

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) No.4026 of 2012

and

M.P.No.1 of 2011

1.K.Saseendra K.Sankar

2.Anugraha Movies International,
Madathil House,
Nanminda Post,
Calicut – 673 613.

.. Petitioners

vs

1.K.Balu

2.M/s.Gemni Colour Laboratories,
Vembuli Amman Koil Street,
Virugambakkam,
Chennai – 600 002.

3.M/s.Gemini Colour Laboratories,
Ernakulam,
Kerala.

.. Respondents

Revision filed under Article 227 of Constitution of India
against the order passed in I.A.No.7444 of 2012 in O.S.No.2882 of
2012 dated 11.10.2012 on the file of the XIV Assistant Judge, City
Civil Court, Chennai.

For Petitioners

: Mr.C.Ramesh

For Respondents

: Mr.Zeakumar for R1

No Appearance for

R2 & R3

ORDER

This revision is directed against the order of the XIV Assistant Judge, City Civil Court, Chennai in I.A.No.7444 of 2012 in O.S.No.2882 of 2012, dated 11.10.2012. The petitioners herein are the defendants 1 and 2 in the suit.

2. The first respondent, who is the plaintiff, has filed the suit being O.S.No.2882 of 2012 for permanent injunction restraining the defendants, their servants, agents or anybody claiming through or under them from in any manner either releasing, distributing, exhibiting or exploiting the picture titled "VAIDOORYAM" (Malayalam Colour) directed by the first defendant and produced by the 2nd defendant, music by Vidya Sagar, Starring Kailash, Nakshatra, Jagathy, Cinematorgraph by Kishore K.Shanker, anywhere either by taking prints from the third and fourth respondent Laboratory or through Qube or delivering satellite rights etc., or delivering the Negatives and prints of the said picture to anybody for release until settling the amounts of the plaintiff. Along with the suit, the plaintiff has also filed I.A.No.7444 of 2012 to grant an ad-interim injunction. The trial Court allowed I.A.No.7444 of 2012, after setting the respondents therein ex parte.

3. Aggrieved by the ex parte order dated 11.10.2012 passed in I.A.No.7444 of 2012, the petitioners, who are defendants 1 and 2 in the suit, have filed this revision by invoking Article 227 of the Constitution of India.

4. I heard Mr.C.Ramesh, learned counsel for the petitioners and Mr.Zeakumar, learned counsel appearing for the first respondent.

5. The learned counsel for the petitioners submitted that the order of the trial Court is contrary to law and materially irregular. The learned trial Court erred in granting an order of injunction, without considering the case on merits. He submitted that the trial Court ought to have satisfied itself with the three cardinal principles for granting injunction before disposing of the petition.

6. The learned counsel for the first respondent submitted that only after perusing the documents, the trial Court allowed the petition and there is no need to interfere with the order of the trial Court.

7. It is pertinent to note that on 10.05.2012, when

I.A.No.7444 of 2012 was taken up for hearing, the trial Court ordered notice to the defendants returnable by 17.05.2012. Private notice was also permitted. From 17.05.2012 to 03.08.2012, I.A.No.7444 of 2012 was adjourned for sending notice to the defendants. On 25.09.2012, the plaintiff took out an application for substituted service and the same was allowed by the trial Court. On 27.09.2012, service by paper publication in one issue of Malayala Manorama English daily was ordered for the hearing on 11.10.2012. On 11.10.2012, paper publication was effected and defendants in I.A.No.7444 of 2012 were called absent, set *ex parte* and petition was allowed.

8. On a perusal of the docket order in I.A.No.7444 of 2012, I found that the trial Court has not stated anything for allowing the petition, even though the respondents were *ex parte*. The order of the trial Court reads as under:

"Paper publication effected. Respondents called absent set ex parte. Petition allowed. No costs."

9. In an application for ad-interim injunction, even at the stage of notice, if the defendants remained *ex parte*, the trial Court ought to have seen whether the plaintiff has satisfied the three factors, which are *prima facie case*, balance of convenience and irreparable

loss. Due care and caution should be taken by the trial Court for granting ad-interim injunction.

10. In the case on hand, admittedly, the trial Court has not recorded anything for allowing the petition. The relief prayed in I.A.No.7444 of 2012 is more or less the main prayer in the suit. When such being the relief, the trial Court, while allowing the petition ex parte, ought to have taken care and cautions. Admittedly, as stated supra, the trial Court has not done so. It is the duty of the trial Court to record reasons before passing an ex parte order of injunction.

11. It is well settled that whenever a Court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated, if an ex parte order is not passed.

12. The Hon'ble Supreme Court of India in a case of Shiv Kumar Chadha v. Municipal Corporation of Delhi reported in (1993) 3

SCC 161, the Hon'ble Supreme Court has categorically considered that when an order of injunction is to be granted. In para-30 and 35 of the said judgment, it is held as follows:

"30. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles *ex debito justitiae*. Before any such order is passed the court must be satisfied that a strong *prima facie* case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.

35. As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an *ex parte* order is not passed."

13. In yet another case, this Hon'ble Court in the case of

P.Ramaswamy v. Sri Dhandayuthapani Finance, Sankari reported in AIR 1986 Mad 360, this Court held that merely because an appeal is maintainable and the power of the Court under Section 115 is not ousted.

14.It is made clear that when the law provides that particular act has to be done only in a particular way, the Court below is bound to pass an order only in the said way and not in any other manner. In fact, I have already extracted the order passed by the Court below. Merely because the defendant did not appear and file a counter, it does not follow that the plaintiff is entitled to get an injunction order. Since the complainant must satisfy the Court that grounds have been made out for grant of an injunction, therefore, it is made clear that the Court below has not applied its mind while passing the impugned order, when the Court below without considering that whether the plaintiff has got a prima facie case or whether there is balance of convenience in favour of the plaintiff and also what is the irreparable loss that is to be sustained unless an order of injunction is granted. The above judgments were clearly held that the very jurisdiction of the Court to pass an order of injunction also rests on satisfaction of those grounds, but admittedly in the present case on hand, the Court below

has not given any reason for grant an injunction. Therefore, it is made clear that the Court is acted without jurisdiction.

15.The learned counsel for the respondents also made an argument by saying that against the order of injunction granted by the Court below in I.A.No.7444 of 2012 dated 11.10.2012 there is an appeal provision against the order and the revision will not be lie against the order, I do not find any substance in that argument, since, this Court is exercising the power of revision under Section 115 of C.P.C. or the supervisory jurisdiction under Article 227 of Constitution of India only to consider the Court below is acted in accordance with law, that if the Courts below have ignored the provisions of law or the law declared by the Hon'ble Supreme Court and has passed an order, which causes manifest injustice to the party, merely because an appeal lies against the order, that cannot be a ground to hold the revisional jurisdiction or supervisory jurisdiction is not to be exercised.

16.It is my absolute view that against the order dated 11.10.2012, no appeal also will lie since it is not an order in the eye of law, since there is no adjudication or a finding, why the Court is exercising discretionary power for granting injunction. It is my

absolute view that non-appearance of the defendants or non-filing of their objection, is not a ground for granting an injunction. Therefore, it is made clear that the Court below namely the learned IVth Assistant Judge, City Civil Court, Chennai have exercised jurisdiction arbitrarily and the order is perverse. Therefore, the judgment rendered by this Court in P.Ramaswamy v. Sri Dhandayuthapani Finance, Sankari, reported in AIR 1986 Mad. 360, is clearly applicable, since mere because of the appeal is maintainable, the power of the Court under Section 115 of C.P.C. or supervisory jurisdiction is not ousted. According to me, when manifest injustice is done, that will be a ground to invoke the revisional jurisdiction or supervisory jurisdiction of this Court.

17.It is my absolute view that when the power is conferred on the High Court under Section 115 of C.P.C. to call for the records of the Subordinate Court or under the supervisory jurisdiction under Article 227 of the Constitution of India in which no appeal also will lie in the existing appeal to another Sub-Court would not ousted the power revision to such matter by this Court. Therefore, this Court has followed the judgment rendered by this Court and the Hon'ble Supreme Court. The learned Single Judge of this Hon'ble Court has

considered in the case of Mahalingam and another v. Mahalingam and another reported in (2000) II MLJ 193 held as follows:

"9. In Shiv Kumar Chadha v. Municipal Corporation of Delhi, (1993) 3 S.C./C. 161, their Lordships considered when an order of injunction is to be granted. In para.30 of the judgment, their Lordships held thus:

"Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles *ex debito justitiae*. Before any such order is passed the court must be satisfied that a strong *prima facie* case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.

"35. As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an *ex parte* order is not passed."

"When the law provides that particular act has to be done only in a particular way, the court is bound to pass an order only in that way and not in any other manner. I have already extracted the order passed by the lower court. Merely because the defendant did not file a counter, it does not follow that the plaintiff is entitled to get an injunction. The plaintiff must satisfy the court that grounds have been made out for grant of an injunction. The lower court has not applied its mind while passing the impugned order, when the lower court has not considered whether the plaintiff has got a prima facie case or whether there is balance of convenience and what is the irreparable loss that is to be sustained unless order of injunction is granted, the order cannot stand in a court of law when the law says the grant of injunction can be only on satisfying certain conditions. The very jurisdiction of the court to pass order of injunction also rests on satisfaction of those grounds. In this case, the lower court has not given any reason for the grant of an injunction. It acted without jurisdiction."

18. Admittedly, in the case on hand, the trial Court has not given any reason for allowing the petition seeking an ad-interim injunction. The Court below must have consider and record its reason for granting injunction eventhough the respondent/defendant have not

appeared. The Court must also look into the documents filed by the plaintiff for supporting for granting of injunction, but in the case on hand it is totally lack on the part of the Court below. Therefore, the order of the trial Court, without assigning any reason, is not valid in the eye of law and the same is liable to be set aside.

19. In the result:

(a) The Civil Revision Petition is allowed by setting aside the order passed in I.A.No.7444 of 2012 in O.S.No.2882 of 2012, dated 11.10.2012 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai;

(b) Liberty is granted to the petitioners herein to file their counter and documents, if any in I.A.No.7444 of 2012 within a period of two weeks from the date of receipt of a copy of this order, for deciding the petition on merits;

(c) The trial Court is directed to dispose of I.A.No.7444 of 2012 within a period of one month from the date of filing the counter within the time stipulated by this Court by giving notice to both the parties and pass appropriate orders;

(d) Both the parties are hereby directed to co-

operate for early disposal of I.A.No.7444 of 2012. No costs. Consequently, connected miscellaneous petition is closed.

19.01.2017

Note: Issue order copy on 08.05.2018
vs

Index : Yes
Internet : Yes

To

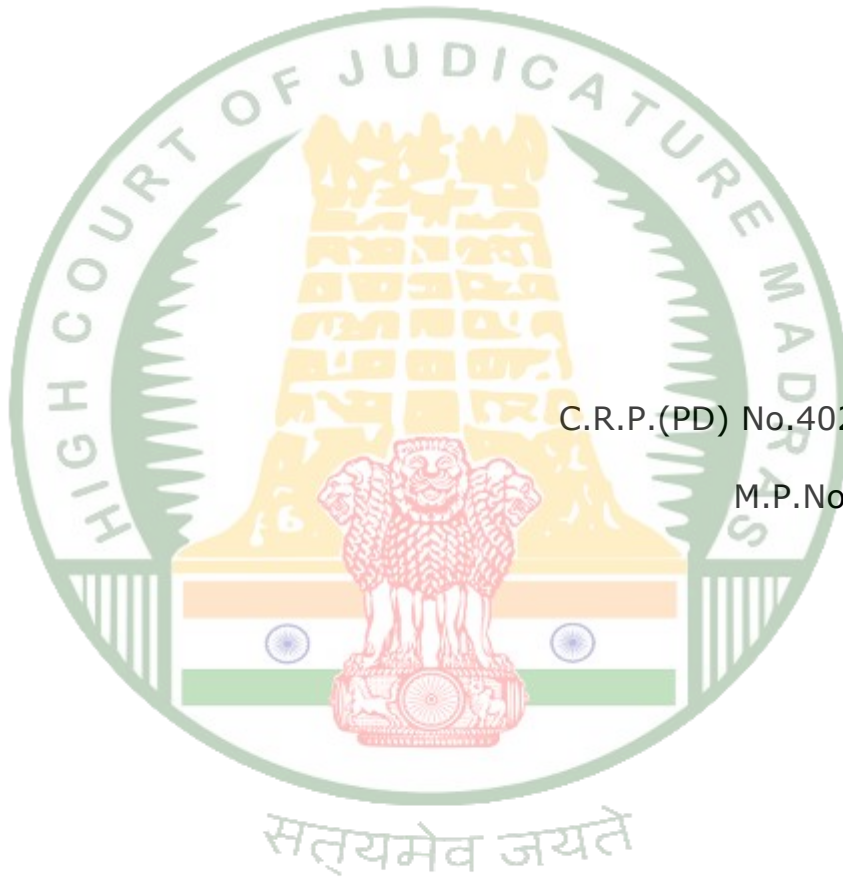
The XIV Assistant Judge,
City Civil Court,
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M.V.MURALIDARAN, J.

VS



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and
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