
(2012) 06 MAD CK 0067
In the Madras High Court
Case No : C.R.P. (NPD) . No. 1593 of 2012

T.H. Anees Ahamed

APPELLANT

Vs

Union Bank of India

RESPONDENT

Date of Decision : 07-06-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 7 Rule 11, 100, 144, 2(2)

Citation : (2012) 5 MLJ 60

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : S. Subramanian, for the Appellant;

Final Decision : Dismissed

Judgement

Honourable Mr. Justice G. Rajasuria

1. Inveighing the order dated 31.3.2011 passed by the Principal District Munsif, Krishnagiri, in I.A. No. 86 of 2011 in O.S. No. 272 of 2010, this

revision petition has been filed. A summation and summarisation of the germane facts would run thus:

(i) The revision petitioner herein, as plaintiff, filed the suit O.S. No. 272 of 2010, whereupon the second defendant entered appearance and filed

the written statement and also filed the I.A. No. 86 of 2011 for getting the plaint rejected.

(ii) After hearing both sides, the lower Court rejected the plaint, as against which, this revision has been focussed.

2. This Court raised the query as to how the revision would lie when appeal remedy is available.

3. In this connection I could get no plausible explanation from the revision petitioner's side.

4. At this juncture, I would like to refer to the definition of the term "decree" in CPC.

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 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.

5. Unambiguously and unarguably it is found specified therein that even rejection of a plaint under Order 7 Rule 11 of CPC would amount to a

decree. It is quite obvious that under Order 41 of CPC an appeal would lie as against any decree passed by a Court, if no civil miscellaneous

appeal is permitted under Order 43 Rule 1 of CPC. It is axiomatic that under Order 43 Rule 1 of CPC as against the rejection of the plaint, no

CMA could be filed, as such only appeal is the remedy.

6. In this connection, I would like to fumigate my mind with the decision of the Hon"ble Apex Court reported in Shamsheer Singh Vs. Rajinder

Prashad and Others, certain excerpts from it would run thus:

3....Before us a preliminary objection was raised based on the observations of this court in Sri Ratnavaramaraja Vs. Smt. Vimla, that the present

appeal is not competent. In that case this court observed that whether proper court-fee is paid on a plaint is primarily a question between the

plaintiff and the State and that the defendants who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no

right to move the superior courts by appeal or in revision against the order adjudging payment of court-fee payable on the plaint.... In the present

case the plaint was rejected under Order 7 Rule 11 of the CPC. Such an order amounts to a decree u/s 2 (2) and there is a right of appeal open to

the plaintiff. Furthermore, in a case in which this court has granted special leave the question whether an appeal lies or not does not arise. Even

otherwise a second appeal would lie u/s 100 of the CPC on the ground that the decision of the 1st appellate court on the interpretation of Section

7 (iv) (c) is a question of law. There is thus no merit in the preliminary objection.

7. It is therefore crystal clear that no revision would lie as against rejection of the plaint. Hence, the civil revision petition is dismissed. No costs.

Registry is directed to return the certified copies of fair and decreetal order to the petitioner, so that he would be able to file regular appeal before

the appellate Court immediately within the limitation period, excluding the time taken for filing the CRP.