

IN HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

O.S.A.No.450 of 2018
and C.M.P.No.20608 of 2018

Punjab & Sind Bank,
Rep. by its Chief Manager,
Zonal Office, 1st Floor,
Spencer Towers, No.770-A,
Anna Salai, Chennai 600 002. Appellant

vs.

M/s.Dewa Properties Limited,
Situated at No.770-A, 2nd Floor,
Spencer Towers-I, Anna Salai,
Chennai 600 002. Respondent

PRAYER : Original Side Appeal is filed under Order XXXVI Rule II of O.S.Rules & Clause 15 of Letters Patent, to set aside the fair and decretal order passed in A.No.6787 of 2018 in C.S.No.668 of 2004 dated 12.10.2018.

Prayer in Application No.6787 of 2018:

a) to specifically enforce the performance of the contract as per the offer letter dated 12.11.1980 & 19.09.1983 and the Acceptance letters dated 24.11.1980 & 19.4.1984 and execute and register the 99 years sale cum lease deed in favour of the Plaintiff in so far as the schedule property is concerned

b) to issue permanent injunction restraining the Defendants or their men agents servants or subordinates or any other person from in any way interfering or disturbing alienating by way of mortgage sale or lease or demand rent or do any other act in deviation to the terms of the offer letters dated 12.11.1980 and 19.09.1983 and acceptance letters dated 24.11.1980 and 19.04.1984 in the property morefully described in the schedule which is under the possession and custody of the Plaintiff and for the cost of the suit.

For Appellant : Mr.T.V.Ramanujam,
Senior Counsel for
M/s.Sampathkumar and Asso.

For Respondent : Mr.Sivanandaraj for
M/s.Roshan balasubramanian
and V.Sankaranarayanan

J U D G M E N T

C.SARAVANAN., J.

The above O.S.A has been filed, against the fair and decretal order dated 12.10.2018 in Application No.6787 of 2018 in C.S.No.668 of 2004. The above suit was filed by the appellant herein for a specific performance to direct the respondent herein to execute and register a 99 years sale cum lease in favour of the appellant herein based on the alleged contract as per the offer letters dated 12.11.1980 and 19.09.1983 and acceptance letters dated 24.11.1980 and 19.04.1984.

2. The trigger for filing the above suit appears to be a previously instituted rent control proceeding by the respondent and against the appellant vide RCOP.No.1109 of 2001 filed before the Small Causes Court for fixation of fair rent under Section 4 of the Tamilnadu Rent Control Act (1960). In the said proceeding, the appellant has not disputed with character of the possession as lease. However, in the above suit filed in the year 2004 the appellant has sought for a specific performance to direct the respondent to execute a 99 years sale cum lease in its favour.

3. In the said suit, after the cross examination of PW-1 on 27.07.2012 and after cross examination of DW-1 on 27.08.2012, the appellant filed Application No.6787 of 2018 on 21.08.2018 under Order XIV Rule 8 of O.S Rules R/W. Section 151 of C.P.C to mark 13 other documents.

4. It was stated that these documents are nothing but communication exchanged between appellant and respondent between 1978 and 1981 and would establish the case the appellant herein. Several other applications also came to be filed by the appellant to stay the said RCOP. Those applications were closed as not pressed for.

5. Application No.6787 of 2018 was contested by the respondent herein stating that the evidence was closed as early as on 27.08.2012 and that when the case was to be argued, the attempt of the appellant to introduce 13 documents was not bonafide. It was stated that there are no sufficient reasons to allow the said application.

6. The learned single Judge, by an order dated 12.10.2018, rejected the prayer for introducing these documents with the following observations:-

Therefore, it is clear that though the provisions of the Order XVIII Rule 17A was removed, the parties were permitted to produce evidence but however on the condition of their satisfying the court that after exercise of due diligence that evidence was not within his knowledge or could not be produced at the time of the party leading evidence on such terms as may appear to be just. In fact, the provisions of Order VII Rule 14 (3) also spells out a similar provision even if a document which ought to be produced when the Plaint is presented or to be entered in the list to be added or annexed to the Plaint but is not produced or entered accordingly the same shall not be received in evidence post trial except by the leave of the court at the hearing of the suit. Order XVIII deals with the hearing of the suit and examination of witnesses and it is after this stage that the parties move to the stage of arguments. The like procedure is also contemplated under the Original Side Rules narrated supra. Given below is the chronology of the dates and events with reference to the suit on hand.

7. The learned Single Judge has observed that the appellant has not disputed the existence lease and therefore on a conjoint reading of the plaint and the counter filed by the respondent herein the case of the appellant was 99 years lease in terms of Letter of Offer dated 21.11.1980 and 19.09.1993 and the Letter of Acceptance dated 24.11.1930 and 19.04.1934.

8. The learned Senior counsel for the appellant submitted that the appellant is seeking to mark additional documents only

to establish their rights through the documents which they could not locate at the time of filing of the suit.

9. It was submitted that there was no estoppel based on the stand taken in the RCOP and therefore the law did not prohibit the appellant from taking a correct stand in a subsequent proceeding that the understanding was for a 99 year sale cum lease.

10. The learned Senior counsel for the appellant refer to the decisions in Chhaganlal Keshavlal Metha vs Patel Narandas Haribhai(1982) 1 SCC 223, wherein it was held as under:

"21.The difference between admission and estoppel is a marked one. Admissions being declarations against an interest are good evidence but they are not conclusive and a party is always at liberty to withdraw admissions by proving that they are either mistaken or untrue. But estoppel creates an absolute bar.".

23. To bring the case within the scope of estoppel as defined in section 1 I 5 of the Evidence Act: (1) there must be a representation by a person or his authorised agent to another in any form a declaration, act or omission; (2) the representation must have been of the existence of a fact and not of promises de futuro or intention which might or might not be enforceable in contract; (3) the representation must have been meant to be relied upon; (4) there must have been belief on the part of the other party in its truth; (5) there must have been action on the faith of that declaration, act or omission, that is to say, the declaration, act or omission must have actually caused another to act on the faith of it, and to alter his former position to his prejudice or detriment; (6) the misrepresentation or conduct or omission must have been the proximate cause of leading the other party to act to his prejudice; (7) the person claiming the benefit of an estoppel must show that he was not aware of the true state of things. If he was aware of the real state of affairs or had means of knowledge, there can be no

estoppel; (8) only the person to whom representation was made or for whom it was designed can avail himself of it. A person is entitled to plead estoppel in his own individual character and not as a representative of his assignee."

11. Per Contra, the learned counsel for the respondent submits that the present appeal it is not maintainable, in the light of the decision of the Honourable Supreme Court in Shah Babulal Khimji vs JayabenD.Kania and Another (1981) 4 SCC 8. Learned counsel referred to paragraph Nos.114 and 115, which are reproduced below:-

"114. In the course of the trial, the Trial Judge may pass a number of orders whereby some of the various steps to be taken by the parties in prosecution of the suit may be of a routine nature while other orders may cause some inconvenience to one party or the other, e.g., an order refusing an adjournment, an order refusing to summon an additional witness or documents, an order refusing to condone delay in filing documents, after the first date of hearing an order of costs to one of the parties for its default or an order exercising discretion in respect of a procedural matter against one party or the other. Such orders are purely interlocutory and cannot constitute judgments because it will always be open to the aggrieved party to make a grievance of the order passed against the party concerned in the appeal against the final judgment passed by the Trial Judge.

115. Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the Trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment."

12. The learned counsel also referred to the decisions of this Court in S.Ramesh Babu vs P.Changaiah (2013)-3-L.W.523, rendered in the context of Clause 15 of the Letters Patent in suit filed under Order 37 Rule 1 of CPC. The Division Bench of this Court dismissed the suit as not maintainable.

13. The above view was affirmed in Midnapore Peoples' Coop.Bank Ltd vs Chunilal Nanda and Others (2006) 5 SCC 399. In paragraphs 15 and 16 the Court held as under:-

" 15.Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

i.Orders which finally decide a question or issue in controversy in the main case.

ii.Orders which finally decide an issue which materially and directly affects the final decision in the main case.

iii.Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.

iv.Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgement.

v. Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

16. The term "judgment" occurring in clause 15 of the Letters patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, "judgments" for the purpose of filing appeals under the Letters Patent. On the other hand, orders failing under categories (iv) and (v) are not "judgments" for the purpose of filing appeals provided under the Letters Patent.

14. The learned counsel through referred to the decision of the Division Bench of Honourable Delhi High Court in Anil Kapoor vs S.R.SharmaThr.Lrs (2009) 159 DLT 734 (DB).

15. The learned counsel thereafter, referred to yet another decisions of the Honourable Supreme Court in Bagai Construction vs Gupta Building Material Store (2013) 14 SCC 1. The Honourable Supreme Court thereafter, referring to other decisions observed that if documents have remained in the exclusive possession of the plaintiff but for the reasons known to the plaintiff, it was not placed, the Trial Court was justified in refusing into allow marking documents at this belated stage after conclusion of evidence and final arguments and after the case was reserved for pronouncement of the judgment. The said documents referred to Order VII Rule 14 of C.P.C.

16. The learned counsel also referred to the decision of the Honourable Supreme Court in K.K.Velusamy vs N.Palanisamy (2011) 11 SCC 275, wherein in Para-19 it was observed as under.

"19. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs."

17. Every interlocutory order cannot be regarded as a judgment but only those orders would be judgment which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Therefore, only if orders passed by the learned Judge refused to summoning of a document cannot be treated as judgments because the grievances on this score can be corrected by the appellate court in appeal against the final judgment.

18. Further submitted that, in the Courts proceedings, the Trial Court may pass several interlocutory orders which are routine nature, which may cause inconvenience to one party or the other. Order refusing an adjournment, an order refusing someone and additional witness or documents, an order refusing to condone delay in filling documents after the first date of hearing an order of costs one of the parties for its default and an order exercising discretion in respect of a procedural matter against one party or the other. Such orders are purely interlocutory nature and cannot constitute judgments because it is always open to the aggrieved party to make a grievances of the order passed against the party concerned in the appeal against the final judgment passed by the Trail Court.

19. We have considered the rival submissions of both the parties. As per the observation of the Honourable Supreme Court in Shah Babulal Khimji vs Jayaben D.Kania and Another (1981) 4 SCC 8 an interlocutory order refusing to summon additional documents or an order refusing to condone the delay in filing documents after the first date of hearing do not constitute a judgment. As per the said decision, an aggrieved person is expected to redress the grievance against such interlocutory orders only in an appeal against the final Judgement and decree.

20. At the same time, in para 106, it observed that whenever a trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgment within the meaning of the Letters Patent.

21. In para 115, the Hon'ble Supreme Court observed that though every interlocutory order cannot be regarded as a judgment and only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned are judgment. In para 117, the court further observed that "Suppose, the trial Judge allows the plaintiff to amend the plaint by adding a particular relief or taking an additional ground which may be inconsistent with the pleas taken by him but

is not barred by limitation and does not work serious injustice to the defendant who would have ample opportunity to disprove the amended plea taken by plaintiff at the trial. In such cases, the order of the trial Judge would only be a simple interlocutory order without containing any quality of finality and would therefore not be a judgment within the meaning of clause 15 of the letters patent."

22. There the plaintiff appellant had filed a suit on the Original Side of the Bombay High Court for specific performance of a contract and prayed for an interim relief for appointing a receiver for the suit-property and to injunct the defendant from disposing of the suit-property during the pendency of the suit.

23. The single judge there after hearing the notice of motion, dismissed the application for appointment of a receiver. Thereafter, an appeal before the Division Bench of the Bombay High Court.

24. The Division Bench dismissed the appeal against the interlocutory order passed by the learned Single Judge as it was not a judgment as contemplated under clause 15 of the Letters Patent of the High Court. Further appeal before the Hon'ble Supreme Court was dismissed with the above observations. Thus, if any right of a party is decided one way or the other at the interlocutory stage, it would be a judgment and can be appealed against.

25. Inasmuch as arguments have been advanced on merits, we are not inclined to go into the legal issue raised by the learned counsel for the respondent qua the maintainability of the intra Court Appeal against the order passed in the interim application. Thus, we deem it appropriate to leave the said issue open, to be answered at an appropriate time.

26. The issue therefore would be whether the appellant was entitled to seek the leave of the court to mark additional document at an advanced stage of the case after the evidence was closed and the case was waiting to be heard on merits?

27. We find that the application to introduce additional evidence was filed by the appellant belatedly in the year 2018 and therefore, the appellant was not diligent. The suit

was filed in the year 2004. The trial was completed in the year 2012 and evidence was closed. The appellant waited for another 6 years to lapse. Thereafter, the appellant filed the above application to mark additional documents.

28. The learned Single Judge in our view has rightly refused to exercise the discretion in favour of the appellant. As a plaintiff, the appellant ought to have laid the suit based on the documents that were in its possession or at its head office. In case, it did not have such document, the appellant should have reserved the right under Order VII Rule 14 (2) of the CPC. On the other hand, the appellant has stated "nil" under the list of document in the plaint under the aforesaid provision.

29. Further, Order VII Rule 14 of CPC indicates that the plaintiff can introduce documents which were not in possession at the time of filing this suit only with leave of the Court, In this case, this is not the case. The appellant cannot mark documents which were in its possession but were not filed along with the plaint. Marking of additional documents which were neither specified in the plaint nor in contemplation at the time of filing of the suit but in possession of the plaintiff is not permissible except under Order VII Rule 14(4) during cross examination of the defendant.

30. Further, documents appear to have been introduced in an apparent bid to make out a new case after the trial was complete. Therefore, even on that ground we do not wish to interfere with the order of the Learned Single Judge. This we say after taking note of the stand taken by the appellant in the counter affidavit filed in the fair rent proceeding and the averment in the plaint, admitting the status as a tenant. Though, the relief sought for in the suit in one for sale cum lease, it is only a lease cum sale as it is not happily worded and as could be seen from the averments. The reason for filing the application after a decade and a half does not sound convincing. Thus, we are of the view it is only for the attempt to drag on the Suit, which is nearing finality.

31. Therefore, for the reasons stated above we are not inclined to interfere with the order of the learned single judge. Hence, this appeal is dismissed. We request the learned single Judge dealing with the case to dispose the suit within a period of six months from the date of receipt of a copy of this order. It is also made clear that all the observation and

discussions made are only confined for the disposal of this appeal alone and hence shall have no bearing on the disposal of the main Suit. No cost. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

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Sub Assistant Registrar

To

The Chief Manager,
Punjab & Sind Bank,
Zonal Office, 1st Floor,
Spencer Towers, No.770-A,
Anna Salai, Chennai 600 002.

copy to: 1) The Sub Assistant Registrar,
Original Side,
High Court, Chennai - 104. (for information)

2) The Section Officer,
VR Section,
High Court, Madras. (for information)

+2ccs to M/s.Sampathkumar, Advocate, S.R.No.11765

+1cc to M/s.Roshan Balasubramanian, Advocate, S.R.No.12042

O.S.A.No.450 of 2018
and
C.M.P.No.20608 of 2018

RGN (CO)
SSM(01/04/2019).

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