

# State Bank Of India vs Asha Goel & Anr on 25 October, 2021

**Author: Amit Bansal**

**Bench: Amit Bansal**

\$~2

\*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) 612/2021

STATE BANK OF INDIA

Through:

..... Pe  
Mr. Ankur Aggarwal, Advo

versus

ASHA GOEL & ANR.

Through:

.....  
None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% 25.10.2021

1. This order may be read in continuation of order passed by this Court on 16th September, 2021 which is set out below:-

"1. With regard to maintainability of the present petition, attention has been drawn of the counsel for the petitioner to the judgment passed by the Supreme Court in Sayyed Ayaz Ali Vs. Prakash G. Goyal and Ors. 2021 SCC OnLine 472, wherein it has been held that rejection of a plaint under Order VII Rule 11 shall amount to a decree being passed against the plaintiff and therefore, the proper remedy would be to file an appeal.

2. Further attention has been drawn to the judgment of the Division Bench of this Court in Sidana Shoe Material Vs. Sumanglam Impex Private Limited and Ors. 2021 SCC OnLine Delhi 3816 wherein in similar facts and circumstances, against the rejection of the plaint under Order VII Rule 11(d) on account of non-compliance with Section 12A of the Commercial Courts Act, a Commercial Appellate Division of this Court has entertained an appeal under Section 13 of the Commercial Courts Act.

3. In light of the above judgments, it has been put to the counsel for the petitioner whether he would like to withdraw the present petition so as to file an appeal.

4. The counsel for the petitioner insists that present petition is maintainable. He submits that he has filed written submissions in respect of his contentions. However, the said written submissions were filed just yesterday and therefore, are not on Court

record. Counsel for the petitioner is given time to have the said written submissions placed on record.

5. List on 25th October, 2021."

2. Pursuant to the said order, written submissions have been filed by the petitioner. In the written submissions, petitioner places reliance on the order dated 23rd March, 2021 passed by a Single Bench of this Court in CM(M) 131/2021 titled as Bank of Baroda Vs. M/s Suhail Garments Through its Proprietor Md. Saleem. Counsel for the petitioner claims that the facts of the present case are identical to the facts in the said case of Bank of Baroda supra and therefore, a similar order as was passed in the case of Bank of Baroda supra may also be passed in this case.

3. It is pertinent to mention here that no attempt has been made by the petitioner to distinguish the judgment of the Supreme Court in Sayyed Ayaz Ali supra which was specifically pointed out to the petitioner on the last date of hearing. The judgment of the Supreme Court in Sayyed Ayaz Ali supra is categorical and it has been clearly held therein that the dismissal of a suit under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (CPC) results in a decree and the same can only be challenged by way of an appeal and not by means of a petition under Article 226 or Article 227 of the Constitution of India. The observations of the Supreme Court in Sayyed Ayaz Ali (supra) are set out below:

"15. Section 2(2) of the CPC defines the expression „decree in the following terms:

"(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;"

17. The definition of "decree" in Section 2(2) "shall be deemed to include the rejection of a plaint". Hence, the order of the Trial Court rejecting the plaint is subject to a first appeal under Section 96 of the CPC. The writ petition filed by the appellant was liable to be rejected on that ground. We therefore affirm the judgment of the High Court rejecting the writ petition, though for the above reason leave it open to the appellant to pursue the remedy available in law."

4. The issue with regard to the maintainability of the petition under Article 227 was not raised before this Court in Bank of Baroda supra and the said issue had therefore, not been considered by the Court therein.

5. In view of the above, this Court is of the view that the petition under Article 227 of the Constitution of India is not maintainable in the facts and circumstances of the present case and the same is dismissed, while granting liberty to the petitioner to pursue remedies available to him in law.

AMIT BANSAL, J OCTOBER 25, 2021 ak