

(2002) 10 KAR CK 0019

In the Karnataka High Court

Case No : Civil Revision Petition No. 3980 of 2002

Shakti Concrete Blocks and Poles and Another

APPELLANT

Vs

Abdulgafar and Others

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1A, Order 7 Rule 10, 104, 115

Citation : (2003) 5 KarLJ 439 : (2003) 1 KCCR 449

Hon'ble Judges : B. Padmaraj, J

Bench : Single Bench

Advocate : Ravi B. Naik, for the Appellant;

Final Decision : Dismissed

Judgement

B. Padmaraj, J.—Heard the learned Counsel for the petitioners on the question of maintainability of the revision petition raised by the office. The office has raised an objection that the civil revision petition filed against an order passed by the Trial Court falls under Order 7, Rule 10 of the CPC and hence an appeal lies and a revision does not lie.

2. Learned Counsel for the petitioners has vehemently contended before me that since this is a revision petition filed against the finding on issue No. 6 of the Trial Court and that the same being erroneous, the revision lies. According to the learned Counsel for the petitioners, the Court below having treated Issue No. 6 as a preliminary issue, has recorded a finding on the said issue holding that it has no pecuniary jurisdiction to try the suit and consequently ordered for return of plaint to the plaintiff for its presentation for the Court of competent jurisdiction. Under the circumstances, he contended that the said finding recorded by the Trial Court on issue No. 6 though resulted in ordering for return of plaint, does not strictly fall under Order 7, Rule 10 of the CPC and hence the revision petition filed by the petitioners is quite competent and correct.

3. It is no doubt true that the Court below while recording its finding on issue No.

6 in the affirmative and holding that it has no pecuniary jurisdiction to try the suit, it has ordered for the return of the plaint to the plaintiff for its presentation before the Court of competent jurisdiction. Therefore, virtually, it is an order for return of plaint and such a power could be exercised only under Order 7, Rule 10 of the CPC. That is the only provision which empowers the Court to order for return of plaint. That being so, the appeal lies from an order made under Order 7, Rule 10 of the CPC. Where such order is made by the Court of first instance, the appeal lies under Order 43, Rule 1(a) of the CPC. In the case of an order returning the plaint for presentation to a Court of competent jurisdiction, an appeal lies u/s 104 as provided under Order 43, Rule 1(a) of the CPC. Though the petitioners seek to contend that in this revision petition, he is only challenging the finding on issue No. 6, but ultimately, the order under challenge in the revision petition is the order of return of plaint for presentation to a Court of competent jurisdiction, which power as I have already stated could be exercised by the Court only under Order 7, Rule 10 of the CPC and against which an appeal lies. When a statutory remedy for getting the impugned order of the Trial Court quashed or set aside being available, revision before this Court u/s 115 of the CPC is not maintainable. In this view of the matter, I uphold the objection raised by the office. Consequently, the revision petition filed by the petitioners is dismissed as not maintainable. It is however made clear that the petitioners are at liberty to challenge the impugned order by way of an appeal before the competent Court. Reserving this liberty to the petitioners, the revision petition filed by the petitioners is dismissed as not maintainable.