

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.2864 of 2016
and C.M.P.No.14545 of 2016

Ezra Sargunam

... Petitioner

Vs

D.Janardhanam

... Respondent

Civil Revision Petition under section 115 of Civil Procedure Code against the decree and judgment of the Additional Sub Court, Chengalpattu dated 28.04.2008 made in C.M.A.No.29 of 2003 confirming the order of the Lower Court dated 19.06.2003 made in I.A.No.820 of 2002 in O.S.No.29 of 1995 on the file of the District Munsif Court, Tambaram dismissing the application to set aside the exparte decree.

For Petitioner : Mr.S.Ruban Prabhu
for M/s.C.R.Rukmani

For Respondent : Mr.D.Rajagopal

ORDER

Challenging the judgment and decree passed in C.M.A.No.29 of 2003 on the file of the Additional Sub Court, Chengalpattu, confirming the order

passed in I.A.No.820 of 2002 in O.S.No.29 of 1995 on the file of the District Munsif Court, Tambaram, the defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.29 of 1995 for permanent injunction.

3.The defendant filed his written statement and was contesting the suit. While so, the defendant remained absent before the trial Court and an exparte decree was passed against him on 21.12.1998. Thereafter, the defendant filed an application in I.A.No.191 of 1999 to set aside the exparte decree, which was allowed by the trial Court on 17.06.1999. Pursuant to which, the exparte decree dated 21.12.1998 was set aside. Subsequently, one Rev.John Polycarp filed an application in I.A.No.767 of 1999 under Order 3 Rule 2 of the Civil Procedure Code to authorize him to make, do such appearance, applications and acts on behalf of the defendant. After contest, the trial Court dismissed the application in I.A.No.767 of 1999. Admittedly, the order passed in I.A.No.767 of 1999 was not challenged by the defendant and the same has become final. Thereafter, on 11.09.2002, the defendant remained absent before the trial Court, hence, again an exparte decree was passed against him. Subsequently, on 30.09.2002, the

defendant filed an application in I.A.No.820 of 2002 under Order 9 Rule 13 of the Civil Procedure Code to set aside the exparte decree dated 11.09.2002. The affidavit filed in support of the said petition was filed by Rev.John Polycarp as the Power of Attorney of the defendant. The application filed by the defendant was contested by the plaintiff. The trial Court, taking into consideration the case of both parties, dismissed the application. Against which the defendant preferred an appeal in C.M.A.No.29 of 2003 and the Lower Appellate Court also confirmed the order passed by the trial Court and dismissed the appeal. Against the concurrent findings of the Courts below, the defendant has filed the above Civil Revision Petition.

4.Heard Mr.S.Ruban Prabhu, learned counsel appearing for the petitioner and Mr.D.Rajagopal, learned counsel appearing for the respondent.

5.The learned counsel appearing for the petitioner submitted that though the trial Court dismissed the application filed by the defendant under Order 3 Rule 2 of the Civil Procedure Code to recognize his Power of Attorney to prosecute the suit on his behalf, the affidavit filed by the said Power of Attorney should have been considered by the Courts below.

Further, the learned counsel submitted that when the defendant has given sufficient reason for setting aside the ex parte decree dated 11.09.2002, the dismissal of the applications by the Courts below are erroneous.

6. In support of his contentions, the learned counsel relied upon the following judgments:

(i)(2011) 3 Supreme Court Cases 545 [Parimal Vs. Veena alias Bharti] wherein the Hon'ble Supreme Court held as follows:

“... ”

13. "Sufficient Cause" is an expression which has been used in large number of Statutes. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the court

exercises discretion, it has to be exercised judiciously. (*Vide Ramlal & Ors. v. Rewa Coalfields Ltd.*, [AIR 1962 SC 361]; *Lonand Grampanchayat v. Ramgiri Gosavi* [AIR 1968 SC 222]; *Surinder Singh Sibia v. Vijay Kumar Sood* [(1992) 1 SCC 70 : AIR 1992 SC 1540] and *Oriental Aroma Chemical Industries Ltd., v. Gujarat Industrial Development Corporation* [(2010) 5 SCC 459 : (2010) 2 SCC (L & S) 50 : (2010 2 SCC (Cr) 1291 : (2010) 2 SCC (Civ) 448].

...

15. While deciding whether there is a sufficient cause or not, the court must bear in mind the object of doing *substantial justice to all the parties concerned* and that the technicalities of the law should not prevent the court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it. (*Vide State of Bihar v. Kameshwar Prasad Singh* [(2009) 9 SCC 94 : 2000 SCC (L & S) 845 : AIR 2000 SC 2306]; *Madanlal v. Shyamlal* [(2002) 1 SCC 535 : AIR 2002 SC 100]; *Davinder Pal Sehgal v. Partap Steel Rolling Mills (P) Ltd.*, [(2002) 3 SCC 156: AIR 2002 SC 451]; *Ram Nath Sao v. Gobardhan Sao* [(2002) 3 SCC 195 : AIR 2002 SC 1201]; *Kaushalya Devi v. Prem Chand* [(2005) 10 SCC 127]; *Srei International Finance Ltd., v. Fairgrowth Financial Services Ltd.*, [(2005) 13 SCC 95] and *Sadh v. Anjana Enterprises* [(2008) 12 SCC 589 : AIR 2008 SC 2054]).”

(ii)(2015) 5 Supreme Court Cases 588 [Maya Devi Vs. Lalta Prasad] wherein the Hon'ble Supreme Court held as follows:

“...

41.The absence of the defendant does not absolve the trial Court from fully satisfying itself of the factual and legal veracity of the plaintiff's claim; nay, this feature of the litigation casts a greater responsibility and onerous obligation on the trial Court as well as the executing Court to be fully satisfied that the claim has been proved and substantiated to the hilt by the Plaintiff. Reference to *Shantilal Gulabchand Mutha vs Tata Engineering and Locomotive Company Limited, [(2013) 4 SCC 396 : (2013) 2 SCC (Civ) 632]*, will be sufficient. The failure to file a written statement, thereby bringing Order 8 Rule CPC into operation, or the factum of defendant having been set ex parte, does not invite a punishment in the form of an automatic decree. Both under Order 8 Rule 10 CPC and on the invocation of Order 9 CPC, the Court is nevertheless duty-bound to diligently ensure that the plaint stands proved and the prayers therein are worthy of being granted.”

(iii)2007-3-L.W. 1044 [R.M.Bedi Vs. 1.M/s.Vijayeswari Textiles Ltd., with its registered Corporate Office at No.1088, Avanashi Road, Coimbatore - 18 and another] wherein this Court held that when there is sufficient cause for the non-appearance of the plaintiff, the plaintiff's

counsel on record can file an affidavit stating the sufficient cause for the non-appearance of the plaintiff before the Court.

7.Countering the submissions made by the learned counsel for the petitioner, the learned counsel appearing for the respondent submitted that the order passed by the Courts below are perfectly correct and that after the dismissal of the application in I.A.No.767 of 1999, the alleged Power of Attorney viz., Rev.John Polycarp cannot file an affidavit explaining the reasons for the non-appearance of the defendant. Further, the learned counsel submitted that the defendant has not given sufficient cause for the non-appearance on 11.09.2002. That apart, the learned counsel also submitted that the Hon'ble Supreme Court has held that boycott of Courts by lawyers cannot be taken as a ground to set aside the exparte decree.

8.In support of his contention, the learned counsel relied upon a judgment reported in **(1994) 5 Supreme Court Cases 557 [Common Cause, A regd. Society Vs. Union of India and others]** wherein the Hon'ble Supreme Court of India held that litigants have a fundamental right to speedy justice as observed in Hussaubaara Khatoon V. Home Secy., State of Bihar [(1980) 1 SCC 81 : 1980 SCC (Cri) 23 : AIR 1979 SC 1360] , it is essential that cases must proceed when they appear on board and should

not ordinarily be adjourned on account of the absence of the lawyers unless there are cogent reasons to do so.

9. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side and also taking into consideration the judgments relied upon by the learned counsel on either side, the issues that have to be decided in this Civil Revision Petition are with regard to the right of the alleged Power of Attorney in filing an application explaining the reasons for the non-appearance of the defendant and whether the defendant has shown sufficient cause for his non-appearance on 11.09.2002? Admittedly, the application filed by the defendant to recognize Rev. John Polycarp as his Power of Attorney and to prosecute the suit on his behalf in I.A.No.767 of 1999 was dismissed by the trial Court. The order passed in I.A.No.767 of 1999 has become final. Subsequently, on 11.09.2002, the defendant remained absent and an ex parte decree was passed for the 2nd time against the defendant. To set aside the ex parte decree, the defendant filed an application in I.A.No.820 of 2002. The affidavit filed in support of the petition was sworn to by Rev. John Polycarp stating that he is the Power of Attorney of the defendant.

10. On the earlier occasion, when the suit was decreed ex parte on

21.12.1998, the defendant himself filed an application in I.A.No.191 of 1999, which was allowed by the trial Court on 17.06.1999. Under Rule 16 (2) of the Civil Rules of Practice, the Court may record in writing that the agent is permitted to appear and act on behalf of the party and unless and until, the said permission is granted no appearance, application, or act, of the agent shall be recognized by the Court. In the case on hand, though the application in I.A.No.767 of 1999 filed under Order 3 Rule 2 of the Civil Procedure Code was dismissed by the trial Court, the application was filed by the alleged Power of Attorney, who was not recognized by the Court and the application filed under Order 3 Rule 2 was dismissed by the trial Court. When the trial Court had not recognized the deponent of the affidavit as the agent of the defendant, the present application filed by the alleged Power of Attorney was rightly rejected by the Courts below.

11.In the judgment reported in **2007-3-L.W. 1044 [R.M.Bedi Vs. 1.M/s.Vijayeswari Textiles Ltd., with its registered Corporate Office at No.1088, Avanashi Road, Coimbatore - 18 and another]**, only the plaintiff's counsel was permitted to file the affidavit on behalf of the plaintiff.

12.As per Rule 16 of the Civil Rules of Practice, a Pleader or an

Advocate can file an application on behalf of the party for whom he is appearing. However, in the case of an agent, only if the Court permits him to act as an agent of a party, he can appear or file applications or act on behalf of the party. Taking note of all these aspects, the Courts below have rightly dismissed the application.

13. In these circumstances, the judgment relied upon by the learned counsel for the petitioner reported in 2007-3-L.W. 1044 [R.M.Bedi Vs. 1.M/s.Vijayeswari Textiles Ltd., with its registered Corporate Office at No.1088, Avanashi Road, Coimbatore - 18 and another] does not apply to the facts and circumstances of the present case.

14. With regard to the reasoning given in the affidavit for the non-appearance of the defendant on 11.09.2002, in paragraph no.3, the defendant has stated that his counsel informed him that he was unable to attend the Court due to Advocates' boycott.

15. The ratio laid down in the judgment reported in **(1994) 5 Supreme Court Cases 557 [Common Cause, A regd. Society Vs. Union of India and others]** squarely applies to the facts and circumstances of the present case.

16. In these circumstances, the reasoning given by the defendant in the affidavit filed in support of the petition cannot be accepted, which was also rightly rejected by the Courts below. In these circumstances, the dismissal of the applications by the Courts below are just and proper.

17. I do not find any ground to interfere with the concurrent findings of the Courts below. The Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

20.09.2016

To

1. The Additional Sub Court,
Chengalpattu.

2. The District Munsif Court,
Tambaram.

M.DURAIWAMY,J.
va

C.R.P.(NPD).No.2864 of 2016
and C.M.P.No.14545 of 2016

20.09.2016