

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2015

CORAM

THE HON'BLE Ms. **JUSTICE K.B.K.VASUKI**

**CRP (NPD) No.2492 of 2010
and M.P.No.1 of 2010**

Manickam

... Petitioner

VS.

Paramasivam

... Respondent

Civil Revision Petition is filed against the order dated 7.7.2010 made in I.A.No.256 of 2008 in O.S.No.1534 of 2002 on the file of the II Additional Sub Court, Coimbatore.

For Petitioner : Mr.N.Anand Venkatesh

For Respondent : Mr.S.Gunalan

ORDER

The defendant is the petitioner and the plaintiff is the respondent herein.

2.This Civil Revision Petition is filed by the defendant against the dismissal of the application filed by him under Section 5 of the Limitation Act to condone the delay of 1796 days in filing the petition to set aside the exparte decree made in O.S.No.1534 of 2002.

3.The suit in O.S.1534/2002 was filed by the plaintiff for specific performance of the agreement dated 20.11.2000, directing the defendant to execute the sale deed in favour of the plaintiff on receiving the balance sale consideration or alternatively for directing the defendant to pay a sum of Rs.82,500/- with subsequent interest at 18% p.a. on Rs.80,000/- from the date of plaint till the date of realisation. The suit was decreed exparte on 24.2.2003.

4.Thereafter, the defendant came forward with an application in I.A.256/2008 on 25.1.2008 to condone the delay of 1796 days in filing the petition to set aside the exparte decree. It is contended in the affidavit filed in support of the condone delay application that the defendant was not aware of the suit proceedings, as he was not served with any suit summons and exparte decree was obtained without serving any notice to the defendant and he was also not served with any notice in EP.No.381/2006 and after he coming to know about the same through some well wishers, the petition came to be filed and the same was hence not barred by limitation.

5.The application was seriously opposed by the plaintiff by denying non-service of notice both in the suit as well as in the Execution Proceedings. According to the plaintiff, the defendant was

served with the suit summons and notice in the Execution Proceedings and he entered appearance through his counsel by name R.S.Madavan in EP.274/2003 on 25.8.2005 and the defendant was hence aware of the proceedings in the year 2005. It is also the case of the plaintiff that the delay of 1796 days in filing the petition to set aside the exparte decree, was not at all explained by the defendant.

6.The trial court, after hearing both sides and after perusing the records, found that the defendant was duly served with the suit summons on 7.1.2003 and he duly entered appearance in the execution proceeding on 25.8.2005 and no explanation much less proper explanation was offered for the inordinate delay of 1796 days and accordingly dismissed the application. Aggrieved against the same, the defendant is now before this court by way of this Civil Revision Petition.

7.Heard the rival submissions made on both sides and perused the materials placed before this court.

8.The defendant has come forward with the application to set aside the exparte decree along with the condone delay application

mainly by contending that he was not served with suit summons and notice in the execution proceedings. Whereas, the particulars made available herein would belie the contention so raised on the side of the defendant. The defendant was duly served with summons in the suit on 7.1.2003 and notice in the Execution proceedings and he entered appearance through his counsel in the execution proceedings on 25.8.2005. However, the defendant has not come forward with any application to set aside the exparte decree within 30 days from the date of exparte decree or within 30 days from the date on which he was served with notice in the Execution Proceedings. But the defendant has come forward with the set aside exparte decree application with inordinate delay of 1796 days.

9.The perusal of the averments raised in the condone delay application would reveal that the defendant, except denying the suit relief on merits and except denying the service of summons in the suit proceedings and service of notice in the execution proceeding, has not explained inordinate delay in filing the application. As a matter of fact, the conduct of the defendant in suppressing the service of suit summons and notice in the execution proceedings and his appearance through his counsel in EP, would dis-entitle him to seek the indulgence of the court. Having regard to such conduct of the

defendant in approaching the court by suppressing the material facts and failure on his part to put forth plausible reason for the inordinate delay, this Court finds no reason to interfere with the order impugned herein.

10. At this juncture, the learned counsel for the petitioner has, by relying on the judgment of the Division Bench of this Court reported in **2011 (3) CTC 168 (Meenakshisundaram Textiles rep. By its Managing Director v. Valliammal Textiles Ltd, Tiruppur)**, sought to question the legality and validity of exparte judgment and decree passed by the trial court. It is contended before this Court that the exparte judgment passed by the trial court is not in accordance with the relevant provisions of law under Order 20 Rule 4(2) and Section 2(14) of the Civil Procedure Code and exparte decree drawn by the trial court without any adjudication of the dispute, does not satisfy the legal requirement and is not in conformity with the provisions of CPC and is hence not executable.

11. It is true that the Division Bench of this court has in the judgment cited above discussed in detail as to what is 'judgment', 'decree' and 'order' and what is the difference between a judgment and decree and an exparte judgment and decree and the effect of not

passing any judgment and decree in conformity with the provisions of CPC and the essential attributes of a judgment and decree. For better appreciation, paras 5 to 7 of the judgment are extracted below:

"5. We have heard the respective learned counsel on either side on the above question. Section 2(9) of the Code of Civil Procedure defines a "judgment" as meaning, the statement given by the judge on the grounds of a decree or order. In this context, Order XX Rules 4 (1) & (2) are also referable, which read as under:-

"4. Judgment of Small Cause Courts.--(1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts.--Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision."

Order XX Rule 4(1) relates to the judgment of a Court of Small Causes. Inasmuch as the said judgment does not require more than the points for determination and that the decision thereon, a judgment of a Court of Small Causes shall not fall under Section 2(9) of the Code of Civil Procedure. Insofar as the judgment of other Court is concerned, in terms of Order XX Rule 4(2), it shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision and therefore it shall fall under Section 2(9) of the Code of Civil Procedure and in that sense, all the ingredients contained in Order XX Rule 4(2) must be available in that judgment. This is more so in view of the

provisions of Order XX Rule 5 relating to the duty of the Court to state its reasons on each issue. That Rule reads as under:-

"5. Court to state its decision on each issue.--
In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit."

6. In terms of the above provisions, every judgment should contain a concise statement of the case, the points for determination, decision thereon and the reasons for such decision. A judgment which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called as "judgment". The judgment should contain the brief summary of the facts, the evidence produced by the plaintiff in support of his claim and the reasoning of the learned Judge either for decreeing the suit or its dismissal. The Civil Procedure Code does not say that the Court is bound to grant a decree in case the defendant is absent. Judgment means cognitive process of reading a decision or drawing conclusion. Judgment is the basic requirement for a court and it means a decision or conclusion reached after consideration and deliberation. To put it differently, the basics of a judgment are to support by most cogent reasons that suggest themselves the final conclusion at which the Judge has conscientiously arrived.

7. In this context, the following other judgments are also relevant for consideration. In **Balraj Taneja v. Sunil Madan, AIR 1999 SC 3381**, the Supreme Court has held that a Judge cannot merely say "Suit decreed" or "Suit dismissed". The Supreme Court in **Swaran Lata Ghosh v. H.K. Banerjee, (1969) 1 SCC 709**, indicated that adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial. The relevant observation reads thus:-

"6. Trial of a civil dispute in court is intended to achieve, according to law and the procedure of the court, a judicial determination between the contesting parties of the matter in controversy. Opportunity to the parties interested in the dispute to present their respective cases on questions of law as well as fact, ascertainment of facts by means of evidence tendered by the parties, and adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial. In a judicial trial, the Judge not only must reach a conclusion which he regards as just, but, unless otherwise permitted, by the practice of the court or by law, he must record the ultimate mental process leading from the dispute to its solution. A judicial determination of a disputed claim where substantial questions of law or fact arise is satisfactorily reached, only if it be supported by the most cogent reasons that suggest themselves to the Judge a mere order deciding the matter in dispute not supported by reasons is no judgment at all. Recording of reasons in support of a decision of a disputed claim serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest: it is also intended to ensure adjudication of the matter according to law and the

procedure established by law. A party to the dispute is ordinarily entitled to know the grounds on which the court has decided against him, and more so, when the judgment is subject to appeal. The appellate court will then have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and the resultant decision is just."

12. The Division Bench has in support of its observation, also referred to the decisions of the Hon'ble Supreme Court and the principles laid down therein, which are reproduced here under:

(i) **AIR 1999 SC 3381 (Balraj Taneja v. Sunil Madan)** - a Judge cannot merely say "suit decreed" or "suit dismissed".

(ii) **1969 (1) SCC 709 (Swaran Lata Ghosh v. H.K. Banerjee)**
 - Adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found are essential attributes of a judicial trial. A judicial determination of a disputed claim where substantial questions of law or fact arises is satisfactorily reached, only if it be supported by the most cogent reasons that suggest themselves to the Judge a mere order deciding the matter in dispute not supported by reasons is no judgment at all. Recording of reasons in support of a decision of a disputed claim serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest. It is also intended to

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(iii) 2002 (5) CTC 740 (SC) : 2003 (1) SCC 197 (Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan) - Order 20 of the Code of Civil Procedure requires a judgment to contain all the issues and findings or decisions thereon with the reasons therefor. The judgment has to state the relief allowed to a party. The preparation of decree follows the judgment. The decree shall agree with the judgment. The decree shall contain, *inter alia*, particulars of the claim and shall specify clearly the relief granted or other determination of the suit..... The very obligation cast by the Code that the decree shall agree with the judgment spells out an obligation on the part of the author of the judgment to clearly indicate the relief or reliefs to which a party, in his opinion, has been found entitled to enable decree being framed in such a manner that it agrees with the judgment and specifies clearly the relief granted or other determination of the Suit. The operative part of the judgment should be so clear and precise that

in the event of an objection being laid, it should not be difficult to find out by a bare reading of the judgment and decree whether the latter agrees with the former and is in conformity therewith.

(iv)2004 (1) SCC 547 at page 549 (State of Punjab v. Bhag Singh) - Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court.

(v)1997 (2) SCC 349 (State of T.N. v. S.Thangavel) - ...Judgment is the decision of a Court of justice upon the respective rights and claims of the parties to an action in a Suit submitted to it for determination. The word "judgment" denotes the reasons which the Court gives for its decision.

(vi)AIR 2003 SC 2508 (Ramesh Chand Ardawatiya v. Anil Panjwani) - Even if the suit proceeds exparte and in the absence of a written statement, unless the applicability of Order 8 Rule 10 of the

C.P.C is attracted and the court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the court cannot be dispensed with..... A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex parte the Court is not bound to frame issues under Order 14, and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the trial court would scrutinise the available pleadings and documents, consider the evidence adduced, and would do well to frame the 'point for determination' and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent, the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence.

13.The Division Bench, after referring to the decisions of the Hon'ble Supreme Court as stated supra, in para 16 further proceeds to say that even for an ex parte judgment and the decree, the basic ingredients of judgment must be available to the extent to indicate that the court has applied its mind to the pleading, relief claimed thereunder, the evidence and the conclusion arrived at by the court thereto. The Division Bench in para 17 of the judgment, laid down the

essential elements for a decree, which are as follows: (i) There must be a Suit, as such a decree could be given only in relation to a suit. (ii) There must be an adjudication of the dispute. Adjudication means the judicial determination of the matter in dispute. Adjudication in other words, also would mean that the court must have applied its mind to the facts of the case to resolve the matter in dispute. (iii) Such adjudication must be about any or all the matters in controversy in the suit. (iv) After adjudication, there must be a conclusive determination of the rights of the parties. (v) Finally, in order to pass a decree, the court must formally express its decision in the manner provided by law. Thus, it is emphasised in para 18 of the Division Bench judgment that the whole process of reasoning has to be set out for deciding the case one way or the other.

14. The learned counsel for the petitioner, after taking this court to the entire judgment of the Division Bench, has drawn the attention of this court to the manner in which *ex parte* judgment was passed by the trial court in O.S.No.1534/2002 dated 24.2.2003, which reads as follows:

"Proof affidavit filed. Exhibits A1 to A3 marked. Claim proved. Suit decreed as prayed for with costs. Time for payment of balance amount one month. Time for

execution two months."

15.This court, by applying the principles laid down by the Hon'ble Supreme Court as followed by the Division Bench of this Court in the judgment cited supra, finds considerable legal force in the argument advanced on the side of the petitioner/defendant that the exparte judgment passed by the trial court is not in conformity with the relevant provisions of C.P.C and not in accordance with the legal principles laid down by the Apex Court. However, that by itself cannot be the ground to set aside the exparte judgment of the trial court.

16.It is to be noted that the judgment of the Division Bench cited before this court, was made in CMA.No.3700 of 2010, arising out of the dismissal of the application filed to set aside the exparte decree made in the suit and the Division Bench set aside the exparte decree. Whereas, the present civil revision petition is filed, not against the order passed in any application filed under Order 9 Rule 13 CPC, but against the order passed in the application filed under Section 5 of the Limitation Act, wherein, the only aspect to be considered is the nature of the delay in approaching the court to set aside the exparte decree. In the absence of any convincing and satisfactory explanation, this Court is not required to go into the validity and executability of

the exparte judgment and decree passed by the trial court. The Division Bench has in para 20 of its judgment, dealt with this situation. It is pointed out therein that there are two remedies available to an aggrieved person to question the exparte decree. One is that he may file an application to set aside the exparte decree as provided under Order 9 Rule 13 of Code of Civil Procedure. In such event, the court which passed the judgment and decree will have to consider the reasons for setting aside such judgment and decree, which may be more or less the explanation as to the failure of non-appearance. The other remedy is that he may prefer an appeal under Section 96(2) and in such event, the Appellate Court should necessarily go into the merits and find out whether the decree could be set aside or not. In case an appeal is laid, in the absence of reasons in the judgment, the Appellate Court has to necessarily remand the case to the trial court for fresh consideration.

17. In this context, the learned counsel for the petitioner would make another submission that the executability of the decree can also be challenged by resorting to section 47 CPC. This Court finds that such stand taken deserves merits and consideration.

18. This Court by applying the principles laid down by the Apex

court in the judgments cited in the Division Bench Judgment and also by considering the submission made by the petitioner/defendant, is hence inclined to give liberty to the defendant to challenge the validity and executability of the judgment passed by the trial court at the appropriate stage, in the light of the Division Bench judgment reported in **2011 (3) CTC 168** (cited supra) and also under the provisions of the Code of Civil Procedure. Except such liberty, the petitioner/defendant is dis-entitled to get any relief in this petition.

19. In the result, the Civil Revision Petition is dismissed, however, with liberty to the petitioner to challenge the validity and executability of the exparte decree passed by the trial court by way of appropriate remedy in the manner known to law in the light of the Division Bench judgment of this court in **2011 (3) CTC 168 (Meenakshisundaram Textiles rep by its Managing Director v. Valliammal Textiles Ltd, Tiruppur)**, with further liberty given to the parties, to contest the same on merits. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes
Internet:Yes

10-4-2015

To

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K.B.K.VASUKI, J.

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