



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 07.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P (MD)No.2621 of 2015

and M.P (MD)No.1 of 2015

T.G.Navaneetha Krishnan (died)

1.N.Renuka

2.N.Suresh Kumar

3.N.Sudharson

4.N.Balaji

..Petitioners/Petitioners 2 to 5/Defendants

Vs.

T.G.R.Vasanthakumar

..Respondent/Respondent/ Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against an unnumbered I.A.No..... of 2015 in O.S.No.129 of 2004 on the file of the learned I Additional District Judge, Tiruchirappalli.

For Petitioners

: Mr.G.Prabhu Rajadurai

O R D E R

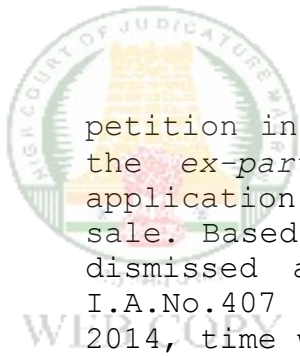
This memorandum of Civil Revision Petition has been directed against the order of return of the petition under Order 9 Rule 9 of the Code of Civil Procedure, 1908, dated 02.12.2015 in an unnumbered application in I.A.No..... of 2015 in O.S.No.129 of 2004 on the file of the learned I Additional District Judge, Tiruchirappalli.

2.Heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the revision petitioners and perused the grounds of revision.

3.Having been taken into consideration of the relevant facts and circumstances of the case, particularly, on perusal of the impugned order of return, dated 02.12.2015, this Court finds that it may be expedient to dispose of this revision at the admission stage itself.

4.The respondent herein had obtained an *ex-parte* decree, dated 01.09.2005 as against the husband of the first revision petitioner one T.G.Navaneetha Krishnan in respect of specific performance of contract of sale in the suit in O.S.No.129 of 2004. The said T.G.Navaneetha Krishnan had filed an application in I.A.No.875 of 2007 to set aside the *ex-parte* decree. He had also filed another application in E.A.No.21 of 2008 under section 28 of the Specific Relief Act, in the execution proceedings to rescind the contract of sale, as the respondent/plaintiff had not deposited the balance of sale consideration.

5.The application in E.A.No.21 of 2008 was transferred to the trial court to be heard along with I.A.No.875 of 2007. The learned counsel appearing for Mr.T.G.Navaneetha Krishnan (husband of the first revision petitioner) before the trial court had made an endorsement on the



petition in I.A.No.875 of 2007 saying that the petition for setting aside the ex-parte decree might be dismissed as withdrawn, as the other application in E.A.No.21 of 2008 was pending to rescind the contract of sale. Based on the endorsement, the application in I.A.No.875 of 2007 was dismissed as withdrawn. Thereafter, in view of the order passed in I.A.No.407 of 2013 filed by the respondent/plaintiff in O.S.No.129 of 2014, time was extended to deposit the balance of sale consideration.

6. In view of this order, E.A.No.21 of 2008 to rescind the contract of sale was dismissed as the time was extended to deposit the balance of sale consideration. Since, E.A.No.21 of 2008 was dismissed, there was no holding for the revision petitioners, either to set aside the ex-parte decree in the suit in O.S.No.129 of 2004 or to press for the relief of rescinding the contract of sale.

7. Under this circumstance, the revision petitioners happened to file an unnumbered application in the suit in O.S.No.129 of 2004 under Order 9 Rule 9 r/w section 151 of Code of Civil Procedure to restore the application in I.A.No.875 of 2007, which was dismissed as not-pressed.

8. The trial court has simply returned the said application with a query that since the provisions of Order 9 Rule 9 of the Code of Civil Procedure is not applicable to restore the application in I.A.No.875 of 2007, which was dismissed as not-pressed, how the present unnumbered application is maintainable?

9. Challenging this order, the revision petitioners have preferred this revision after invoking the provisions of Article 227 of the Constitution of India.

10. It is the standard judicial parlance that the parties to the proceedings shall not be penalised for the wrong committed by their counsel. Of course, Order 9 Rule 9 of the Code is not made applicable to restore the application, which was dismissed as not-pressed.

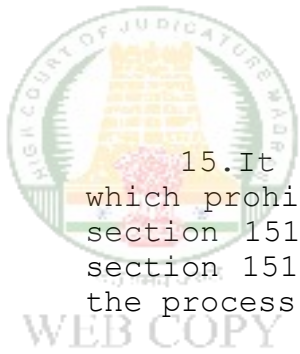
11. It is to be noted that the petition in I.A.No.875 of 2007 has also been filed under section 151 of the Code of Civil Procedure to invoke the inherent powers of the court.

12. It is relevant to note here that the trial court is having inherent powers to exercise its discretion for the ends of justice or to prevent abuse of process of court.

13. Section 151 of the Code is extracted as under:-

"S.151. Saving of inherent powers of Court.-Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

14. The inherent powers conferred under this section can be exercised only for the furtherance of justice, that is, the justice that the Code is designed to achieve or to prevent the abuse of the process of the court. Further, it is only when there is no clear provision in the Code that inherent jurisdiction can be invoked.



15. It is to be underlined that if there is no specific provision, which prohibits the grant of relief sought in an application filed under section 151 of the Code, the courts have all the necessary powers under section 151 of the Code to make a suitable order to prevent the abuse of the process of court.

16. The mere mention of provision on the heading of the application will not render the application liable either for rejection or for return.

17. It is also significant to note here that the primary duty of a court is to see that truth is arrived at. A party to a civil litigation is not entitled to constitutional protection under Article 20 of the Constitution. Thus, the Civil Court although may not have any specific provision in the CPC and the Evidence Act 1872, it has an inherent power in terms of section 151 CPC to pass all orders for doing complete justice to the parties to the suit.

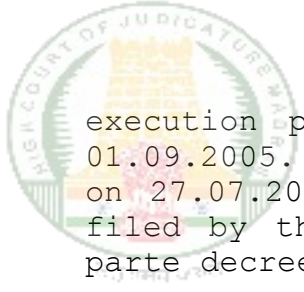
18. The facts, which are absolutely necessary for the disposal of this civil revision are as under:-

It is manifested from the records that the respondent herein has filed a suit in O.S.No.129 of 2004 as against the husband of the first petitioner seeking the relief of specific performance of contract of sale. In the plaint, it was specifically alleged that on execution of a promissory note, the husband of the first petitioner had availed a sum of Rs.18,02,346/- from the respondent. Since, he was not able to repay the amount agreed upon by him under the suit promissory note, in the later stage, he had executed a sale agreement on 09.04.2000 agreeing to execute a sale deed in respect of the suit property. That suit was decreed ex-parte.

19. On the strength of the ex-parte decree, the respondent had taken out an execution proceedings in E.P.No.34 of 2008 on the file of the Court of first instance viz., the learned I Additional District Judge, Tiruchirappalli. The decree passed in the above suit has directed the defendant to execute a sale deed in respect of 'A' schedule property in favour of the respondent/plaintiff, as per the agreement of sale, dated 09.04.2000 on or before 01.12.2005.

20. In fact, no time limit was given in the said decree for payment of balance of sale consideration. As afore stated, three months time was given to the first revision petitioner's husband to execute the sale deed, as per the agreement of sale, dated 09.04.2000, failing which, the respondent/plaintiff is entitled to get the sale deed executed through the process of execution.

21. It transpires from the records that originally, the first revision petitioner's husband had filed a petition on 29.09.2005 to set aside the ex-parte decree, dated 01.09.2005. Though the said petition was filed on 29.09.2005, it was only numbered in the year 2007 as I.A.No.875 of 2007. It is also revealed that in the meanwhile, the respondent/plaintiff had filed a lodgement schedule on 24.07.2007 for payment of balance sale consideration. On 21.04.2008, the respondent/plaintiff had filed an



execution petition in E.P.No.34 of 2008 to execute the decree, dated 01.09.2005. But, the Executing Court had returned the lodgement schedule on 27.07.2008 on the ground that the application in I.A.No.875 of 2007 filed by the first revision petitioner's husband to set aside the ex-parte decree was pending.

22.In the interregnum, the first revision petitioner's husband had filed an execution application in E.A.No.21 of 2008 under Section 28 of the Specific Relief Act to rescind the contract, as the respondent/plaintiff had not deposited the balance of sale consideration within the stipulated time.

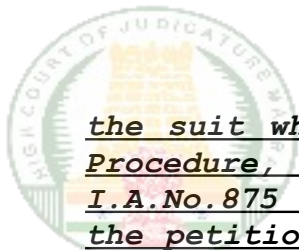
23.It is also revealed that the revision petitioners had filed an application in I.A.No.277 of 2012 for transferring the E.A.No.21 of 2008 to the Trial Court as a petition under Section 28 of the Specific Relief Act, which could be decided only by the trial Court under original jurisdiction. During the pendency of the petition in I.A.No.875 of 2007 as well as E.A.No.21 of 2008, the first revision petitioner's husband had passed away. Since the revision petitioners 1 to 4 were already on record, they were recognised as the legal representatives of the deceased defendant.

24.In the mean time, the learned counsel, who was appearing for the revision petitioners, before the trial Court had made an endorsement on the application in I.A.No.875 of 2007 stating that the petition might be dismissed as withdrawn, as the other application in E.A.No.21 of 2008 which was filed under Section 28 of the Specific Relief Act to rescind the contract was pending.

25.Under this circumstance, the respondent/plaintiff had filed an application in I.A.No.407 of 2013 in O.S.No.129 of 2004 for extension of time to deposit the amount and issue chalan to deposit the balance of sale consideration and to execute the sale deed. As afore stated, I.A.No.875 of 2007 was dismissed as withdrawn on 03.10.2013. Thereafter, the application filed by the respondent/plaintiff in I.A.No.407 of 2013 to extend the time to deposit the balance of sale consideration as well as the application in E.A.No.21 of 2008 were taken up together and after hearing both sides, the application in I.A.No.407 of 2013 seeking extension of time was allowed and the application in E.A.No.21 of 2008 filed by the first revision petitioner's husband to rescind the contract was dismissed by the trial Court by a common order, dated 23.04.2014.

26.Challenging the common order, dated 23.04.2014, the revision petitioners had filed two revision petitions in C.R.P(MD)Nos.1373 and 1374 of 2014 before this Court. After hearing both sides, both the revisions were dismissed by this Court on 27.10.2014.

27.In the meanwhile, explaining the mistake crept in the order of dismissal as not pressed, the revision petitioners had filed an unnumbered application in I.A.No..... of 2015 in O.S.No.129 of 2004 under Order 9 Rule 9 and Section 151 of the Code of Civil Procedure, 1908 to set aside the order, dated 03.10.2013. This application was not numbered, however, it was returned with a query as under:- **"Authority submitted by the learned counsel for the petitioner perused. The provision under Order 9 Rule 9 of the Code of Civil Procedure, 1908 can be invoked to restore**



the suit which was dismissed under Order 9 Rule 9 of the Code of Civil Procedure, 1908 for non-appearance of the petitioner. Hence, in this case I.A.No.875 of 2007 was not dismissed for default for non-appearance of the petitioner. How this petition invoking Order 9 Rule 9 of the Code of Civil Procedure, 1908 is maintainable to be stated".

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28.In this connection, Mr.G.Prabhu Rajadurai, the learned counsel appearing for the petitioners has invited the attention of this Court to paragraph No.5 of the affidavit filed by the revision petitioners in support of their petition. In paragraph No.5 of the affidavit, it is stated as under:-

"Since the decree obtained by the plaintiff is an ex-parte decree and we have a good case to defend the above suit on merits and moreover the suit property is the only property for us in which we are all living together as joint family and moreover without contesting the case, the counsel of us on records has let the I.A.No.875 of 2007 to go for dismissal and hence our chance to protect our case on merit was cut short by the attitude of our previous advocate and since we came to know all the above details then only we have changed the advocates to represent us and hence this petition to restore the I.A.No.875 of 2007 to the file of this Court and to take up for enquiry and thus allow us to contest the case, otherwise, we will put to great loss and hardship."

29.In this regard, Mr.G.Prabhu Rajadurai, learned counsel appearing for the revision petitioners has pointed out that in fact Order 9 Rule 9 of the Code of Civil Procedure, 1908 might not be made applicable to the instant case on hand. However, Section 151 of the Code of Civil Procedure, 1908 provides the inherent jurisdiction to take the matter, as no specific provision is available in the Code of Civil Procedure, 1908, to set aside the order, which was passed by the trial Court, based on the wrong endorsement made by the learned counsel.

30.In support of his contention, the learned counsel for the revision petitioners has also placed reliance upon the decision of the Apex Court in *Jet Ply Wood (P) Limited and another Vs. Madhukar Nowlakha and others* reported in (2006)3 SCC 699.

31.In this case, while speaking on behalf of the Division Bench of the Apex Court, the Honourable Mr. Justice Altamas Kabir in paragraph Nos.25 and 26 has observed as under:-

"25. The aforesaid position was reiterated by the learned single Judge of the High Court in his order dated 04.02.2005 though the language used by him is not entirely convincing. However, the position was clarified by the learned Judge in his subsequent order dated 14.03.2005 in which reference has been made to a Division Bench decision of the Calcutta High Court in *Rameswar Sarkar's* case which, in our view, correctly explains the law with regard to the inherent powers of the Court to do justice between the parties. There is no doubt in



our minds that in the absence of a specific provision in the Code of Civil Procedure providing for the filing of an application for recalling of an order permitting withdrawal of a suit, the provisions of Section 151 of the Civil Procedure Code can be restored to in the interest of justice. The principle is well established that when the Code of Civil procedure is silent regarding a procedural aspect, the inherent power of the Court can come to its aid to act *ex debito justitiae* for doing real and substantial justice between the parties. This Court had occasion to observe in *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal* as follows:-

"It is well settled that the provisions of the Code are not exhaustive for the simple reason that the legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them".

26. Based on the aforesaid principle, the Division Bench of the Calcutta High Court, in almost identical circumstances in *Rameswar Sarkar's case*, allowed the application for withdrawal of the suit in exercise of inherent powers under Section 151 of the Code of Civil Procedure, upon holding that when through mistake the plaintiff had withdrawn the suit, the Court would not be powerless to set aside the order permitting withdrawal of the suit."

32. It is obvious to note here that as observed by the Division Bench of the Honourable Apex Court, for filing the application to recall the order of dismissal as withdrawn, the provisions of under Order 9 Rule 9 of the Code of Civil Procedure, 1908 is not applicable. However, such an application would be maintainable under Section 151 of the Code of Civil Procedure, 1908 as the Code of Civil Procedure is silent in this regard as no specific provision is available. In such circumstance, the inherent power conferred on the Court can come to its aid to act *ex debito justitiae* for doing real and substantial justice between the parties. Without the application of mind and without numbering the application and without giving an opportunity of being heard of the petitioners, the trial Court has proceeded to return the application on the ground of maintainability, which according to this Court, is absolutely perverse in nature and against the principles of natural justice. Hence, this Court is constrained to exercise its supervisory jurisdiction under Article 227 of the Constitution of India to stretch its hand to set at right the wrong committed by the Court below.

33. Keeping in view of the above facts, this Civil Revision Petition is disposed of with the following direction:-

The learned I Additional District Judge, Tiruchirappalli, in the light of the observation made above, is directed to number the unnumbered application in I.A.No..... of 2015 in O.S.No.129 of 2004 and take the same on his file and to invite objection from the other side if any and subsequently, to dispose the application on merits within a period of 15 days from the date of receipt of a copy of this order.



There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(R)

/True copy/

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Sub Assistant Registrar

To
The I Additional District Judge,
Tiruchirappalli.

+1cc to Mr.G.Prabhu Rajadurai, Advocate in SR.69940

C.R.P (MD) No.2621 of 2015
and M.P (MD) No.1 of 2015
07.12.2015

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