

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(NPD).No.3093 of 2016

and

C.M.P.No.15735 of 2016

1.Sengodan
S/o.Ponnusamy

2.Sekar
S/o.Sengodan

.. Petitioners/Petitioners/JD/Defendants

-Vs.-

S.P.Natesan
S/o.Pachamuthu

.. Respondent/Respondent/DH/Plaintiff

Prayer:

Civil Revision Petition is filed under Section 115 of Code of Civil Procedure against the fair and decreetal order dated 13.07.2016 made in R.E.A.No.126 of 2015 in R.E.P.No.39 of 2003 in O.S.NO.139 of 2001 on the file of the Subordinate Court, Sankari.

For Petitioners : Mr.R.Marudhachalamurthy

For Respondents : Ms.P.T.Asha,
for M/s.Sarvabhauman Associates

ORDER

The present Civil Revision Petition has been filed challenging the fair and decreetal order dated 13.07.2016 made in R.E.A.No.126 of 2015 in R.E.P.No.39 of 2003 in O.S.NO.139 of 2001 on the file of the Subordinate Court, Sankari.

2.The learned counsel appearing for the revision petitioner would submit that the respondent herein as plaintiff has filed the suit for specific performance on the basis of the sale agreement dated 15.07.1995. The said suit was decreed exparte on 15.11.2002. Thereafter, the respondent/plaintiff filed the execution petition on 16.12.2002. While so, the revision petitioners/defendants filed an application in I.A.No.17/2004 to set aside the exparte decree along with an application to condone the delay. The said application came to be dismissed as against which the revision petitioners/defendants preferred a revision which was also dismissed. Pursuant to the same, the sale deed has been executed and now, the respondent/plaintiff has filed an execution petition for delivery of the property. At this juncture, the revision petitioners/defendants filed an application in R.E.A.No.126 of 2015 under Section 47 r/w 151 CPC stating that the decree itself is not executable because the decree is not in consonance

with Section 2(9) of CPC. However, the said application came to be dismissed as against which the present Civil Revision Petition has been preferred. To substantiate his contention, the learned counsel for the revision petitioner relied upon the following decisions

- 1. AIR 1969 Supreme Court 1167(1), Smt.Swaran Lata Ghosh v. Harendra Kumar Banerjee and another.**
- 2. AIR 1999 Supreme Court 3381(1), Balraj Taneja and another v. Sunil Madan and another.**
- 3. (2011) 7 MLJ 652, Meenakshisundaram Textiles v. Valliammal Textiles Ltd.,**

and submits that the executing Court had dismissed the said application without considering the above dictum and hence, prayed for setting aside the fair and decreetal order passed by the executing Court.

3.Resisting the same, the learned counsel appearing for the respondent would submit that as the suit was decreed exparte, the revision petitioners herein filed an application to set aside the exparte decree along with an application for condonation of delay. The said applications came to be dismissed against which the revision petitioners preferred the revisions in CRP(NPD).No.1846/2003 against the order passed in REP.No.39/2003 in

O.S.No.139/2001 and CRP.No.801/2004 against the order passed in I.A.No.17/2004 in O.S.No.139/2001. The aforesaid revisions were also dismissed and so, it operates as res judicata. To substantiate her contention, the learned counsel relied upon the decision reported in **(2014) 2 MLJ 496 (SC), *Rajinder Kumar and Others v. Shri Kuldeep Singh and Others*** and submits that merely because the decree passed under Order VIII Rule 10 CPC is an exparte decree, the same does not cease to have the force of the decree and it is a valid decree for all purposes. The learned counsel would further submit that only in order to protract the proceedings, the revision petitioners have come forward with the present application and hence, the learned counsel for the respondent prayed for dismissal of the Civil Revision Petition.

4.Considered the rival submissions made by both sides and perused the typed set of papers.

5.The respondent herein as plaintiff has filed the suit for specific performance on the basis of the sale agreement dated 15.07.1995. Even though the revision petitioners/defendants appeared before the Trial Court, they did not file the written statement. Hence, both the defendants were set exparte and the suit was decreed exparte on 15.11.2002. It is also an admitted fact

that pursuant to the execution petition filed by the respondent/plaintiff, the sale deed has been executed. It is also pertinent to note that the delivery has been effected and taken.

6.Now, the only point to be decided is whether the exparte decree is executable or not?

It is appropriate to incorporate paragraphs 9 and 10 of the petition filed in R.E.A.No.126 of 2015 in R.E.P.No.39 of 2003 by the revision petitioners/defendants.

“9.The petitioners most respectfully submit that the Judgment passed in the above suit was not in accordance with the provisions contained in Section 2(9) CPC which defines “Judgment” as

2.(9)“judgment” means the statement given by the judge on the grounds of a decree or order”. In this case, the Judgment of the Honourable Court does not give any reasons. The learned Subordinate Judge who delivered the judgment has merely given a statement of facts and the judgment was only in 3 lines as

“Proof affidavit filed. Ex.A1 to A4 marked. Claim is

proved. Suit is decreed as prayed for with costs. Time for balance amount 2 months.”

and on the strength of this four line judgment a decree was drafted and that decree is the one which is put in execution in the above E.P. The failure to give reasons for granting a judgment in favour of the respondent/plaintiff is illegal and make the judgment and decree a void one.

10.The petitioners are advised to bring it to the notice of this Honourable Court of the principles laid down in the cases reported in (2011) 7 MLJ 652 (DB), wherein it has been held as,

“Ex-parte judgment should show application of minimum requirement of consideration of pleadings issues and evidence and relief sought for rendering such judgment. The Honourable High Court while rendering the judgment has followed the principles laid down in the cases reported in AIR 1999 SC 3381 and AIR 1969 SC 1167, wherein it has been held as

“Trial of a civil dispute in Court is intended to achieve, according to law and the procedure of the Court, a judicial determination between the contesting parties of the matter in

controversy. A judicial determination of a disputed claim where substantial questions of law or fact arise is satisfactorily reached, only if it be supported by the most cogent reasons that suggest themselves to the judge; a mere order deciding the matter in dispute not supported by reasons is no judgment at all". This is what was happened in the above suit.

The Honourable Supreme Court and High Court have consistently held that the judgment should contain reasons and a mere order not supported by reasons is no judgment at all. Hence, the decree which followed the judgment is not executable."

7. At this juncture, it would be appropriate to consider the decision relied on by the learned counsel for the respondent reported in **(2014) 2 MLJ 496 (SC), Rajinder Kumar and Others v. Shri Kuldeep Singh and Others**. It would be appropriate to incorporate paragraphs 21 and 22 of the said decision:

"21. It is also worthwhile to note that the Judgment was pronounced under the pre-amended Rule 10 under Order VI II of the Code of Civil Procedure, 1908 and there was more discretion with the Court regarding pronouncement of the Judgment in the absence of written statement. Still further, it is to be noted that

Rule 10 speaks about the requirement of written statement indicating thereby that there are cases where written statement was required to be filed. Written statement is the defense of the defendants. They chose not to file it. Despite the absence of such defense, the court still applied its mind and after referring to the pleadings, pronounced a Judgment allowing the suit for specific performance. Though the Judgment says that the suit is decreed as prayed for and though all the prayers have been incorporated in the decree, it is to be noted that the suit is one for specific performance of the agreement. The suit that has been decreed is the suit for specific performance of the agreement. Once the decree for specific performance attained finality, they cannot thereafter turn round and make weak and lame contentions regarding the executability of the decree.

22.If the suit for specific performance is not decreed as prayed for, then alone the question of any reference to the alternative relief would arise. Therefore, there is no question of any ambiguity . As held by this Court in Topanmal Chhotamal v. Kundomal Gangaram and Others [AIR 1960 Supreme Court 388]

and consistently followed thereafter, even if there is any ambiguity, it is for the executing court to construe the decree if necessary after referring to the Judgment. If sufficient guidance is not available even from the Judgment, the Court is even free to refer to the pleadings so as to construe the true import of the decree. No doubt, the court cannot go behind the decree or beyond the decree. But while executing a decree for specific performance, the Court, in case of any ambiguity, has necessarily to construe the decree so as to give effect to the intention of the parties. Thus, there is no question of any alternate relief regarding the damages etc. in the present case since the suit for the specific performance for the conveyance of the property has been decreed.”

In the above decision, the defence has not filed the written statement. Further, it was specifically mentioned therein that the suit was decreed as prayed for and time has been granted. So, the decree does not suffer any ambiguity. Hence, the above citation is squarely applicable to the facts of the present case.

8. Now this Court has to consider whether the judgment passed by the

Trial Court is in consonance with Section 2(9) of CPC?

8.1. At this juncture, it would be appropriate to consider the decision relied on by the learned counsel for the revision petitioner reported in ***AIR 1969 Supreme Court 1167(1), Smt. Swaran Lata Ghosh v. Harendra Kumar Banerjee and another***. It would be appropriate to incorporate paragraph 6 of the said decision:

“6. Trial of a civil dispute in Court is intended to achieve, according to law and the procedure of the Court, a judicial determination between the contesting parties of the matter in controversy. Opportunity to the parties interested in the dispute to present their respective cases on questions of law as well as fact, ascertainment of facts by means of evidence tendered by the parties, and adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial. In a judicial trial the Judge not only must reach a conclusion which he regards as just, but, unless otherwise permitted, by the practice of the Court or by law, he must record the ultimate mental process leading from the dispute to its solution. A judicial determination of a disputed

claim where substantial questions of law or fact arise is satisfactorily reached, only if it be supported by the most cogent reasons that suggest themselves to the Judge : a mere order deciding the matter in dispute not supported by reasons is no judgment at all. Recording of reasons in support of a decision of a disputed claim serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest : it is also intended to ensure adjudication of the matter according to law and the procedure established by law. A party to the dispute is ordinarily entitled to know the grounds on which the Court has decided against him, and more so, when the judgment is subject to appeal. The Appellate Court, will then have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and the resultant decision is just. It is unfortunate that the learned Trial Judge has recorded no reasons in support of his conclusion, and the High Court in appeal merely recorded that they thought that the plaintiff had sufficiently proved the case in the plaint.”

In the above decision, the defendant filed written statement denying the averments in the plaint and the Trial Court after holding a lengthy trial merely decreed the claim without delivering the judgment. The same was also confirmed by the High Court. However, the Hon'ble Apex Court had remitted the matter back to the Trial court for fresh trial after giving opportunity to both the parties to give additional evidence. In such circumstances, I am of the view that the above decision is not applicable to the facts of the present case.

8.2. In the decision reported in *AIR 1999 Supreme Court 3381(1), Balraj Taneja and another v. Sunil Madan and another*, the suit for specific performance was decreed exparte. Further, there was serious disputed question of fact involved between the parties as to whether the defendant obtained certificate from Income Tax Department and sent the same to plaintiff. The fact is to be proved by the plaintiff to show that he was ready and willing to perform his part of contract. But in the case on hand, the defendant has not filed any written statement and hence, there was no necessity to frame the issues and thus, the suit was decreed exparte. Therefore, the above citation is not applicable to the facts of the present case.

8.3. In the decision reported in *(2011) 7 MLJ 652*,

Meenakshisundaram Textiles v. Valliammal Textiles Ltd., it was held that an exparte judgment should show application of minimum requirement of consideration of pleadings, issues, evidence and relief sought for rendering such judgment.

There is no quarrel over the ratio decidendi laid down in the above decision. In the case on hand, the plaint pleadings were incorporated and an order has been passed.

9.Thus, considering the overall circumstances, it can be safely concluded the judgment passed by the Trial Court is in consonance with Section 2(9) of CPC.

10.Further, it is pertinent to note that the revision petitioners who are the defendants had filed the application to set aside the exparte decree along with an application for condonation of delay I.A.No.17/2004 in O.S.No.139/2001 and the same was dismissed. Against the dismissal of the said application, the revision petitioners/defendants preferred a revision in CRP.No.801/2004 and the same was also dismissed. The revision petitioners also filed an execution petition in REP.No.39/2003 in O.S.No.139/2001 for execution of sale deed. Thus, the revision petitioners/defendants were filing series of

application to prevent the respondent/plaintiff/decreed holder from enjoying the fruits of the decree. Above all, the respondent/plaintiff had already taken possession of the suit scheduled property. Hence, I do not find any reason to interfere with the order passed in R.E.A.No.126 of 2015 in R.E.P.No.39 of 2003 in O.S.NO.139 of 2001 on the file of the Subordinate Court, Sankari.

11. In fine, the Civil Revision Petition is dismissed as devoid of merits.

Consequently, connected miscellaneous petition is closed. No costs.

03.02.2017

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Index:Yes/No

R.MALA, J.

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