(8) In the light of the discussion above, while C.R. No. 3452 deserves to be dismissed, the other one preferred by Siri Narain, i.e. No. 189 has to be allowed. I order accordingly but with no order as to costs. Siri Narain's case is sent back to the Appellate Authority, Narnaul, for decision afresh on merits. The parties through their counsel are directed to appear before the said authority on April 8, 1985.

H.S.B.

Before J. V. Gupta, J.

SUDARSH KUMAR AHUJA,—*Petitioner.* .....

versus

R. P. JOSHI AND ANOTHER,—*Respondents.*

Civil Revision No. 2781 *of* 1984.

March 15, 1985.

Code of Civil Procedure (V of 1908)—Section 115—Order 1 Rule 10 and Order 6 Rule 17—Application for permission to amend plaint to implead another party refused—Court by same order rejecting plaint—Revision against said composite order—Whether maintainable.

Held, that the rejection of the plaint amounts to a decree and section 115(2) of the Code of Civil Procedure, 1908 provides that the High Court shall not under the said section, vary or reverse any decree or order against which an appeal lies either to the High Court or any other court subordinate thereto. In the impugned composite order the prayer for amendment under Order 6 Rule 17 and Order 1 Rule 10 has also been rejected but it would not make any difference if an order rejecting the application for seeking amendment of the plaint was decided by a separate order and then the plaint was rejected by another order. In that situation also since the plaint would have been rejected, the plaintiff could file an appeal only against the said order and in that appeal plaintiff could challenge the order declining the prayer for amendment of the plaint. As such the plaint itself has been rejected by the impugned order by the trial Court which is admittedly an appealable one the only remedy open to the plaintiff is to file an appeal against the said

order and in view of sub-section (2) of section 115 of the Code, the revision petition is not maintainable.

(Paras 2 and 5).

PETITION UNDER SECTION 115 *C.P.C. for the revision of the order of the Court of Sh. S. K. Garg, PCS, Additional Senior Sub-Judge Muktsar, dated* 24*th July,* 1984, *disallowing the application for permision to amend the plaint under Order VI rule* 17, *read with Order* 1 *rule* 10 *and Order XXVII rule* 5-*A, CPC.*

R. S. Bindra with Rajiv Bhalla, Advocates, for the Petitioner.

S. S. Shergill, A.A.G. (Punjab) for respondent No. 1.

Anupam Gupta, Advocate for respondent No. 2.

JUDGMENT

J. V. Gupta, J.

(1) This revision petition is directed against the order of the trial Court dated July 24, 1984, whereby the application for permission to amend the plaint under Order VI rule 17, read with Order 1 rule 10 and Order XXVII rule 5-A, Code of Civil Procedure, (hereinafter called the Code), was not allowed, and the plaint was rejected,—*vide* impugned order as the plaintiff had not impleaded the State Government as a party to the suit filed against a public officer, as contemplated under Order XXVII rule 5-A of the Code.

2. A preliminary objection has been raised on behalf of the defendants-respondents that since the plaint was also rejected, it amounted to a decree and, thus, the impugned order was appealable and no revision was maintainable against the same in view of sub-section (2) to section 115 of the Code, which provides that the High Court shall not under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any other Court subordinate thereto. The learned counsel for the petitioner submitted that if the order rejecting the application for amendment of the plaint is set aside, then automatically, the order rejecting the plaint falls, and as such, the revision petition against the impugned order was competent. According to the learned counsel, if the trial Court had not passed a composite order and would have passed a separate order declining the application for amendment of the plaint, then, obviously, the revision against the

said order was maintainable. Simply because the trial Court has passed a composite order rejecting the application for amendment of the plaint and at the same time rejecting the plaint under Order VII rule 11 of the Code, the plaintiff was not debarred from challenging the order declining his prayer for amendment of the plaint, in revision. In support of the contention, the learned counsel relied upon *Kumaraswamish* v. *Krisnna Reddi,* (1) *Damodar Prasad* v. *Ram Charan,* (2) *Jai Lal* v. *Prithvi Nath,* (3) and *Mathura Prasad* v. *Parmanand,* (4). On the other hand, the learned counsel for the respondents contended that where a plaint is rejected under clause (d) of rule 11 of Order VII of the Code, i.e., where the suit appears from the statement in the plaint to be barred by any law, then the order is appealable as a decree and no revision against such an order is maintainable. It was further contended by the learned counsel that even if a separate order would have been passed by the trial Court dismissing the application for amendment of the plaint, even then, no revision was maintainable against such an order if meanwhile the plaint was rejected under Order VII rule 11(d) of the Code. In that situation, according to the learned counsel, the only remedy available to the plaintiff was to file an appeal against the order rejecting the plaint and in that appeal he could also challenge the order rejecting his application for amendment of the plaint. In support of the contention, the learned counsel relied upon the Full Bench judgment of the Kerala High Court in *Souri Varghese* v. *P. C. Assankutty,* (5) the Full Bench judgment of the Madras High Court in *Satyanarayanacharyulu* v. *Ramalingam,* (6) *Wajid Ali* v. *Jiga Bibi* (7), *Kamalamma* v. *Mariyana* (8), *and Jagat Singh* v. *Joginder Paul,* (9).

3. I have heard the learned counsel for the parties and have also gone throgh the case law cited at the bar.

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(1) A.I.R. 1947 Madras 84.
(2) A.I.R. 1957 Patna 143.
(3) A.I.R. 1954 J. & K. 54.
(4) A.I.R. 1960 Madhya Pradesh 161.
(5) A.I.R. 1972 Kerala 56.
(6) A.I.R. 1952 Madras 86.
(7) A.I.R. 1968 Orissa 163.
(8) A.I.R. 1960 Mysore 140.
(9) I.L.R. (1973)1 Punjab and Hary. 400.

4. The authorities relied upon by the learned counsel for the petitioner are clearly distinguishable and are not applicable to the facts of the present case. *In Kumaraswamiah's case* (supra), the plaint was rejected under Order VII rule 11(b) of the Code. In *Mathura Prasad's case* (supra), tht question involved was whether an appeal lies against an order recording a compromise or not. In that context, it was held therein that whether an appeal is patent or not does not depend upon the availability of other remedies. The contention that the order recording the compromise has merged in the decree is not tenable, for just because the Court passes a decree in terms of the compromise the right to prefer an appeal against the order recording it cannot be taken away. To hold otherwise will mean that the statutory right of a party under Order XLIII rule 1(m) can be frustrated by passing a decree forthwith. The said case is, therefore, clearly distinguishable because against a decree passed on a compromise, no appeal is maintainable whereas an appeal is provided under Order XLIII rule 1(m) of the Code against an order recording a compromise. Besides, in *Kumaraswamiah's case* (supra), the deficient Court-fee was to be paid by a particular date. Application for extension of the time for doing the needful was rejected. As a result, the plaint was rejected for non-payment of the deficit Court-fee by the time allowed earlier. The order rejecting the application for extension of time was set aside on review. In these circumstances, it was held therein that on the setting aside of the order rejecting the application for extension of time, the consequential order rejecting the plaint would be automatically set aside and, therefore, it was not necessary for the plaintiff to appeal against that order in order to have it set aside. Thus, the said case has no applicability to the facts of the present case.

5. The *ratio* of the decision in *Souri Varghese's case* (supra) is to the effect that where against the order of the Court calling upon the plaint to pay additional Court-fee, the plaint files a revision petition but before it was admitted, the plaint itself was rejected for plaintiff's default for payment of Court-fee, the order of rejection of plaint being a decree, the proper remedy for plaintiff was an appeal and not revision. In the said case two separate orders were passed by the Court; one, allowing the plaintiff to pay the deficit Court-fee, and the other, rejecting the plaint for non-compliance of the said order. Revision petition was filed against the first order. During the pendency of the revision petition, the second order, as mentioned above, was passed and the plaint was rejected. It was in these

circumstances held therein that where a plaint is rejected under Order VII rule 11 of the Code for default to pay additional Court-fee even before the admission of a revision petition filed against order calling for payment of additional Court-fee, the revision petition was not maintainable. Similarly, in *Satyanarayanacharyulu's* case (supra), it was held that where an order directing payment of additional Court-fee is not complied with and it is followed by an order rejecting the plaint, a revision petition is not maintainable against the latter. The proper remedy is only by way of an appeal against the order rejecting plaint which is a decree under section 2(2) and is appealable as such. Once an appealable order in the form of an order rejecting the plaint is passed, a revision petition cannot also be filed against the earlier order demanding additional Court-fee. Such a petition is against the well-established principles of procedural law. To the same effect was the law laid down in *Wajid Ali's case* and *Kamalamma's case* (supra). I am in respectful agreement with the *ratio* of the Full Bench decision of the Madras High Court *in Satyanarayanacharyulu's* case (supra) and the *ratio* of the Full Bench judgment of the Kerala High Court in *Souri Varghese's case* (supra). Since the plaint itself has been rejected by the impugned order by the trial Court in the present case, which is admittedly an appealable one, the only remedy open to the plaintiff is to file an appeal against the said order, and in view of sub-section (2) to section 115 of the Code, the revision petition as such is not maintainable. On principle also, it would not have made any difference if an order rejecting the application for seeking amendment of the plaint was decided by a separate order and then the plaint was decided by another order. In that situation also since the plaint would have been rejected, the plaintiff could file an appeal only against the said order and in that appeal he could challenge the ordtr declining the prayer for amendment of the plaint in view of the provisions of section 105 of the Code.

6. In this view of the matter, the preliminary objection raised on behalf of the defendants-respondents, prevails and this revision petition is liable to be dismissed as not maintainable. However the petitioner will be at liberty to seek his remedy in accordance with law.

7. Consequently, this revision petition fails and is dismissed as not maintainable with no order as to costs.

H.S.B.