment was served upon the defendant on 03.01.2020, as per Order XXXVII Rule 3(4) of Code and hence, the

defendant/respondent was required to file an application for leave to defend within 10 days i.e. by 13th January, 2020, as provided for under Order XXXVII Rule 3(5) of Code. However, the defendant failed to file an application for leave to defend within the statutory period of 10 days and hence, on this ground alone, the suit was liable to be decreed forthwith as per the provisions of Order XXXVII Rule 3(6)(a) of Code. Therefore, the trial Court fell in error while failing to exercise its jurisdiction in not passing a decree immediately on the lapse of 10 days.

Learned senior counsel for the petitioners further contended that application under Order 7 Rule 11 of Code was not maintainable in a suit filed under Order XXXVII of Code. He submitted that Order XXXVII of Code was a complete code in itself and thus, the procedure provided therein could not be deviated from and had to be strictly complied with. After putting in appearance, the defendant has to file an application for leave to defend and on doing so, only thereafter he could be permitted to raise all the defenses be available to him and permissible under law. It was thus argued by the learned senior counsel that an application under Order 7 Rule 11 of Code, was not maintainable in a summary suit and the trial Court had clearly gone beyond its jurisdiction by entertaining the application filed under Order 7 Rule 11 of Code by the defendant.

Learned senor counsel for the petitioners vehemently argued that the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, was extensive and it could be exercised to check and correct any patent error or illegality committed by a subordinate Court. He thus submitted that in the aforementioned circumstances, since the trial Court had not complied with the mandatory procedure envisaged under

Order XXXVII of Code and still further illegally adjudicated upon an application under Order 7 Rule 11 of Code, the instant revision petition under Article 227 of the Constitution of India, would be maintainable. In support of his submissions, learned counsel has placed reliance upon ***Surya Dev Rai Vs. Ram Chander Rai and others, (2003) 6 SCC 675, Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies District I Calcutta and another, (1961) 2 SCR 241, Hirday Narain Vs. Income Tax Officer, Bareilly, 1970(2) SCC 355, Harbanslal Sahnia andanother Vs. Indian Oil Corpn. Ltd. and others*** and various other judgments of High Courts and the Supreme Court.

Per contra, learned counsel for the respondent/defendant while opposing the submissions made by the counsel opposite, prayed for dismissal of the instant petition on the ground of maintainability by urging that the supervisory jurisdiction under Article 227 of the Constitution of India, could not be invoked by the petitioner without first availing of his alternative remedy of appeal. He submitted that since the rejection of plaint is a deemed decree, the petitioner could not have approached this Court under Article 227 of the Constitution of India and could have challenged the impugned order only by way of an appeal. In support of his contentions, learned counsel placed upon ***Sayyed Ayaj Ali Vs. Prakash G. Goyal and others : (2021) 7 SCC 456; Sirihari Hanumandas Totala Vs. Hemant Vithal Kamat and others : 2021(3) RCR (Civil) 768*** and ***Ramal Adwani Vs. Vashulal M.Talreja and another (Bomby HC) : Writ Petition (Civil) No.13427 of 2018.***

I have heard learned counsel for the parties and have perused the relevant material on record.

The foremost question, which requires to be dealt with by this

Court, is whether the instant petition under Article 227 of the Constitution of India, is maintainable or not. Before proceeding further, it would be apposite to reproduce Section 2(2) of Code:-

> *"(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;"*

By decree, it is implied that it is a formal expression of an adjudication by a Court of law, wherein, the rights of the parties are conclusively determined with regard to all or any of the matters in controversy in a suit. Further, the term 'decree' would include within its ambit an order of rejection of plaint under Order 7 Rule 11 of Code, as would be evident from the expression "shall be deemed to include the rejection of plaint" appearing in Section 2(2) of Code. A statutory remedy of appeal has been provided under Section 96 of Code against a decree, therefore, even an order of rejection of plaint under Order 7 Rule 11 of Code would be amenable to the remedy of appeal.

In the circumstances, when there does exist a statutory remedy of appeal against the impugned order, this Court does not deem it

appropriate to entertain the instant petition under Article 227 of the Constitution of India. It would be relevant to reproduce the observations of the Hon'ble Supreme Court in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Ors. Vs. Tuticorin Educational Society and Ors., (2019)9 SCC 538***, which are as under:-

> *"11. Secondly, the High Court ought to have seen that when a remedy of appeal under section 104 (1)(i) read with Order XLIII, Rule 1 (r) of the Code of Civil Procedure, 1908, was directly available, the respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In* ***A. Venkatasubbiah Naidu Vs. S. Chellappan [A. Venkatasubhiah Naidu v. S. Chellappan, (2000) 7 SCC 695]****, this Court held that "though no hurdle can be put against the exercise of the Constitutional powers of the High Court, it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a Constitutional remedy".*
>
> *12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in* ***Surya Dev Rai vs. Ram Chander Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675]****, pointed out in* ***Radhey Shyam Vs. Chhabi Nath [Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423 : (2015) 3 SCC 67]*** *that "orders of civil court stand on different footing from the orders of*

authorities or Tribunals or courts other than judicial/civil courts.

13. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.*"***

The order dated 09.03.2022 amounts to a decree as contemplated under Section 2(2) of the Code and the aggrieved party has a remedy of appeal under Section 96 of the Code. That being the position, this Court would loathe to interfere in the matter in exercise of its jurisdiction under Article 227 of the Constitution of India.

As a sequel to the above, no case for interference by this court is made out. The revision petition is thus dismissed.

(MANJARI NEHRU KAUL)
JUDGE

July 19, 2022
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No