
(2012) 05 MP CK 0054

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4958 of 2011

Nagar Palika Parishad Ashoknagar

APPELLANT

Vs

Balwant Raj Surana and Others

RESPONDENT

Date of Decision : 14-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 103, Order 21 Rule 97, Order 21 Rule 98
Constitution of India, 1950 — Article 227

Citation : (2012) 05 MP CK 0054

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : D.D. Bansal, for the Appellant; Aniket Naik, Advocate for the respondent No. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Shri Justice Sujoy Paul

1. Since common questions of law are involved in these petitions (W.P. No. 4958/011 and W.P. No. 1323/2012), with the consent of parties, matters are analogously heard and decided by this common order. Facts are taken from W.P. No. 4958/2011.

2. In this petition filed under Article 227 of the Constitution, the challenge is made to the order dated 20.07.2011, whereby, an application preferred under Order 21 Rule 97 and 101 read with Section 151 of CPC is rejected by the Court below.

3. Shri D.D. Bansal, Advocate for the petitioner submits that against the impugned order dated 20.07.2011, the first appeal u/s 96 of CPC is already filed, which is pending. However, he submits that the said appeal was preferred after filing of the present writ petition. The question of dealing with the contentions on merits will depend on the maintainability of this petition. Thus, the first question

is, whether this petition under Article 227 of the Constitution is tenable ?

4. The only difference in W.P. No. 1323/2012 is that in the said case, first appeal has not been preferred by the petitioner against the impugned order therein, whereby similar application under Order 21 Rule 97 of CPC is rejected by the Court below by order dated 24.06.2011.

5. Shri D.D. Bansal, Advocate for the petitioner further submits that petition is maintainable and relied on Ram Kumar Tiwari and others Vs. Deenanath and others,

6. Per contra, Shri Aniket Naik, Advocate for the respondents relied on a recent order passed by this Court in W.P. No. 293/2012 (Prannath Jutshi Vs. Hindustan Petroleum Corporation). By relying on various provisions of CPC, Shri Naik submits that this petition is not maintainable and proper remedy for the petitioner to prefer appeal. Provisions which have a bearing in this matter are Order 21 Rule 97, 98 and 101 of CPC. Sub-rule (2) of Order 21 Rule 99 of CPC is also relevant in this matter.

7. A conjoint reading of the aforesaid rules would show that the objection of petitioner was required to be adjudicated. Sub-rule (2) of Rule 99 of CPC aforesaid shows that the Court is under a mandatory obligation to deal with the application in accordance with the provision. After objection and determination of questions referred as per rule 101 above, the Court is required to make an order as per Rule 98. Order 21 Rule 103 of CPC provides that where any application has been adjudicated under Rule 98 or Rule 100, the Order made there upon shall have the same force and be subject to the same conditions as to an appeal or as if it was a decree. Thus, it is clear that the order passed by the Court below is an appealable order u/s 96 of CPC. In view of availability of appellate remedy, this petition is not entertainable. More so, when in one case petitioner has already preferred an appeal against the same order. The judgment cited by Shri D.D. Bansal, Advocate for the petitioner in Ram Kumar case (supra) has no application in the facts and circumstances of this case.

8. In view of aforesaid, since petition is not tenable, there is no question of entering into the rival contentions of the parties on merits. Thus, no finding is given by this Court on the merits of the matter. Petitions are dismissed on the ground of maintainability. However, liberty is reserved to the petitioners to avail the remedy of appeal under the CPC. If petitioners prefer appeal (if not already preferred) within 15 days from today, the impediment of delay will not come in the way. In other words, if appeal is preferred within the aforesaid time, the competent Court shall deal with it in accordance with law on merits. On production of true copy of impugned order, Registry may return the certified copy of impugned order to the petitioners to enable them to avail alternative remedy. Petition is not entertained and is hereby dismissed. No costs.