

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4794 of 2015
and M.P.No.1 of 2015

M.Arul

.. Petitioner/1st Defendant

Vs.

1.Krishnamoorthi
2.Kumaravel

.. 1st Respondent/Plaintiff
.. 2nd Respondent/2nd Defendant

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.08.2015 in I.A.No.83 of 2013 in O.S.No.34 of 2013 on the file of the Sub-Court, Thiruvarur.

For Petitioners : Mr.R.Selvakumar

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 21.08.2015 in I.A.No.83 of 2013 in O.S.No.34 of 2013 on the file of the Sub-Court, Thiruvarur.

2.The first respondent herein as a plaintiff filed a suit in O.S.No.34 of 2013 for a direction to the first defendant to refund the amount of Rs.5,00,000/-, if any default in payment, directing the first defendant to pay the interest at the rate of 7% per annum from the date of filing the suit till the realisation of the amount and also for mandatory injunction to return the cheque bearing No.000102, dated 18.09.2013 for Rs.25 lakhs drawn at Karur Vysya Bank, Tiruvarur and further reliefs. The plaintiff/first respondent valued the suit under Section 27(c) of the Tamil Nadu Court Fees and Suits Valuation Act (hereinafter called as the "Act") and paid Court fee of Rs.37,500.50 for recovery of Rs.5,00,000/- with interest. For mandatory injunction, the plaintiff valued the suit under Section 27(c) of the Act and paid Rs.75.50 as Court fee. The first defendant filed a detailed written statement and contesting the suit. During pendency of the suit, the first defendant filed an application in I.A.No.83 of 2013 for directing the plaintiff to pay the correct Court fee under Section 40 of the Act in respect of the relief sought for mandatory injunction. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the first defendant.

3.Learned counsel for the revision petitioner/first defendant submits that the first respondent/plaintiff ought to have valued the suit under Section 40 of the Act for return of the cheque for Rs.25,00,000/-. For mandatory injunction, he valued the suit only at Rs.1,000/-, but face value of the cheque is Rs.25,00,000/-. That factum was not considered by the trial Court. He further submits that Section 40 of the Act deals with cancellation of a decree for money or other property having a money value or other document which purports or operates to create, declare, assign and limit. So the plaintiff must have paid the Court fee under Section 40 of the Act. Therefore, he prayed for allowing the revision.

4.At the time of admission, argument of the revision petitioner is heard in length.

5.The first respondent herein as a plaintiff filed a suit for recovery of money of Rs.5,00,000/- and also for mandatory injunction with a direction to the first defendant to return the cheque for Rs.25,00,000/-. In the plaint, it was stated that the second defendant is the son of the plaintiff and he is working under the first defendant. During his employment, there was a shortage of

amount. So the plaintiff was forced to enter into an agreement with the first defendant, which came into existence on 18.03.2013. In pursuance of the said agreement, the first respondent/plaintiff issued a cheque for a sum of Rs.5,00,000/-, which was presented for encashment and the same has been realised. The plaintiff has also issued post dated cheque for Rs.25,00,000/- in favour of the first defendant. After perusal of document and accounts, the first respondent/plaintiff came to know that there is no loss caused to the first defendant. Hence, after issuance of notice, the first respondent/plaintiff has filed a suit for the aforesaid reliefs.

6.The revision petitioner/first defendant filed a detailed written statement stating that without cancellation of the said agreement dated 18.03.2013, the suit is not maintainable. He also raised a plea that the plaintiff ought to have paid the correct Court fee under Section 40 of the Act for Rs.25,00,000/-, since the suit is for return of cheque. The trial Court, after hearing both sides, dismissed the application.

7.The point to be decided is that whether the suit valued under Section 27(c) of the Act is correct in respect of the second

prayer for mandatory injunction directing the first defendant to return the cheque for Rs.25,00,000/- or the suit must be valued under Section 40 of the Act for the said relief?

8. Now it is appropriate to incorporate Sections 27(c) and 40 of the Act, which read as follows:

"27. Suits for injunction__

.. ..

.. ..

(c) in any other case, where the subject-matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on 3[rupees one thousand], whichever is higher.

40. Suits for cancellation of decrees, etc.

(1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be-- if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed; if a part of the decree or other

document is sought to be cancelled, such part of the amount or value of the property.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.

Explanation.-- A suit to set aside an award shall be deemed to be a suit to set aside a decree within the meaning of this section."

9. According to the revision petitioner/first defendant, the Court fee shall be paid on the face of the document and decree as per Section 40 of the Act, which deals with cancellation of any document or decree, so the first respondent/plaintiff ought to have valued the suit under Section 40 of the Act. It is not the case that the amount has been realised by the revision petitioner/first defendant. Since it is alleged that the post dated cheque has been given to the first defendant for Rs.25,00,000/-, which is yet to be encashed, the first respondent/plaintiff filed the suit for mandatory injunction directing the first defendant to return the post dated cheque issued for Rs.25,00,000/-.

10.Considering the aforestated circumstances of the case, the suit is for mandatory injunction directing the first defendant to return the cheque and it is not the suit for cancellation of cheque already issued. So Section 40 of the Act will not be attracted. Furthermore, it is well settled dictum of the Honourable Apex Court that at the time of taking the suit on file, the Court ought to have considered the plaint pleadings and payment of Court fee on the basis of the plaint pleadings. In such circumstances, I am of the view, the Court fee paid under Section 27(c) of the Act for the second prayer sought for by the plaintiff is correct. So the trial Court has considered all the aspects in proper perspective manner and came to the correct conclusion, therefore, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The civil revision petition deserves to be dismissed and it is hereby dismissed.

11.In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.01.2016

Index:Yes/No

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R.MALA,J.

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To

The Sub-Court, Thiruvavarur.

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