



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.10.2017

Pronounced on : 10.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A(MD)No.516 of 2013

and

M.P(MD)No.2 of 2013

and

C.M.P(MD)Nos.9595 & 9596 of 2017

P.Ramasubbu

... Appellant/Petitioner

Vs.

1. The Commissioner,
Kodaikanal Municipality,
Kodaikanal.

2. The District Collector,
Dindigul District,
Dindigul.

... Respondents/Respondents

Prayer:- Writ Appeal is filed under Clause 15 of Letters Patent against the order, dated 07.02.2013 passed in Writ Petition(MD) No.3940 of 2006 on the file of this Court.

Prayer in WP(MD). 3940/ 2006 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court a WRIT OF CERTIORARI Calling for the records comprised in the proceedings bearing No.Na.Ka. 5878/1995-A1 dated 5.4.2006 passed by the first respondent and quash the same and such further or other orders as this Hon ble court may deem fit.

For Appellant	: Mr.T.T.Ravichandran
For R - 1	: Mr.J.Parek Kumar for Mr.P.Srinivas
For R - 2	: Mr.M.Murugan, Government Advocate.

JUDGMENT

**(Judgment of the Court was delivered by
V.BHAVANI SUBBAROYAN,J.)**

This Writ Appeal has been filed by the appellant against the order, dated 07.02.2013 passed in Writ Petition(MD)No.3940 of 2006 by the learned Single of this Court.

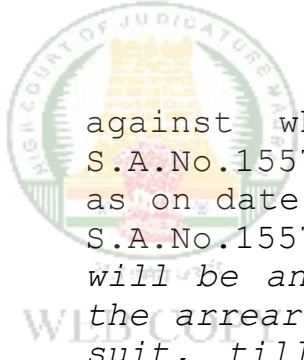


2.The case of the appellant/petitioner is that the appellant is the owner of the property measuring an extent of 7089 sq.ft at Kodaikanal and running a restaurant and a lodging house in the name and style of 'Hotel Astoria'. The abovesaid property was assessed to property-Tax bearing Assessment No.3320 and the appellant assessed the property Tax till September 1993 at the rate of Rs.9,302/- per half-yearly. However, for the next half-year, the property Tax was enhanced by serving show-cause notice to the appellant and was directed to pay an enhanced amount of Rs.27,906/-. The appellant through his association, filed a Writ Petition in W.P.No.12946 of 2004 before this Court challenging the enhancement of property-Tax and this Court passed a conditional order of interim stay, by directing the appellant to pay 50% of the disputed amount and further directed the first respondent to issue special notice for enhancing the property-Tax by following the provisions contained in the Tamil Nadu Municipalities Act, 1920.

3.It is further averred that when the first respondent issued a fresh notice, dated 16.06.1995, directing the appellant to pay the enhanced sum, the appellant filed a suit in O.S.No.205 of 1995, on the file of the District Munsif Court, Kodaikanal, seeking for a declaration that the enhanced Assessment, dated 16.06.1995, as illegal and arbitrary and for a consequential relief of permanent injunction restraining the defendant from collecting the enhanced Assessment or property-Tax.

4.The Commissioner, kodaikanal Municipality-first respondent herein, who is the defendant in the suit, filed a written statement stating that the last general revision of property-Tax in terms of the existing rule, took place in the year 1987-88 and as per the provisions of the Tamil Nadu District Municipalities Act, 1920, the property-Tax has been enhanced by 200% on the pre-revision Tax for commercial buildings. The property-Tax in the revision is not exorbitant, which runs for the commercial purpose, the same was increased. It is further stated that there is a provision for filing a revision petition on a special notice for enhancement of Tax. The appellant has not chosen to avail this remedy, but had filed a Writ Petition and obtained a conditional order of interim stay and stated that the show-notice was issued only as per Rules.

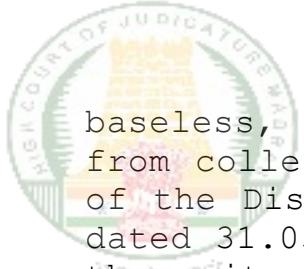
5.The learned District Munsif, Kodaikanal, by an order, dated 31.03.1997 decreed the suit in favour of the appellant. Against the Judgment and Decree passed in O.S.No.205 of 1995, the first respondent/the Commissioner, Kodaikanal Municipality, filed an appeal in A.S.No.43 of 1997, on the file of the Sub Court, Palani. The learned Sub Judge, Palani, reversed the finding given in the suit and allowed the appeal filed by the Commissioner, Kodaikanal Municipality, by its Judgment and Decree, dated 22.03.2002. As



against which, the appellant has filed a Second Appeal in S.A.No.1557 of 2002, on the file of this Court, which is pending, as on date. This Court on 26.09.2002, in C.M.P.No.13298 of 2002 in S.A.No.1557 of 2002 granted an order of interim stay that "there will be an interim order subject to the petitioner paying 50% of the arrears of enhanced property Tax, which was challenged in the suit, till the subsequent revision came to be filed. For the period subsequent to the latest revision, payment of such arrears should be 50% of the enhanced Tax. The petitioner should also continue to pay 50% of the current enhancement as on this date for the future respective half years. Arrears upto second half of the year 2001-2002 and the past arrears should be paid within six weeks from the date of receipt of a copy of this order and the future payment should be made on the respective due dates. In the event of failure to comply with the above said conditions, the stay granted shall stand automatically vacated. Notice". Subsequent to the above order, the first respondent issued a notice, dated 09.10.2002 claiming an arrears of Rs.3,79,070/- and the appellant seems to have paid half of the amount viz., Rs.1,51,160/-, which was a due upto first half and for second half for the year 2002 and thereafter, the appellant on his own calculation issued cheques in favour of the first respondent. However, the first respondent, without encashing the cheques, by proceeding, dated 05.04.2006 in Na.Ka.No.5878/1995-A.1, directed the appellant to pay the amount in three days, failing which, they will initiate action under the Tamil Nadu Municipalities Act, 1920. As against which, the appellant filed a Writ Petition in W.P.No.3940 of 2006. The learned Single Judge disposed of the Writ Petition, as regarding the payments made by the appellant that the first respondent-the Commissioner/Kodaikanal Municipality shall take into consideration and if the appellant seeks for any installment, the same may also be considered by the first respondent-the Commissioner/Kodaikanal Municipality and the remittance made by the appellant shall be without prejudice to his rights and contentions in the Second Appeal in S.A.No.1557 of 2002.

6.The present Writ Appeal is filed as against the order passed in W.P(MD)No.3940 of 2006 by the learned Single Judge by assailing various grounds.

7.It is seen from the records available that when the property Tax was enhanced, the appellant chose to file a Writ Petition in W.P(MD)No.12946 of 2004 before this Court through his Association. This Court passed a conditional order of stay directing the appellant herein to pay 50% of the disputed amount and further directed the first respondent herein to issue a special demand notice. While directed so, the first respondent herein issued a special demand notice. When such special demand notice was issued, the appellant herein challenged the demand notice, dated 16.06.1995 under Assessment No.3320 as illegal, arbitrary,



baseless, ultravires and void and for a consequential injunction from collecting the said amount in O.S.No.205 of 1995 on the file of the District Munsif Court, Kodaikanal. By Judgment and Decree, dated 31.03.1997, the learned District Munsif, Kodaikanal, decreed the suit and set aside the assessment order. However, on appeal filed by the first respondent herein in A.S.No.43 of 1997, the learned Sub Judge, Palani, set aside the Judgment and Decree made in O.S.No.205 of 1995. As against which, the appellant has preferred a second Appeal in S.A.No.1557 of 2002 and this Court by an interim order, dated 26.09.2002, in C.M.P.No.13298 of 2002 in S.A.No.1557 of 2002 has passed the following order:-

"There will be an interim order subject to the petitioner paying 50% of the arrears of enhanced property Tax, which was challenged in the suit, till the subsequent revision came to be filed. For the period subsequent to the latest revision, payment of such arrears should be 50% of the enhanced Tax. The petitioner should also continue to pay 50% of the current enhancement as on this date for the future respective half years. Arrears upto second half of the year 2001-2002 and the past arrears should be paid within six weeks from the date of receipt of a copy of this order and the future payment should be made on the respective due dates. In the event of failure to comply with the above said conditions, the stay granted shall stand automatically vacated. Notice."

8. Thereafter, the present impugned order in the Writ Petition, came to be passed by the first respondent, as early as on 05.04.2006 and is challenged by the appellant.

9. The main ground under which the order of the learned Single Judge, dated 07.02.2013, is assailed before this Bench is on the ground that when there was no representation on the side of the appellant, the learned Single Judge ought to have dismissed the petition for non-prosecution and ought not to have gone into the merits of the case. It is also further stated that when there was no representation on behalf of the appellant, since the counsel engaged by him was from Chennai and the present counsel of the appellant left his chamber in the month of October, 2010, the appellant could not prosecute the appeal and there was a communication gap between the client and the lawyer and this Court has consistently held in various number of cases that the mistake of the counsel should not be scheduled on the parties. However, the attitude of the parties should also be taken into account.

10. On perusal of the order passed by the learned Single Judge it appears that this case was initially posted on 04.02.2013 and <https://hcservicescourthgivinghcservices/> no representation on behalf of the appellant, the matter was directed to be posted on 07.02.2013 under the caption "for orders". However, for the reasons best known to them, neither



any counsel present nor represented by any counsel or made any arrangements to represent the case.

11.The learned Single Judge went into the merits of the case and upon being appraised of the learned counsel for the first respondent that the conditional order passed in C.M.P.No.13298 of 2002 in S.A.No.1557 of 2002 on 26.09.2002, was not complied with, since the learned Judge, who granted the conditional injunction, made it clear that in the event of failure to comply with the above said conditions, the stay granted shall stand automatically vacated and that there was a pre-condition for stay that the appellant shall pay 50% of the arrears of the enhanced amount, which was challenged in the suit in O.S.No.205 of 1995, on the file of the District Munsif Court, Kodaikanal. Apart from that, the appellant should also continue to pay 50% of the current enhancement as on this date for the future respective half years. Arrears upto second half of the year 2001-2002 and past arrears should be paid within six weeks from the date of receipt of a copy of this order.

12.The first respondent took a stand that the conditional interim order has not been complied with and therefore, they are entitled to demand the entire Tax.

13.The appellant's counsel contention is that when there was no one appeared before the Court and if the case is dismissed for default, there is a chance for him to set aside the same. The appellant cannot claim a right in the absence of counsel and no Court can go into the merits of the case, which is totally incorrect and cannot be assailed as a ground to set aside the order passed by the learned Single Judge. It is only a matter of practice by the Court that when the counsels are absent, the matter is dismissed for default so as to enable the parties to restore the same. However, the matters like the present case on hand, the attitude of the appellant has also to be gone into. When the appellant failed to honour the condition in the impugned order passed in the second appeal, the appellant cannot claim such leverage as mandatory that the case ought to have been dismissed for default and not on merits. The Courts are guided by the respondent counsels, who appeared on the side of the respective Department, can always in the absence of petitioner's counsel pass orders on merits based on the records available when the matters are pending for a long time. The appellant not only failed to comply with the conditions imposed while granting interim order in the second appeal, but also failed to comply with the condition imposed while securing interim stay against the impugned order in the Writ Petition. Hence, the conduct of the parties floating the orders passed by this Court, does not warrant any interference on the merits of the case. When the counsel was absent. The Court can proceed to pass orders with the available records.



14. The learned counsel for the appellant raised certain grounds as against the later portion of the order passed by the learned Single Judge.

15. We have perused the order passed by the learned Single Judge. When the appellant has not complied with neither the order passed in C.M.P.No.13298 of 2002 in S.A.No.1557 of 2002 nor while securing the interim stay in the Writ Petition, the learned Single Judge has rightly disposed of the Writ Petition holding that there is no error in the impugned order warranting interference by this Court as such the condition imposed for securing interim order in C.M.P.No.13298 of 2002 in S.A.No.1557 of 2002 was not complied with by the appellant and no cause shown what prevented from complying with the orders passed by the first respondent.

16. In the appeal, the learned counsel for the appellant filed an additional type-set of papers, wherein he has disputed the amount paid by the appellants and he would say that these were not considered by the first respondent, even though there was no opportunity before the learned Single to produce the same and on the issue, the Municipality has not adjusted the cheques paid by him to the account of the Hotel and they have mistakenly given credit to some other assessment numbers. All these facts raised need not be advanced in the present Writ Appeal, since the factual aspect has to be decided only in the suit proceedings and all these things can be canvassed by the appellant before the Second Appeal Court. The learned Single Judge has rightly held that the Court in the absence of any stay against the first respondent in claiming any demand, that too, the appellant has not complied with condition imposed for interim stay which automatically dismissed, if when the condition is also not complied with. Under the said circumstances, we are of the view that the ground made by the appellant cannot hold good, when the order of the learned Single Judge has to be sustained and the order of the learned Single Judge is to be confirmed and the Writ Appeal is liable to be dismissed.

17. From the findings and reasons stated supra, this Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

<https://hcservicecommissioner.com/>

Kodaikanal Municipality,
Kodaikanal.



2. The District Collector,
Dindigul District,
Dindigul.

+1cc to Mr.P.Srinivas, Advocate Sr.No.87177
+1cc to Mr.T.T.Ravichandran, Advocate Sr.No.86439
+1cc to Spl.Government Pleader Sr.No.86896

PS

VB/SV/MMS/SAR1/24/11/2017/7P/6C

**Judgment made in
W.A(MD)No.516 of 2013
10.11.2017**