

(2012) 03 CHH CK 0045
In the Chhattisgarh High Court
Case No : Second Appeal No. 84 of 2011

Manoj Agrawal

APPELLANT

Vs

R.R. Energy Company Ltd. and Others

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 11, 144, 2(2), 47

Citation : (2012) 3 MPHT 40

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Advocate : Amit Sharma, for the Appellant; Afroz Khan, Advocate for the Respondent No. 1, Mr. Ankit Singhal, Advocate for the Respondent No. 2 and Mr. G.D. Vaswani, Govt. Advocate for the Respondent No. 3/State, for the Respondent

Judgement

N.K. Agarwal, J.—This is plaintiffs" second appeal u/s 100 of CPC against the judgment and decree dated 7-12-2010 passed by the 3rd Additional District Judge (FTC), Raigarh in Civil Appeal No. 5-A/2010. On 14-3-2011, the appeal was admitted for hearing on the following substantial question of law :--

Whether the First Appellate Court was justified in dismissing the appeal as not maintainable.

2. The plaintiff filed a first appeal against the order dated 30-3-2010 passed by First Civil Judge Class II, Raigarh in Civil Suit No. 17-A/2010, whereby the Trial Court, while allowing the application under Order 7 Rule 11 of the CPC, filed by respondent No. 2, rejected the plaint. The learned 3rd Additional District Judge (FTC), Raigarh dismissed the appeal, inter alia on the ground that u/s 96 of the CPC, the first appeal is not maintainable against the order of rejection of plaint but only review petition is tenable. Hence, this second appeal.

3. Shri Amit Sharma, learned Counsel appearing for the appellant, by drawing the attention of this Court to the definition of decree, submits that rejection of the plaint also comes within the definition of decree, and therefore, first civil

appeal was maintainable and the learned First Appellate Court has wrongly dismissed the first appeal as not maintainable.

4. I have heard learned Counsel for the parties and perused the judgment and decree impugned.

5. Section 2(2) of the CPC reads thus:--

"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 47 or 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. As per above definition, decree shall be deemed to include rejection of a plaint. Therefore, on the fact, the First Appellate Court committed gross illegality in dismissing the first appeal holding it as not maintainable and the question of law formulated by this Court is answered accordingly in favour of the appellant.

7. For the reasons mentioned hereinabove, the appeal is allowed in part. The judgment and decree is set aside. The matter is remitted back to the First Appellate Court with a direction to restore the first appeal to its original number and then to proceed in deciding the same on its own merits, in accordance with law.

8. The parties are directed to appear before the First Appellate Court on 9th April, 2012.

9. In the facts and circumstances of the case, there shall be no order as to costs. A decree be drawn accordingly.