

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 422 of 2023

VIKAS PAROLIA & ORS.

VS.

**BHARTIYA STEEL & ENGINEERING
COMPANY PRIVATE LIMITED & ORS.**

For the petitioners :Mr. Arijit Bardhan, Adv.
Mr. Sarosij Dasgupta, Adv.
Mr. Saheli Bose, Adv.

For the Opposite Party no. 1 :Mr. Utpal Bose, Ld. Sr. Adv.
Mr. Madhupriya, Adv.
Mr. Aniruddha Sinha, Adv.

Heard On :28.11.2024

Judgment On :05.12.2024

Bibhas Ranjan De, J. :

1. The instant civil order revolves around the sole question as to whether maintainability can be considered as adjudication or part of adjudication.

Brief Facts:-

- 2.** The instant civil revisional application has been preferred under Article 227 of the Constitution of India challenging the order dated 07.11.2022 passed by the learned Civil Judge (Senior Division) 2nd Court at Howrah in connection with Miscellaneous Case No. 29 of 2019 wherein an application under Order XXI Rules 97, 98 and 101 of the Code of Civil Procedure (hereinafter referred to as 'CPC' in short) filed by the petitioner was rejected.
- 3.** The original misc. case being No. 29 of 2019 filed under Order XXI Rules 97, 98 and 101 of the CPC filed by the petitioners herein arose out of the Title Execution Case No. 26 of 2018 in which the petitioners being third parties to the decree, put into execution, prayed for declaring the original decree passed by this Hon'ble Court in connection with E.O.S No. 58 of 1987 to be not executable on account of the same being a nullity. The decree sought to be executed in the execution case was passed by this Hon'ble Court wherein direction of eviction of the judgment debtors from the decretal property together with damages and mesne profits was given.

4. Amidst such scenario, the petitioners herein filed a misc. case being No. 29 of 2019 under Order XXI Rules 97, 98 and 101 of the CPC which was heard by the learned Judge and vide the impugned order dated 07.11.2022 the same was dismissed on the ground that the misc. case was premature.

5. Being aggrieved by and dissatisfied with the order of dismissal, the present petitioners have preferred this present revisional application.

Arguments advanced:-

6. Learned Senior Counsel, Mr. Utpal Bose appearing on behalf of the opposite party no. 1 has raised the issue of maintainability of the revisional application and has contended that an order disposing an application under Order XXI Rule 97 of the CPC is an appealable order and not revisable. In support of his contention he has referred to the provision of the Order XXI Rule 103 of the CPC, which runs as follows:-

“103. Orders to be treated as decrees.- Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the

same conditions as to an appeal or otherwise as if it were a decree.”

7. In order to further substantiate his argument, Mr. Bose, has relied on a couple of cases which are as follows:-

- ***Ajoy Kumar Shaw & ORS. Vs. Uttam Kumar Shaw & Ors.*** reported in **2010(3) CHN (CAL) 74.**
- ***Sriram Housing Finance and Investment India Ltd. Vs. Omesh Mishra Memorial Charitable Trust*** reported in **2022 SCC OnLine SC 794.**

8. Per-contra, learned counsel Mr. Arijit Bardhan appearing on behalf of the petitioners has vehemently submitted that a careful perusal of the impugned order will make it clear that the learned Trial Judge did not adjudicate the issues that were raised under Order XXI Rules 97, 98 and 101 of the CPC and therefore the impugned order is indeed revisable and not appealable.

9. In support of his contention Mr. Bardhan has relied on the following cases:-

- ***Brahmdeo Chaudhury Vs. Rishikesh Prasad Jaisawal and Another*** reported in **(1997) 2 SCC 694.**

- ***Sameer Singh and Another Vs. Abdul Rab And Others*** reported in **(2015) 1 SCC 379.**
- ***Asgar and Other Vs. Mohan Varma and Others*** reported in **(2020) 16 SCC 230.**
- ***Castle Wood vs. Life Insurance Corporation of India*** reported in **2000 SCC OnLine Cal 300**

10. Ratio of the cases relied on behalf of the parties:-

For the opposite party:-

- In the case of ***Sriram Housing Finance*** (supra) the Hon'ble Apex Court laid down that the bonafide purchaser of a suit property is not entitled to object the execution of the decree by the decree holder. It was further held that applications under Rule 97 and Rule 99 of Order 21 CPC are subject to Rule 101 which provides for determination of questions relating to disputes as to right, title or interest in the property arising between the parties to the proceedings which effectively makes the requirement of filing fresh suit for adjudication of disputes redundant.
- In ***Ajoy Kumar Shaw (supra)*** the Co-ordinate Bench of this Hon'ble Court was of the opinion that Order 21 Rule 103 of the

CPC makes it clear that where an application has been adjudicated upon under Rule 98 and 100 of Order 21, the Order made thereon shall have the same force subject to the same conditions as to appeal or otherwise as if it was decree which in turn makes it a deemed decree within the meaning of Order 21 Rule 103 of the CPC.

For the petitioners:-

- In ***Brahmdeo Chaudhury*** (supra) the Hon'ble Supreme Court held that a stranger to a decree is entitled to agitate his or her grievance and claim for adjudication for independent right, title and interest in the decretal property even after being dispossessed in accordance with Order 21 Rule 99 of the CPC. Order 21 Rule 97 deals with the stage which is prior to the actual delivery of possession and the grievance of the obstructionist can be adjudicated upon before the actual delivery of possession to the decree holder. Therefore, both sets of remedies are available to the stranger to a decree.
- In ***Asgar*** (supra) the Hon'ble Apex Court by relying on the ratio of ***Brahmdeo Chaudhury*** (supra) held that claim for compensation of improvements by tenant is intrinsically

related to the issue of tenant's right to remain in possession. However, such claim has to be made in course of eviction proceedings. Hence, failure to raise the claim in earlier proceedings by the tenant would operate as constructive *res judicata* in subsequent proceedings filed only for claiming such compensation.

- In the case of **Castle Wood** (supra) the Co-Ordinate Bench of this Hon'ble Court by referring to the provisions of Rules 97, 98 & 99 of Order 21 of the CPC observed that Rule 97 does not indicate that the 3rd party before dispossession can complain to the executing court asserting his independent right. At the instance of the 3rd party an application under Order 21 Rule 97 of the CPC can come forward with the application for adjudication of his independent right in accordance with Rule 101 of Order 21 of the CPC.
- In **Sameer Singh** (supra) it was held by the Hon'ble Apex Court that although an order passed under Order 21 Rules 98 to 100 CPC is a decree as per the provisions contained under Order 21 Rule 103 of the CPC which would usually attract appeal and not revision but if the Court had not decided the lis

in question with the expression of an opinion that it had no jurisdiction after having become functus officio, in that scenario an appeal would not lie.

Analysis:-

11. After careful scrutiny of the rival contentions adduced on behalf of the parties, it has come to the notice of this Court that the present revisional application needs to pry into the sole determining issue i.e. whether deliberation on the point of maintainability can be considered as a part of adjudication or not.

12. In this regard it would be pertinent to mention that there is no bar under law to decide the maintainability of the claim as a preliminary issue. The Hon'ble Apex Court in a plethora of decisions has observed that Tribunals and Courts who are requested to decide preliminary questions must ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. Therefore, in my humble opinion implicit in this observation of the Hon'ble Apex Court is the proposition that there is no bar on Courts to decide the issue of

maintainability at the threshold if the outcome is likely to make rest of the issues redundant.

13. It is further held that while considering the issue of maintainability, the Courts have to decide whether they are necessary and if in case the outcome is likely to effect the rest of the issues then it can indeed be seen as a form of adjudication. Decisions on maintainability do not inherently address the merit of the case. For instance a judgment may focus solely on the point of maintainability without impacting the substantive rights of the parties involved.

14. The above analysis boils down to a conclusion that a decision on the sole issue of maintainability can indeed be considered a form of adjudication. It serves as a critical threshold that can determine whether a case proceeds to a full hearing on its merits. However, the nature of this adjudication may vary as it can be treated as a standalone issue or intertwined with the merits of the case.

15. In the light of the aforesaid discussion if the impugned order is carefully looked into, then it would be crystally clear that the learned Trial Judge while determining the issue of

maintainability pretty clearly discussed the settled propositions of law through various cited judgments and in my opinion was able to resolve the issue of maintainability and rightly provided his observation with regard to the prematurity of the miscellaneous application.

16. Therefore, *al beit* the impugned order is not a traditional decree, but it satisfied all tests of a **deem decree** by adjudication of the matter in controversy conclusively and thereby determining the rights of the parties.

17. Regard being had to the above, impugned order cannot be said to be a non-adjudicatory order leading to maintainability of a revision application in terms of the ratio of the judgments relied on behalf of the petitioner which dealt with the order of rejection of application for want of jurisdiction unlike the issue of maintainability of the application here. Therefore, if an order under Order 21 Rule 97 of the CPC is preceded by an adjudication then it must be considered a deem decree which is not revisable. As a result, the only remedy left to the petitioners is to file appeal in terms

of the provision of Order XXI Rule 103 of the CPC treating the order impugned as decree.

- 18.** As a sequel the instant revisional application being C.O. 422 of 2023 stands dismissed with liberty to the petitioners to pry into the track of seeking remedy in the appropriate forum. However, there shall be no order as to costs.
- 19.** Liberty is granted to the learned advocate for the petitioner to take back the certified copy of the impugned order upon furnishing photocopy thereof.
- 20.** Parties to act on the server copy of this order duly downloaded from the official website of this Court.
- 21.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]