

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CR No. 23/2020
CM No. 1012/2020

Mehvish Choudhary Appellant(s)/ Petitioner(s)

Through :- Mr. Aseem Sawhney, Advocate

V/s

J & K Bank & Anr.Respondent(s)

Through :- Mr. R K Jain, Sr. Advocate with
Mr. Pranav Jain, Advocate

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
22.05.2023

(ORAL)

1. Through the medium of the instant petition, revisional jurisdiction of this Court enshrined under Section 115 of the Code of Civil Procedure (*for short, 'CPC'*) is being invoked for setting aside order dated 29.08.2019 (*for short, 'impugned order'*), passed by the court of City Judge, Jammu (*for short, 'the trial court'*) in case titled as "*Mehvish Choudhary vs. J & K Bank & Anr.*".
2. The facts giving rise to the filing of the instant petition would reveal that the petitioner herein filed *inter alia* a suit for mandatory injunction against the defendants/respondents herein and during the pendency of the said suit, the defendants/respondents herein filed an application for rejection of the plaint in terms of Order 7 Rule 11 CPC and the said application came to be allowed by the trial court in terms of the impugned order, rejecting the suit of the plaintiff.
3. The impugned order is being challenged by the petitioner herein on the following grounds:-

- I. That the impugned order/judgment is illegal and arbitrary and thus, deserves to be set aside.
- II. That the suit was not hit by any provisions of Specific Relief Act and the purpose of the application was only to delay the trial.
- III. That since 2013 March, the suit was pending before the Trial Court but after filing the written statement and when the matter was in the prime of documents and further evidence of the plaintiff, then the respondent bank initiated this application to circumvent the trial after a period of about six years.
- IV. That the original documents of the testimonials of the petitioner have also been submitted in the shape of documents before the Trial Court and now only issues were to be struck and evidence to be led by the parties. However, before framing such issues whether jurisdiction or legal issue of cause of action etc. the court has circumvented/aborted the trial at its prime stage only.
- V. That it is settled law that the declaration is always sought in case of employment when the court concludes in favour of plaintiff and consequential relief of injunction can be granted.
- VI. That since the J&K Bank Ltd. is not State as held by this Hon'ble High Court's Full Bench, therefore, no writ petition could have been filed against the J&K Bank by the petitioner and the only remedy for the petitioner was to file the civil suit, however, the learned trial court by virtue of impugned judgment, has left the petitioner remediless which as per settled law is illegal as it is settled law that nobody will be left remediless against any action of the authority/instrumentality or organization, thus, the remedy was to

file a suit, but mere technicalities, the suit could not have been rejected in this way that too in the manner and fashion the learned trial court has done.

- VII. That the learned trial court has not discussed even a single judgment cited by the parties and has merely a ritual formality quoted the title and citations of these judgments while as Hon'ble High Court in is to be discussed, distinguished and not merely only touched.
- VIII. The para from J&K High Court judgment in Mariyam Akhter & Anr. vs. Wazir Mohd. on 14 October, 2010 Cr. Rev No. 51 of 2005 and Cr.M P No. 15 of 2005 is as follows:-

.....90. Before parting with the judgment, it is necessary to put on record certain observations.

91. The learned Judicial Officers while quoting cited judgments and judicial authorities, shall extract the relevant paragraphs of the judgment referred to with clear mention of the said paragraph/paragraphs therein instead of quoting the Head notes of a particular judgment. In the instant case, on perusal of the impugned judgment and order, it appears that the learned Magistrate has quoted the Head Notes only of the judgment referred to or relief upon. Be it noted that Head Notes are not the ratio or operative part of the judgment. It is simply an editorial comment and , accordingly, attempt should be made quoting the Head Notes only.

Sd/-

(Dr. Aftab H. Saikia) Chief Justice

- IX. That the arguments of the plaintiff/petitioner have not been appreciated rather the court has held that the plaintiff has instrumented the suit for Mandatory Injunction to command the defendants to implement the reservation policy for Scheduled Tribes and simply held that the relief is specifically barred in the shape of

present plaint. The learned trial court has not even averred a single provision of law that as to under which section of Relief Act, the Mandatory Injunction of this type is barred and merely has adverted that the suit has been drafted cleverly in order to circumvent the provisions of law. Thus, the impugned is lacking the sanctity and merely mechanical in nature, arbitrary and illegal, leaving the poor plaintiff/petitioner remediless against the arbitrary action of Power Organization like the J&K Bank herein. Thus, the present Revision Petition.

Heard learned counsel for the parties and perused the record.

4. Learned counsel for the petitioner while making his submissions reiterated the contention raised and grounds urged in the petition, **whereas**, the counsel for the respondents while opposing the said contentions and grounds raised and urged, would raise a preliminary objections qua the maintainability of the petition and would contend that an order passed under O.7 r.11 CPC, rejecting the plaint is a **decree** within the meaning of Section 2 (2) of the CPC and as such, is appealable in terms of Section 96 read with Order 41 of the CPC. Mr. Sawhney though would controvert the contention of the counsel for the respondents, yet would pray for conversion of the revision petition into an appeal.
5. Having regard to the aforesaid preliminary objections, it is deemed appropriate to address to the same in the first instance.

Section 2 (2) of CPC defines the term “Decree” and reads as under:-

“(2) ‘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.

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.”*

What emanates from a plain reading of the aforesaid provision is that, the same specifically provides that the rejection of a plaint shall be **deemed to be a decree**. In law the word “deemed” is commonly used for creating a statutory fiction for extending the meaning to a subject matter which it does not specifically designate. In other words, whenever the word “deemed” is used in a statute in relation to a person or a thing, it implies that the Legislature, after due consideration has exercised its judgment in conferring that status or attribute to a person or a thing.

An adjudication, not fulfilling the requisites of Section 2 (2) of CPC cannot said to be “deemed”, however, by a legal fiction, certain orders and determinations are deemed to be a decree within the meaning of Section 2 (2) like an order passed under O.7 r.11 CPC,

The Apex Court in case titled as “**Chief Inspector of Mines vs. K.C. Thapper**” reported in **AIR 1961, Supreme Court 838** has provided as follows:-

“.....a question may therefore arise as to the effect of such legal fiction and the effect of such legal fiction is that a position which otherwise would not be there, is deemed to be present under certain circumstances and that an effect must therefore be given to such legal fiction” and though, an order passed under O.7 r.11 CPC, rejecting the plaint does not

preclude the plaintiff from presenting a fresh plaint on the same cause of action, yet, Section 2 (2) of the CPC specifically provides that the rejection of the plaint shall be deemed to be a decree.

6. Keeping in mind the aforesaid position and principles of law and reverting back to the case in hand, it is not in dispute that the plaint of the plaintiff/petitioner herein came to be rejected by the trial court in terms of the impugned order under the provision of O.7 r.11 CPC and same under Section 2 (2) CPC is deemed to be a decree and a decree is appealable in terms of Section 96 read with Order 41 of the CPC, as it is the decree against which an appeal lies being the settled position of law and the view of the Apex Court as laid down in case titled as **“Jagat Dhish Bhargava vs. Jalwahaar Lal Bhargava”** reported in **1961 AIR (SC) 832**. It is thus clear from the aforesaid position that no revision would lie against the rejection of plaint, even if, it is found that the trial court while passing the impugned order has committed any procedural irregularity as has been held by the Apex Court in case titled as **“Rishabh Chand Jain & Another vs. Ginesh Chandra Jain”** reported in **2016 (6) SCC 675**.
7. While considering the submission of Mr. Sawhney for conversion of the instant revision petition into an appeal and though there may be a case wherein, power of converting a revision petition into an appeal or vice versa may be exercised by this Court, yet, there is an impediment created by Civil Courts Act, Svt. 1977 thereto in exercise of such power by this Court, in that, the order of rejection of plaint impugned in the instant petition stands passed by a Sub-Judge i.e. City Judge Jammu and an appeal thereto would lie to a District Judge and not to this Court under the

hierarchy of courts. The submission of Mr. Sawhney made in this regard, therefore cannot be accepted.

8. For the aforesaid reasons, the preliminary objections raised by the counsel for the respondents succeed and the instant petition is held, not maintainable. Resultantly, **the petition fails and is accordingly dismissed** along with connected application(s), if any.

(Javed Iqbal Wani)
Judge

Jammu:
22.05.2023
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Whether the order is speaking : Yes

Whether the order is reportable : Yes

