
(1998) 10 DEL CK 0059

In the Delhi High Court

Case No : Civil Revision Petition No. 834 of 1987

Atma Parkash and Others

APPELLANT

Vs

Roshan Lal and Others

RESPONDENT

Date of Decision : 16-10-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1999) 4 CivCC 425 : (1999) 77 DLT 162 : (1999) 121 PLR 54

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. J.N. Aggarwal, for the Appellant;

Judgement

Mukul Mudgal, J.—In the present case the plaint was returned to the plaintiff/petitioner so as to be filed before a competent Court in accordance with its rejection under Order VII, Rule 11 of the Code of Civil Procedure. Learned Counsel for respondent No. 3 points out that a decree as defined u/s 2, Sub-clause (2) of CPC is deemed to include a rejection of a plaint. He further submits that only an appeal would lie only against the impugned order. Section 2, Sub-section (2) 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 termination 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."

2. He further relates on two judgments of learned Single Judge of this Court viz. M.L. Aggarwal Vs. National Thermal Power Corporation Ltd., and Tarun Chopra and Ors. Vs. UOI & Ors. 1992 (2) Del Law 250.

3. In my view there is merit in the preliminary objection raised by the learned Counsel for respondent No. 3. It is clear that rejection of a plaint as per the definition of a decree in Section 2(2) of CPC is defined to include deemed rejection of a plaint and accordingly only an appeal would be maintainable against such an order. The present revision petition is accordingly not maintainable. The revision petition is dismissed accordingly. It will be open to the petitioner to take such proceedings in accordance with law as may be available to him. There will be no other as to costs.