
(1994) 07 MAD CK 0035
In the Madras High Court

M. Muthupalani

APPELLANT

Vs

M.D. Kanan

RESPONDENT

Date of Decision : 08-07-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 115, 144, 151

Citation : (1994) 2 LW 357 : (1994) 2 MLJ 467

Hon'ble Judges : K.A. Swami, C.J

Bench : Single Bench

Judgement

K.A. Swami, C.J.—This L.P.A. is preferred against the order dated 23rd December, 1993 passed by the learned single Judge in C.R.P.

SR. No. 68468 of 1993 rejecting the civil revision petition on the ground that it is not maintainable, as it does not comply with the requirement of

Rule 21, Order 4 of the Rules of the High Court of Madras in the Appellate Side. Along with the civil revision petition, the petitioner has produced

a certified copy, of the order passed by the learned District Munsif, Poonamallee, rejecting the application filed by him under Order 7, Rule 11

read with Section 151 of the Code of Civil Procedure, 1908 for rejecting the plaint. Learned District Munsif has rejected the application.

However, learned single Judge has taken a view that according to Rule 21, Order 4 of the Appellate Side Rules of the High Court of Madras,

certified copies of the fair order and decretal order are to be produced. Of course, Rule 21, Order 4 of the Appellate Side Rules does not provide

that a fair copy of the order and certified copy of the decree to be produced in a case where only an order is sought to be revised. The Rule says

that civil revision petition u/s 115 of the Code or any other enactment shall be accompanied by

- (i) a certified copy of the decree or order which is to be revised,
- (ii) a certified copy of the judgment, if any, on which decree is based,
- (iii) a certified copy of the judgment or order, if any, of the court or tribunal of the first instance.

The other sub-clauses of Rule 21 are not necessary for our purpose. The expression ""order"" as defined in the CPC means the formal expression of

any decision of a civil court which is not a decree, whereas 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 and it shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but

shall not include any adjudication from which an appeal lies as an appeal from an order or any order of dismissal for default. For our purpose the

explanation is not necessary. Thus, there is no doubt that the order rejecting the application filed by the defendant in the suit under Order 7, Rule

11, read with Section 151 of the Code to reject the plaint cannot be held to be a decree. It is an order, because it does not determine the rights of

the parties involved in the suit. The petitioner has produced a certified copy of the order. This satisfies Rule 21(1) of Order 4 of the Appellate Side

Rules. As such the civil revision petition ought to have been registered. Hence, we find it difficult to agree with the office objection. However, it is

also not possible to hold that the L.P.A. is maintainable. The contention of the learned Counsel for the appellant is that the rejection of the civil

revision petition without going into the merits of the case only on the ground of maintainability, is an order unconnected with the civil revision

petition, therefore, it is an order passed in exercise of the inherent power of the Court, hence under Clause 15 of the Letters Patent, the appeal is

maintainable. We find it difficult to accept such a contention. The matter was placed before the learned single Judge as a revision petition. The

determination of the question of maintainability of a civil revision petition is a part of the exercise of jurisdiction u/s 115. Therefore, the order

passed by the learned single Judge cannot be held to be amenable to L.P.A. However, the view we have taken would enable the appellant to seek

review of the order so that the learned single Judge can review the order, in the

light of what we have said. With these observations, the L.P.A.S.R. is rejected.