THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL MISCELLANEOUS APPEAL No.793 OF 2016

J U D G M E N T
(*Per Sri Justice Sanjay Kumar*)

This civil miscellaneous appeal under Order 43 Rule 1 CPC arises out of the order dated 02.03.2016 passed by the learned IV Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.601 of 2014 in O.S.No.491 of 2008. The said I.A. was filed by the plaintiff company under Order 9 Rule 9 CPC to set aside the order of dismissal dated 31.08.2015 and to restore the suit. By the order under appeal, the trial Court dismissed the I.A. Aggrieved thereby, the plaintiff company is before this Court.

Heard Sri D.Prakash Reddy, learned senior counsel representing Sri Harender Pershad, learned counsel for the appellant /plaintiff company, and Sri Vedula Venkataramana, learned senior counsel representing M/s.Bharadwaj Associates, Advocates Firm, for respondents 1 to 11/defendants 1 to 11, and Sri K.P.Vijay Kumar Goud, learned counsel for respondent 12/defendant 12.

Parties shall hereinafter be referred to as arrayed in the suit.

O.S.No.491 of 2008 was filed by the plaintiff company seeking specific performance of the agreement of sale dated 07.08.2006 and for other associated reliefs. The suit claim was valued at Rs.18.00 Crore and court-fee of Rs.18,02,426/- was paid thereon. The suit was dismissed for default on 31.08.2015.

I.A.No.601 of 2015 was filed therein on 16.09.2015 by the plaintiff company under Order 9 Rule 9 CPC to set aside the dismissal order dated 31.08.2015 and to restore the suit. This I.A. was dismissed on 02.03.2016, leading to the filing of this appeal.

Perusal of the affidavit filed in support of the subject I.A. reflects that the deponent thereto, the Managing Director of the plaintiff company, was examined as P.W.1 and his cross-examination by defendants 1 to 11 was completed on 05.08.2015. The matter was adjourned to 14.08.2015 for his cross-examination by defendant 12. On the said day, a request was made for an adjournment on the ground that P.W.1 had fallen sick because of the road journey undertaken by him from New Delhi to Mathura on 10/11.08.2015. Though the adjournment sought was for a period of ten days, the trial Court granted only six days time and posted the matter on 20.08.2015. Again on the said date, a request was made for further adjournment. The matter was accordingly posted on 26.08.2015. There was no representation on behalf of the plaintiff company or its witness on the said day. The matter was then adjourned to 28.08.2015, but on that day the Presiding Officer was on leave and the matter was adjourned to 31.08.2015. As the plaintiff was called absent even on that day, the trial Court dismissed the suit for default with costs.

However, there appears to be a contradiction in the claim of the plaintiff company as to the events that transpired on the earlier dates when the suit was posted. The trial Court referred to the docket orders which stated to the effect that on 14.08.2015, a request was made for an adjournment on the ground that P.W.1 was un-well and the case was adjourned to 20.08.2015. Contrary to what is claimed by the plaintiff company, on 20.08.2015, the docket records that P.W.1 was called absent and there was no representation till the evening. The matter was then adjourned to 26.08.2016 and again there was no representation on behalf of the plaintiff company or its witness on the said day and thereafter, even on 31.08.2015. The docket proceedings were also extracted by defendants 1 to 11 in their counter filed in the I.A.

This Court is bound to accept the entries in the docket proceedings and Sri D.Prakash Reddy, learned senior counsel, does not dispute this. He would however contend that the trial Court erred in losing sight of the fact that non-representation on behalf of the plaintiff company and the absence of P.W.1 was over a very short period of time, falling within half a month, and that the same should not have been held sufficient to non-suit the plaintiff. He would further point out that the plaintiff company had paid substantial court-fee and was claiming valuable property rights by way of the subject litigation, which warranted examination on merits. Learned senior counsel would point out that the trial Court was mainly influenced by the fact that there was a direction by this Court on 05.11.2009 to dispose of the suit within six months. He would contend that the trial Court was misguided by the time stipulation fixed by this Court long ago and ought not to have applied the same for non-suiting the plaintiff company, all the more so when the subject I.A. was filed in September, 2015, almost immediately after dismissal of the suit itself, but was kept pending till March, 2016.

Per contra, Sri Vedula Venkataramana, learned senior counsel, would contend that even if the alleged ill-health of P.W.1 was a fact, the plaintiff company could have examined another witness by giving him up and that there was no valid reason for the plaintiff company to have failed to appear before the trial Court on several dates. He would further state that mere payment of substantial court-fee is not sufficient in itself to condone the lapses on the part of the plaintiff company in following up the litigation. Learned senior counsel would assert that the lack of diligence on the part of the plaintiff company in prosecuting the suit was manifest and that the discretionary order passed by the trial Court dismissing its petition under Order 9 Rule 9 CPC warranted no interference. Sri K.P.Vijay Kumar, learned counsel, adopted these arguments.

In reply, Sri D.Prakash Reddy, learned senior counsel, would state that as P.W.1 was the Managing Director of the plaintiff company, he could not be given up, being a crucial witness, and as he was un-well owing to a heart ailment and the road journey undertaken by him, his absence on the stipulated dates was for valid and bonafide reasons. Learned senior counsel would further submit that the plaintiff company should not be punished for lapses over a short period of time and reiterate that the time stipulation fixed by this Court long ago ought not to have weighed with the trial Court at this late stage to non-suit it.

It is no doubt true that when the plaintiff company came up in appeal aggrieved by denial of an interim injunction pending the suit, this Court directed disposal of the suit within six months. However, this order was passed as long back as in the year 2009. There is no explanation forthcoming from either side as to why the suit was not proceeded with despite this time stipulation being fixed six long years ago. However, this aspect is, by itself, not sufficient to non-suit the plaintiff company. The *lis* in the present case, as pointed out by Sri D.Prakash Reddy, learned senior counsel, involves the plaintiff company's claim in respect of valuable property rights of the value of Rs.18.00 Crore. The court-fee paid by the plaintiff company is also running into over Rs.18 Lakh. When it parted with such a large amount of money to initiate this litigation, this Court cannot jump to the conclusion that the plaintiff company is not serious about prosecuting it. All the more so, when the lapses on its part which led to dismissal of the suit for default were over a short period of less than half a month. The trial Court therefore ought to have been more liberal in its approach and ought not to have non-suited the plaintiff company on this ground. The plaintiff company could, as well, have been placed on terms and bound to a strict time frame for proceeding with the suit so as to obviate further delay.

We therefore set aside the order under appeal subject to the following conditions:

The plaintiff company shall deposit costs of Rs.20,000/- to the credit of the suit, O.S.No.491 of 2008, on the file of the learned IV Additional District Judge, Ranga Reddy District at L.B.Nagar. Upon such deposit, defendants 1 to 11, on the one hand, and defendant 12, on the other, are entitled to withdraw the same equally. The parties shall proceed with the suit on a day to day basis without seeking undue adjournments and endeavour to facilitate disposal of the suit expeditiously.

The Civil Miscellaneous Appeal is accordingly allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall also stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

U.DURGA PRASAD RAO,J

3rd JANUARY, 2017
PGS