

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

CRP.No. 526 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN OS 272/2012 of III ADDL.SUB COURT, ERNAKULAM
DATED 10-07-2015

REVISION PETITIONER(S)/REVISION PETITIONER/IST RESPONDENT/PLAINTIFF:

STATE BANK OF INDIA
STRESSED ASSETS RECOVERY BRANCH, M.G.ROAD, ERNAKULAM
REP. BY ITS CHIEF MANAGER.

BY ADVS.SRI.M.JITHESH MENON
SMT.INDU.K

RESPONDENT(S)/RESPONDENTS/PETITIONERS AND RESPONDENTS 2 TO 4/DEFENDANTS 2
TO 4 DEFENDANTS 5 TO 7:

1. JANCY JOSE
W/O P.C.JOSE, PUTHENVEETIL HOSUE, DOOR NO.244,
SAFDAR HASHMI ROAD, VUYTTILA, ERNAKULAM,
KOCHI-682019.

2. JEESON JOSE,
S/O P.C.JOSE, PUTHENVEETIL HOSUE, DOOR NO.244,
SAFDAR HASHMI ROAD, VYTTILA, ERNAKULAM,
KOCHI-682019.

3. JIYA JOSE
D/O P.C.JOSE, PUTHENVEETIL HOSUE, DOOR NO.244,
SAFDAR HASHMI ROAD, VYTTILA, ERNAKULAM,
KOCHI-682019.

4. JOSHY CHARLY,
PUTHENVEETIL, MARIA BHAVAN, ANCHUMURY ROAD,
THAMMANAM, KOCHI-32.

5. MARIKKAR ENGINEERING PVT. LTD.,
ADJ TO MUNICIPAL TOWN HALL, KALAMASSERRY,
ERNAKULAM DISTRICT-683014.

6. BOBBY,
OORTHU HOUSE, KIZHAKKAMBALAM, ERNAKULAM DISTRICT-683562.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 08-
10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.ABRAHAM MATHEW, J.

C.R.P. No.526 of 2015

Dated this the 8th day of October, 2015

ORDER

Petitioner is the plaintiff. The suit was for realisation of money borrowed by the 1st defendant and the repayment of which was guaranteed by one Jose. On the death of the latter his legal representatives were impleaded as additional defendants 2 to 4, who are respondents 1 to 3 in this O.P. The 1st defendant failed to appear in the suit and he was set ex parte. Respondents 1 to 3 filed a written statement raising a contention, inter alia, that the suit was barred so far as they are concerned. The suit was posted for trial. Respondents 1 to 3 filed I.A.No.2331 of 2015 to frame an issue with regard to the question of limitation, whereupon the learned Sub Judge framed an issue and heard it as a preliminary issue. By the impugned 'order' the learned Sub Judge found the issue against the plaintiff and accordingly, she "exonerated" respondents 1 to 3 from the liability, the correctness of which is questioned in this O.P.

2. Heard.

3. The question of maintainability of the revision petition was heard as a preliminary question.

4. The learned Sub Judge found that the suit is barred by the law of limitation so far as respondents 1 to 3 are concerned. Consequently she pronounced the impugned 'order'. The question is whether this decision is an order or judgment. If it is a judgment only on appeal will lie.

5. Section 2(9) C.P.C defines judgment: "Judgment means the statement given by the judge on the grounds of a decree or order." Thus, judgment is the statement of grounds on the basis of which a decree or order is passed. But this does not mean that there is no distinction between a judgment and order. As seen from Section 2 C.P.C the definition is applicable only if there is nothing repugnant in the subject or context. Section 33 of the Code also is relevant in this context. It is mandatory for the court to pronounce a judgment after the suit has been heard and it shall be followed by a decree. A decree is passed only if the adjudication conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. An adjudication which does not conclusively determines the rights of the parties is not a decree. If it is not a decree, the grounds on which it is passed is not a judgment. It is only an order which is not accompanied by a decree.

6. Under Section 96 of the Code an appeal lies only from a decree and not from an order. For the purpose of appeal only an

adjudication which requires passing of a decree is called a judgment. Any other adjudication is only an order. Some orders like rejecting a plaint are deemed decrees. But in such case there is no decree, which is why a fiction is created. Unless there is a specific provision in Code, an appeal will not lie against an order. Thus, there is a clear distinction between a judgment and an order.

7. In ***Tarapore and Co., Madras Vs. Tractors Export, Moscow (AIR 1970 SC 1168)*** the Supreme Court examined the meaning of judgment in the context of Article 133(1) of the Constitution of India. The court held that judgment “means a final adjudication by the court of the rights of the parties, and that an interlocutory judgment even if it decides an issue or issues without finally determining the rights and liabilities of the parties is not a judgment, however cardinal the issue may be”. An adjudication which brings an end to the litigation between the parties in a suit is a judgment. If after the adjudication on a preliminary issue the trial of the suit is to be proceeded with, it is only an order.

8. Order 14 Rule 2(2) mentions the issues which may be heard as preliminary issues. It should either relate to the jurisdiction of the court or a statutory bar. If the decision depends upon existence of facts which are to be proved at the trial, it cannot be heard as a preliminary issue. If the finding on the preliminary issue is that the court has no jurisdiction or

the suit is barred by the law of limitation, it is liable to be dismissed. If the finding is in favour of the plaintiff, the court shall proceed with the trial of the suit. When the result of finding on the preliminary issue is that the suit is not maintainable, it brings an end to the litigation between the parties. On the basis of the finding on the preliminary issue in such cases the court shall pronounce a judgment. The court need not pass an order first and thereafter, a separate judgment on its basis. It can be a composite one labelled judgment making the order on the preliminary issue a part of it. The court shall discuss the preliminary issue first and after deciding it record that in view of the finding on the above issue the suit is dismissed. The last paragraph should be the result. i.e dismissal of the suit, which will be the decree. If a separate order is passed on the preliminary issue, it shall be followed by a separate judgment declaring that in view of the finding on the preliminary issue the suit is liable to be dismissed, and the court shall pass a decree accordingly.

9. In this case, the suit has been found not maintainable only in respect of some of the defendants. The litigation has come to an end so far as they are concerned; but the suit will continue so far as the others are concerned. Is the continuance of the suit against some of the defendants an impediment for the court to pronounce a judgment in respect of the defendants against whom the suit has been found not

maintainable.

10. Order 8 Rule 10 C.P.C throws some light in this matter. It reads as follows:

The words 'any party' and the phrase 'the court shall pronounce judgment against him' make it clear that if there are several defendants and any of them fails to file written statement the court can pronounce judgment against him. The court need not wait for the conclusion of the trial so far as the other defendants are concerned.

11. I find no difficulty to hold that if the court after hearing on a preliminary issue finds that the suit cannot be proceeded with as against one or some of the defendants, it shall immediately pronounce judgment dismissing the suit as against him or them and shall pass a decree accordingly without waiting for the termination of the suit in respect of the others.

12. In the case on hand the learned Sub Judge found that the suit is time barred as against some of the defendants. She 'exonerated' them from the liability to pay the amount. The court shall use only legal language in its proceedings. The learned Sub Judge should have entered a finding that the suit is not maintainable against those defendants and accordingly pronounced a judgment and passed a decree. Instead she just passed an order exonerating them from liability,

which is irregular and illegal. As the adjudication is a judgment, the plaintiff gets a right to challenge the decree in appeal. A revision petition does not lie. But the trial court has not passed neither a judgment, nor a decree. I am compelled to direct it to do so, which will give the petitioner an opportunity to file an appeal against the decree.

In the result, this revision petition is disposed of with a direction to the learned Sub Judge to pronounce judgment on the basis of the finding on the preliminary issue and to pass a decree accordingly, which shall be done within 10 days from the date of receipt or production of a copy of this order.

**K.ABRAHAM MATHEW
JUDGE**

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