

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2017

CORAM

The Hon'ble Mr.Justice K.K.Sasidharan

C.R.P(NPD)No.1121 of 2013

and

M.P.No.1 of 2013

V.Subramaniam

...Revision Petitioner

Vs.

Dr.Selvam

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order, dated 31.01.2013, passed by the learned I Additional District Judge, Erode District, in I.A.No.876 of 2012, in O.S.No.254 of 2008.

For Revision Petitioner : Mr.I.C.Vasudevan

For Respondent : Mr.K.M.Muralidharan

ORDER

The respondent filed a suit for money on the strength of promissory notes, stated to have been executed by the petitioner. The suit was contested by the petitioner, by filing written statement. The petitioner failed to

appear before the trial Court on the day prescribed for leading evidence. The Court, therefore, set him ex parte, and immediately thereafter, passed an ex parte decree. The petitioner filed an Application before the trial Court to set aside the ex parte order along with an Application in I.A.No.876 of 2012, to condone the delay of 880 days in filing the said Application. The application was opposed by the respondent.

2. The learned trial Judge by way of a very brief order, dismissed the Application primarily on the ground that, there was no explanation for each days delay. The learned trial Judge held that the respondent had already filed an Execution Petition, and the petitioner entered appearance in the said Petition, and the present attempt is only to drag on the proceedings.

3. The order passed by the learned trial Judge on 31, January, 2013, in I.A.No.876 of 2012, is under challenge in this Civil Revision Petition, primarily on the ground that the application to condone the delay was not considered on merits. According to the petitioner, the delay on his part to explain each days delay alone is not a ground to dismiss the Application.

4. Heard the learned counsel appearing on behalf of the parties.
5. The respondent filed the suit, in O.S.No.254 of 2008, praying for a money decree. The suit was contested by the petitioner by stating that the respondent fabricated three promissory notes and made an unjustifiable claim.
6. There is no dispute that the petitioner failed to appear before the trial Court for adducing evidence on his side. The matter was posted on 12.04.2010. Since there was no representation on behalf of the petitioner on 12.04.2010, the trial Court passed a judgement and decree on the very same day.
7. The application filed by the petitioner to condone the delay should be considered in the light of the judgment and decree passed by the trial Court in O.S.No.254 of 2008.
8. The Supreme Court in Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan

[MANU/SC/1018/2002 : 2003(1) SCC 197], held that judgment should contain the issues and findings on such issues. The relevant paragraph reads thus:

"10...Order XX requires a judgment to contain all the issues and findings or decision thereon with the reasons therefore. 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 decree shall also state the amount of costs incurred in the suit and by whom or out of what property and in what proportions such costs are to be paid. Rules 9 to 19 of Order XX are illustrative of contents of decrees in certain specified categories of suits. 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. A self-contained decree drawn up in conformity with the judgment would exclude objections and complexities arising at the stage of execution."

9. The Supreme Court in *Ramesh Chand Ardawatiya v. Anil Panjwani* [MANU/SC/0387/2003 : AIR 2003 SC 2508], while considering the provisions of Order IX Rule 6 and Order VIII Rule 10 of the Code of Civil Procedure, observed that even if the suit proceeds *ex parte* under Order IX Rule 6, the necessity of proof by the Plaintiff of its case cannot be dispensed with. The Supreme Court observed as under:

" 33...But there is substance in the other limb of this submission made by the learned senior counsel for the Defendant-Appellant. Even if the suit proceeds ex parte and in the absence of a written statement, unless the applicability of Order VIII Rule 10 of the Code of Civil Procedure 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. In the absence of denial of plaint averments the burden of proof on the Plaintiff is not very heavy. 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 XIV and deliver the judgment on every issue as required by Order XX 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."

10. In *Meenakshisundaram Textiles vs. Valliammal Textiles*, [MANU/TN/1715/2011 : 2011(3) CTC 168], a Division Bench of this Court held that even an ex-parte judgment should contain reasons. The relevant portion of the judgment reads thus:

"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. 16. Code of Civil Procedure does not define either an ex parte judgment or an ex parte decree. It refers only to a judgment and a decree. In the event a judgment is rendered when the defendant fails to defend the suit by his absence, that judgment is known to be an ex parte judgment and the decree drawn on the basis of that judgment is known as an ex parte decree. Hence, 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 on the above.

20. It is also relevant to point out that under Section 96(2) of the Code of Civil Procedure, an appeal may lie from an original decree passed ex parte. Two remedies are available to an aggrieved person to question the ex parte decree. One is that he may file an application to set aside the ex parte decree as provided under Order IX 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 nonappearance. 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. For that reason, the judgment should contain the reasons and should be in conformity with the provisions of Section 2(9) read with Order XX Rule 4 of the Code of Civil Procedure."

11. Most recently, the Supreme Court in Maya Devi vs. Lalta Prasad [MANU/SC/0122/2014 : 2015(5) SCC 588] held that the absence of defendant to contest the suit does not invite a punishment in the form of an automatic decree. The Supreme Court said:

"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 v. Tata Engineering and Locomotive Company Limited, will be sufficient. The failure to file a Written Statement, thereby bringing Order VIII Rule 10 of the Code of Civil Procedure 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 VIII Rule 10 Code of Civil Procedure and on the invocation of Order IX of the Code of Civil Procedure, the Court is nevertheless dutybound to diligently ensure that the plaint stands proved and the prayers therein are worthy of being granted."

12. The judgment and decree passed by the trial Court indicates that the merits of the matter was not considered. Failure on the part of the petitioner to appear before the Court was taken as a ground to pass a default decree on the very same day. The trial Court was expected to consider as to whether the promissory notes, in question, were executed by the petitioner, more so, on account of the fact that the execution of the promissory notes was specifically denied by the petitioner, in his written statement. Even then, there was no attempt made by the trial Court to consider the merits of the claim made by the petitioner.

13. The petitioner filed the application to condone the delay of 880 days. The petitioner has given reasons that he was prevented by sufficient grounds for not filing the Application within the statutory period. The learned trial Judge wanted the petitioner to explain each days delay, notwithstanding the cryptic judgement and decree. This Court, by way of an interim order, directed the petitioner to deposit the entire decree amount. The petitioner has already deposited the decree amount. The petitioner should, therefore, be permitted to contest the suit on merits.

14. In the result, the order, dated 31.01.2013 is set aside. The Application in I.A.No.876 of 2012 is allowed.

15. The learned First Additional District Judge, Erode, is directed to take up the application filed by the petitioner to set aside the ex parte decree and pass orders on merits as per law. Such exercise shall be completed within a period of 30 days from the date of receipt of a copy of this order.

16. In the upshot, I allow the Civil Revision Petition. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.04.2017

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Index : Yes/No

To
The I Additional District Judge,
Erode District.

K.K.Sasidharan, J.,

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C.R.P(NPD)No.1121 of 2013

25.04.2017

C.M.P.No.7185 of 2017
in
C.R.P.(NPD) No.1121 of 2013

K.K.Sasidharan, J.,

Ordered.

26.04.2017

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Note :

Office is directed to carry out the necessary corrections with regard to the conversion of C.R.P. into Article 227 of the Consitution of India from Section 115 C.P.C. in the order alone, not in the EB, before issuing the order copy.

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