

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.1303 of 2006

M/s.K.Kannan
R.C.S.Transport,
Main Road, Keerampudur Post,
Namakkal Taluk & District
Pin - 637 202. Appellant/Petitioner

Vs.

1. Prime Cotton Textiles,
Coimbatore a Partnership firm,
rep. by its Power of Agent Subrogee,
M/s.New India Assurance Company Ltd.,
Chinnappanuthu Village, Udumalpet - 642 122.
2. M/s.New India Assurance Company Ltd.,
Rep. By its Divisional Manager,
Divisional Office - 720 100, Coimbatore - 2.
3. M/s.Shiv Kirupa Transport,
National Highways - 8
Near Eagle Farm House, Maliyaram District,
Rajkot.
4. M/s.Jalaram Ginning Factory,
Station Road, Jesdan - 360 050,
Gujarat State. Respondents

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule (i) of Civil Procedure Code, against the decree and judgment dated 23.09.2005 made in I.A.No.556 of 2005 in O.S.No.819 of 2004 on the file of the Additional District and Sessions, Fast Track Court No.I, Coimbatore.

For Appellant : Ms.Kaavya Silambanan

For RR1 & 2 : Mr.N.Vijayaraghavan

JUDGMENT

1. The second defendant in O.S.No.819 of 2004 on the file of the Additional District and Sessions, Fast Track Court No.I, (MACT) Coimbatore, challenges the order dismissing I.A.556/2005 where under it sought the setting aside a ex-parte decree passed in the said suit.

2. The facts are that the third defendant had entrusted a consignment of cotton with the first defendant carrier for being transported from Gujarat to Coimbatore. The carrier transported the same through the lorry of the second defendant. While so, during transit the lorry caught in fire due to which the consignment of cotton suffered severe damage. This incident had taken place at Bangalore. Based on a contract of marine insurance that the first plaintiff, the consignee of goods had entered into with the second plaintiff, the latter indemnified the former, got subrogated to the former's right and has laid the suit for recovery of Rs.8,37,464/- with interest at 12%.

3. Challenging the territorial jurisdiction of the District Court at Coimbatore to entertain the suit, the second defendant/the appellant herein filed I.A.No.61/2005 to decide the same as a preliminary issue. That was dismissed, against which, the appellant had preferred C.R.P.No.666 of 2005 in which it is stated that this Court had initially passed an order of status quo. Be that as it may, the trial of the suit had begun and on 18.04.2005 PW-1 was examined and relevant exhibits were marked. Thereafter the suit was posted on four different dates between 19.04.2005 and 26.04.2005 for cross-examination of P.W.1 by the defendants. On 27.04.2005, the plaintiffs have filed their written arguments and the case was again posted to 29.04.2005 and thereafter to 07.06.2005. In all these dates, the appellant herein was not represented and consequently the trial Court passed an ex-parte decree in the suit. Thereafter, the appellant filed necessary application under Order IX Rule 13 CPC, to set aside the ex-parte decree and vide the impugned order, the District Court dismissed the same. In its order, the learned District Judge has traced the history of the litigation as well as the conduct of the appellant in relation to the trial of the case. It is also pertinent to point out here that the order also refers to C.R.P.No.666 of 2005 and concerning it the learned District Judge has observed that no notice of the same was seen served on the plaintiffs.

4. Before this Court, the learned counsel for the appellant submitted that inasmuch as the territorial jurisdiction of the trial Court was challenged at the relevant time which was then pending in CRP 666/2005, it would be an embarrassment for the second defendant to participate in the trial by submitting to the jurisdiction of the Court. She also added that there was no willful intention not to participate in the trial, but the unfortunate circumstances in which the appellant was positioned before the Trial Court was not adequately appreciated by it. The learned counsel also submitted that since the suit was decreed ex-parte, C.R.P.No.666/2005, has become infructuous and it was hence withdrawn on 21.06.2005. She added that the appellant has a case on merit, as it contended that there was a lease arrangement between the

appellant and first defendant carrier whereby the entire possession of the lorry was handed over to the carrier, that the appellant was not a privy to the contract entered into between the consignor of goods and first defendant carrier and hence was not liable for the damage alleged to have been suffered in the fire accident.

5. When the case was posted yesterday i.e. 15-12-2016, there was no representation for the Insurance Company, even though notice was served on it. Today, Mr.N.Vijayaraghavan, learned counsel appears for respondents 1 and 2/plaintiffs in the suit and he contended that the liability or otherwise of the second defendant/appellant could not be decided in this appeal and that it was a matter for trial. However, he fairly appreciated the circumstances in which the appellant found himself in at the time when the trial of the case took place.

6. Taking into consideration all the relevant facts and circumstances of the case, and bearing in mind that a substantial question regarding the very legitimacy of liability that the plaintiffs are seeking to fasten on the second defendant/appellant is required to be investigated, which as rightly submitted by the counsel for the respondents/plaintiff, could be done only in a complete trial of the suit, I consider an opportunity should be given to the appellant to contest the suit. The circumstances per se in which the ex-parte decree happened to be passed themselves offer adequate reasons to allow this appeal.

7. Accordingly, this Appeal is allowed. The copy of the judgment be made available to the Trial Court before 16-01-2017 on receipt of which, the trial Court shall take immediate steps to proceed with the trial and dispose of the suit within three months time. Both sides are directed to co-operate in the smooth conduct of the trial and the trial Court must ensure that no unnecessary adjournments are granted to the parties except when it is imminently necessary. No costs.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To:

1. The Additional District and Sessions Judge,
Fast Track Court No.I, Coimbatore.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.N.Vijayaraghavan,advocate,sr.74285

+1 cc to M/s.Silmbanan associates,sr.73379.

pvs (co)
krd 25/1

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