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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved on : 18.10.2019
Order Pronounced on : 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.R.P. (NPD) (MD) .Nos.1303 of 2012 and 871 of 2013
and
M.P. (MD) .No.1 of 2012 in C.R.P. (NPD) (MD)1303 of 2012

In C.R.P. (NPD) (MD) .No.1303 of 2012:

R.Stella .. Petitioner / Defendant /
Petitioner

Vs.

V.Antony Francis .. Respondent / Plaintiff /
Respondent

PRAYER:- Petition filed under Section 115 of the Civil Procedure Code, against the fair and final order, dated 29.11.2011 in I.A.No.326 of 2008 in O.S.No.179 of 2004 on the file of the learned Principal District Judge, Trichy.

In C.R.P. (NPD) (MD) .No.871 of 2013:

R.Stella .. Petitioner / Petitioner/
Petitioner / Defendant

Vs.

V.Antony Francis .. Respondent /Respondent /
Respondent / Plaintiff

PRAYER:- Petition filed under Section 115 of the Civil Procedure Code, against the fair and final order, dated 06.09.2012 in I.A.No.4 of 2010 in I.A.No.326 of 2008 in O.S.No.179 of 2004 on the file of the learned Principal District Judge, Trichy.

In both cases:

For Petitioner : Mrs.N.Krishnaveni
Senior Counsel
for Mr.P.Thiyagarajan

For Respondent : Mrs.J.Maria Roseline



COMMON ORDER

C.R.P.(MD).No.1303 of 2012 has been filed against the dismissal of the application filed under Section 5 of the Limitation Act, 1963, to condone the delay of 1305 days in filing the petition to set aside the exparte decree.

2. C.R.P.(MD).No.871 of 2013 has been filed against the order passed by the Court below dismissing the application, filed under Section 28 of the Specific Relief Act, for non-prosecution.

3. The order to be passed in C.R.P.(MD).No.1303 of 2012, will have a bearing in C.R.P.(MD).No.871 of 2013 and therefore, C.R.P.(MD).No.1303 of 2012 is taken up first for consideration.

4. The petitioner is the defendant in the suit filed by the respondent seeking for the relief of specific performance.

5. The suit filed by the respondent/plaintiff was decreed exparte by Judgment and Decree, dated 02.02.2005. An application was filed under Section 5 of the Limitation Act, 1963, to condone the delay of 1350 days in setting aside the exparte decree. The reasons assigned for the said delay is that the son of the petitioner was following up the case and the petitioner was suffering from diabetes and loss of eye-sight and the son of the petitioner did not properly follow up the case later, as a result of which the suit was decreed exparte. It came to be known only on 21.10.2008 and therefore, the petition has been filed with a delay. The Court below dismissed the condone delay application on the ground that no sufficient reasons were assigned for the inordinate delay and that subsequent to the exparte decree, the sale deed has been executed in favour of the respondent/defendant and the possession of the property has also been taken. Therefore, the Court below proceeded to dismiss the application.

6. Mrs.N.Krishnaveni, learned Senior Counsel appearing on behalf of the petitioner submitted that the Court below did not take into consideration certain vital aspects before passing the exparte decree. The learned Senior Counsel brought to the notice of this Court the averments made in the plaint. In one portion of the plaint, it was averred that after the agreement of sale was entered into on 19.03.2002, the advance of Rs.2,00,000/- was paid on the same day and a sum of Rs.4,50,000/- has been given to one Ashok Kumar Chordia, who was the earlier agreement holder to the property and the plaintiff was ready and willing to pay the balance sale consideration and the defendant was evading to execute the sale deed. In the other portion of the plaint, it is seen that the plaintiff specifically pleads that a sum of Rs.7,00,000/- is the balance sale consideration that has to be given out of the total sale consideration of Rs.9,00,000/-. This is even more clear in the



relevant portion wherein the alternate relief that has been sought for by the plaintiff is only for the refund of a sum of Rs.2,00,000/- paid as advance with interest.

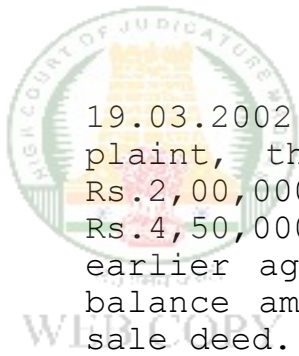
7. The learned Senior Counsel thereafter brought to the notice of this Court the Judgment and Decree passed by the learned Principal District Judge, Trichy. The learned Senior Counsel submitted that the Judgment does not satisfy the requirements of Order XX Rules 4 and 5 of C.P.C., and there are absolutely no reasons given in the Judgment and it suffers from non-application of mind and the Court below has not even stated in the Judgment as to what is the balance amount that has to be paid by the plaintiff.

8. The learned Senior Counsel submitted that substantial right over the property is involved and therefore, the Court below ought to have taken into consideration the serious infirmities that have been pointed out before the Court, while considering the condone delay petition. The learned Senior Counsel, in order to substantiate her submissions, relied upon the Judgment passed by this Court in K.Balakrishnan v. S.Dhanasekar, reported in 2018(1) LW 599.

9. Per contra, Mrs.J.Maria Roseline, learned counsel appearing on behalf of the respondent/plaintiff submitted that the Judgment and Decree was passed in this case on 02.02.2005 and E.P.No.28 of 2006 was filed for execution of the sale deed after the deposit of the balance amount. The sale deed was executed in favour of the respondent by the Court on 27.09.2007. In this execution petition, the petitioner had appeared through her lawyer and she was aware about the decree even at that point of time. Subsequently, the respondent filed E.P.No.69 of 2007 for delivery of possession and the E.P was allowed by an order, dated 04.01.2008 and the delivery was effected on 12.08.2008. It is only thereafter, the petitioner had filed the application under Section 5 of the Limitation Act, 1963, to condone the delay of 1350 days in filing the petition to set aside the exparte decree. The learned counsel submitted that the petitioner has not explained the inordinate delay and has not given any sufficient cause to justify the condonation of delay and therefore, the Court below was right in dismissing the application and there are absolutely no grounds to interfere with the order passed by the Court below. When a specific question was put by this Court to the learned counsel for the respondent as to what was the balance amount that was deposited, the learned counsel submitted that a sum of Rs.2,50,000/- was the balance amount deposited after the period fixed in the Judgment, dated 02.02.2005, by getting necessary orders in the execution petition.

10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. The respondent has filed a suit for specific performance. <https://hccases.courtsol.in/hccases/> for consideration as per the agreement of sale, dated



19.03.2002 is a sum of Rs.9,00,000/-. At paragraph No.4 of the plaint, the plaintiff has pleaded to the effect that a sum of Rs.2,00,000/- was paid as advance and thereafter, a sum of Rs.4,50,000/- was given to one Ashok Kumar Chordia, who was the earlier agreement holder and the plaintiff was willing to pay the balance amount and the defendant was evading the execution of the sale deed.

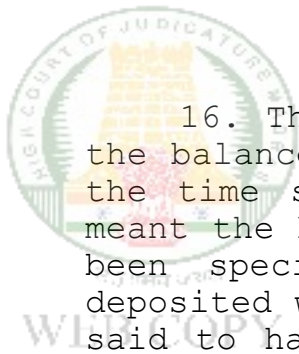
12. A reading of the second portion of paragraph No.4 of the plaint shows that the plaintiff himself says that the balance sale consideration payable is a sum of Rs.7,00,000/-. The plaintiff again repeats the same plea at paragraph No.8, where he makes reference to the legal notice and admits that the balance amount payable is a sum of Rs.7,00,000/-. In the cause of action paragraph also, he reiterates the same plea. This gets confirmed in the alternate relief sought for, wherein, the plaintiff seeks for the repayment of a sum of Rs.2,00,000/- paid as advance amount with interest. If really, the plaintiff had paid a sum of Rs.4,50,000/- to Ashok Kumar Chordia, he would have accounted for the same and claimed for the return of the said amount also in the alternate relief.

13. It is clear from the above that there is no clarity with regard to the balance amount that had to be paid by the plaintiff in this case. However, the entire reading of the pleadings shows that the balance amount is a sum of Rs.7,00,000/-. However, admittedly, the plaintiff has paid only a balance amount of Rs.2,50,000/- and got the sale deed executed in his favour through the Court.

14. This Court will next go into the Judgment that has been passed by the Principal District Court, Trichy. The Judgment, dated 02.02.2005, merely states as follows:

"Proof affidavit filed. Ex.A1 to Ex.A15 marked. Claim proved. Suit is decreed as prayed for with cost. The plaintiff is directed to deposit the balance amount in one month time. Time for execution of sale deed one month from the date of deposit."

15. This Judgment suffers from two patent illegalities. The first illegality is that the Judgment is not in conformity with Order XX Rules 4 & 5 of the Civil Procedure Code, and it is apparently, on the face of it illegal. The second illegality is that the Judgment does not even say what is the balance amount that has to be deposited by the plaintiff. There is no indication to show that the Court had taken into consideration the so called payment of a sum of Rs.4,50,000/- claimed to be paid by the plaintiff to Ashok Kumar Chordia. There is absolutely no proof for the said payment and the Court has also not given any findings regarding the same. The minimum requirement for a suit for specific performance, namely, the readiness and willingness that requires to be proved, has not even been dealt with in the judgment.



16. The Court had fixed a time of one month for the deposit of the balance amount and admittedly, this deposit was not made within the time stipulated. Going by the judgment, the trial Court only meant the balance amount to be a sum of Rs.7,00,000/-, since it has been specifically pleaded by the plaintiff. However, what was deposited was only a sum of Rs.2,50,000/- and the execution Court is said to have condoned the delay in depositing this amount and has proceeded to execute the sale deed in favour of the plaintiff. Subsequently, the possession has also been handed over to the plaintiff.

17. The above said facts, which pertains to mandatory legal requirements, ought to have been considered by the Court below, while deciding the application filed for condoning the delay in filing the petition to set aside the exparte decree.

18. It will be relevant to take note of certain judgments on this aspect.

(I). This Court in Meenakshisundaram Textiles v. Vallilammal Textiles Ltd., Tiruppur, reported in (2011) 7 MLJ 652, has been held as follows:

" 5. We have heard the respective learned counsel on either side on the above question. Section 2(9) of the Code of Civil Procedure defines a "judgment" as meaning, the statement given by the judge on the grounds of a decree or order. In this context, Order XX Rules 4 (1) & (2) are also referable, which read as under:-

"4. Judgment of Small Cause Courts.--(1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts.--Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision."

Order XX Rule 4(1) relates to the judgment of a Court of Small Causes. Inasmuch as the said judgment does not require more than the points for determination and that the decision thereon, a judgment of a Court of Small Causes shall not fall under Section 2(9) of the Code of Civil Procedure. Insofar as the judgment of other Court is concerned, in terms of Order XX Rule 4(2), it shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision and therefore it shall fall under Section 2(9) of the Code of Civil Procedure and in that sense, all the



ingredients contained in Order XX Rule 4(2) must be available in that judgment. This is more so in view of the provisions of Order XX Rule 5 relating to the duty of the Court to state its reasons on each issue. That Rule reads as under:-

" 5. Court to state its decision on each issue.--In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit."

6. In terms of the above provisions, every judgment should contain a concise statement of the case, the points for determination, decision thereon and the reasons for such decision. A judgment which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called as "judgment". The judgment should contain the brief summary of the facts, the evidence produced by the plaintiff in support of his claim and the reasoning of the learned Judge either for decreeing the suit or its dismissal. The Civil Procedure Code does not say that the Court is bound to grant a decree in case the defendant is absent. Judgment means cognitive process of reading a decision or drawing conclusion. Judgment is the basic requirement for a court and it means a decision or conclusion reached after consideration and deliberation. To put it differently, the basics of a judgment are to support by most cogent reasons that suggest themselves the final conclusion at which the Judge has conscientiously arrived.

15. As against the requirement of a judgment, Section 2(14) of the Code of Civil Procedure relating to an "order" is also referable. In terms of that Section, an "order" means the formal expression of any decision of a Civil Court which is not a decree. When it comes to the judgment, it should state the grounds of a decree, which includes an order. Hence, there is a vast difference between a judgment, a decree based on such judgment and an order.

16. Code of Civil Procedure does not define either an ex parte judgment or an ex parte decree. It refers only to a judgment and a decree. In the event a judgment is rendered when the defendant fails to defend the suit by his absence, that judgment is known to be an ex parte judgment and the decree drawn on the basis of that judgment is known as an ex parte



decree. Hence, even for an ex parte judgment and the decree, the basic ingredients of judgment must be available to the extent to indicate that the Court has applied its mind to the pleading, relief claimed thereunder, the evidence and the conclusion arrived at by the Court on the above."

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(II). This Court in G.Selvam and others v. Kasthuri (deceased) and others, reported in 2015 (4) CTC 673, has held as follows:

"7. The main contention raised by Mr.R.Muthukumarasamy, learned Senior Counsel appearing for the petitioner is that the judgment and decree passed by the Trial Court is liable to be set aside on the ground that the Trial Court had passed a preliminary decree by non-speaking judgment. The learned Senior Counsel further submitted that the judgment passed by the Trial Court is against the settled propositions of the Hon'ble Apex Court as well as this court. The learned Senior Counsel further contended that since the judgment and decree passed by the Trial Court is against the provisions of Order 20 Rule 5 of C.P.C., and also the ratios laid down by the Hon'ble Supreme Court and this court, the Civil Revision Petition filed under Article 227 of the Constitution of India challenging the said judgment and decree is maintainable.

25. As per Order 20 Rule 4 of Civil Procedure Code, Judgments of the Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

26. In the case on hand, all the defendants were set exparte. The trial court did not frame any issue for deciding the suit. The trial court simply examined P.W.1 and found that the claim made by him is proved. The judgment pronounced by the trial court is clearly contrary to the provisions of Order.20 Rule 4 and Rule 5 of Civil Procedure Code.

27. In the judgment reported in 2012 (5) SCC 265 (C.N. Ramappa Gowda vs C.C. Chandregowda (dead) by LRs and another, cited supra, the Hon'ble Supreme Court held that in a suit, where the defendants failed to file their written statement, the non-filing of the written statement should not have any



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penal consequences and the court should proceed cautiously and exercise its discretion in a just manner and even in the absence of written statement, burden of proof would remain on plaintiff and his mere assertion in plaint would not be sufficient to discharge the burden.

28. In that case, challenging a cryptic unreasoned judgment and decree, resulting from failure to file a written statement despite repeated opportunities having been given for the same, it has been held that the High Court was justified in remanding the matter to the lower Court for de novo trial by giving fresh opportunity to the defendants to file written statement.

29. Following the ratio laid down in the judgment reported in 2012 (5) SCC 265 (Ramappa Gowda vs C.C. Chandregowda (dead) by LRs and another,) the Division Bench of this Court, reported in 2013 (4) CTC 545 (Chitrakala vs P. Mahesh and others) (cited supra) (wherein, I was a party to the judgment), held that the burden of proof lies on plaintiff, irrespective of there being any Written Statement or evidence of rebuttal, plaintiff to succeed in Suit only on the basis of strength in his case and not on the basis of weakness in Defendant's case.

30. Further, the Division Bench held that the decree cannot be passed solely on the plaint averments, as these averments are not substantiated. Hence the Division Bench remanded the matter back to the trial court for fresh disposal."

(III). This Court in K.Balakrishnan v. S.Dhanasekar, reported in 2018 (1) LW 599, has held as follows:

" 6. The only ground raised by the appellant is that the trial court passed the exparte decree without giving detailed reason or appreciating the evidence adduced by the plaintiff. The learned counsel for the appellant/defendant submitted that the respondent/plaintiff herein filed the suit before the Additional District Munsif Court for permanent injunction. The trial court passed the exparte decree against the appellant/defendant. Challenging the judgment and decree passed by the trial court, the appellant/defendant preferred an appeal before the Sub Court by raising a ground that the trial court failed to record reasons in the judgment for granting relief in favour of the



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plaintiff. According to the learned counsel for the appellant/defendant, the trial court has simply decreed the suit, by recording a finding that on the basis of the evidence of P.W.1 and the documents marked as Ex.A1 to A7, the plaintiff has proved the case. In the said judgment, except the aforesaid fact, there is no discussion or appreciation of evidence adduced by the plaintiff nor any reason in the judgment for granting relief in favour of the plaintiff. According to the learned Senior counsel for the appellant/defendant, in the light of the decision of the Hon'ble Supreme Court as well as this court, the settled legal principles of law is that judgment must contain the bare minimum facts, the point for determination, evidence adduced and the evidence which are basis for deciding the issues. It is the further contention of the learned Senior counsel that as per the definition under Section 2(9) of C.P.C., the judgment means there must be adjudication of dispute. The judgment should contain brief summary. Therefore, the present judgment passed by the trial court is cryptic and an unreasoned judgment. Hence, the judgment and decree passed by the trial court as well as the judgment and decree passed by the Appellate court are liable to be set aside. In support of his submission, the learned counsel for the appellant/defendant relied on the following decisions:

- (i) SMT. SWARAN LATA GHOSH VS. H.K.BANERJEE AND OTHERS [1969(I) I SCC 709];
- (ii) C.N.RAMAPPA GOWDA VS. C.C. CHANDREGOWDA (DEAD) BY LRS. AND ANOTHER [(2012)5 SCC 265;
- (iii) SHANTILAL GULABCHAND MUTHA VS. TATA ENGINEERING AND LOCOMOTIVE COMPANY LTD. AND ANOTHER [(2013)4 SCC 396;
- (iv) AZIZ AHMED KHAN VS. I.A. PATEL (A.I.R. 1974 (V.61,C.1) A.P.1);
- (v) M/s.MEENAKSHI SUNDARAM TEXTILE VS. VALLIAMMAL TEXTILE LTD. [2011-3 L.W.80].

22. Hence, in the light of the principles laid down by the Hon'ble Supreme Court as well as this court, the trial court without considering Section 2 (9), C.P.C. which defines a meaning a formal expression of civil court. Any decision of civil court is not a decree. In a suit, court may take certain decision of objective consideration and those decisions must contain discussion of the matter, issues in the suit, reason which led the

<https://hcservices.ecourts.gov.in/hcservices/> pass such orders.



23. In the case of C.N.RAMAPPA GOWDA cited supra, the Hon'ble Supreme court has considered the issue of unreasoned judgment and decree passed by the trial court and held that it is a well-acknowledged legal dictum that assertion is no proof and hence, the burden lay on the plaintiff to prove his/her case even if there was no written statement to the contrary or any evidence of rebuttal and the Hon'ble Supreme Court observed that the trial court adopted an erroneous approach by inferring that merely because there was no evidence of denial or rebuttal, the plaintiff's case could be held to have been proved. The trial court therefore, while accepting the plea of the plaintiff ought to have recorded reasons even if it were based on exparte evidence. By placing reliance upon the judgment in Balraj Taneja's case, it was held that if the plaint itself indicates that there are disputed question of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Further, in the concluding portion of the judgment, it was held that the trial court has decreed the suit without assigning any reason how the plaintiff is entitled for half-share in the property. Such judgment is absolutely cryptic in nature.

24. Therefore, in the light of the decisions of the Hon'ble Supreme court as well as the decision of the Division Bench of this court reported in 2011(3) L.W. 80 (supra), while passing the exparte judgment, the trial court has not satisfied the requirement under Section 2(9) of C.P.C. The trial court has passed a cryptic and unreasoned judgment in granting exparte decree in favour of the plaintiff."

19. It is clear from the above judgments that where the defendant contests a suit or submits himself to a decree, it is the bounden duty of the trial Court to follow the procedure under Order XX Rule 4 of the Civil Procedure Code, by giving the concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. If this is not satisfied and a cryptic unreasoned judgment is passed, it is ex facie illegal. When a Court considers an application for delay to set aside the exparte decree, this must also be taken into consideration. If the original judgment itself is ex facie illegal, it cannot be allowed to continue and under such circumstances, it will have a bearing, while the Court considers an application to condone the delay to set aside the exparte decree. The Court need not have a pedantic



approach in this regard, since it involves the substantial right of the parties.

20. In this case, the cryptic judgment has resulted in the trial Court not even determining what is the balance amount that has to be deposited by the plaintiff. The plaintiff has assumed that it is only Rs.2,50,000/- and the Court has also mechanically executed a sale deed and given possession to the plaintiff. This patent illegality has substantially affected the rights of the defendant in this case.

21. This Court in exercise of its jurisdiction under Article 227 of the Constitution of India, is exercising superintendence over all the Courts and tribunals throughout the State. This Court cannot turn a blind eye when its attention is drawn to an ex facie illegal judgment. This Court has to necessarily interfere with the same, failing which, there will be failure of justice and it will amount to perpetuating illegality.

22. In the considered view of this Court, the petitioner has to be given one opportunity to contest the suit on merits, since it involves her substantial rights over the property. However, this opportunity can be given by subjecting the petitioner to condition. Admittedly, the petitioner has received a sum of Rs.2,00,000/- as advance. Therefore, at the worst, the plaintiff will be entitled to this amount with interest and he cannot be deprived of the same.

23. In the result, the fair and final order passed by the Court below in I.A.No.326 of 2008, dated 29.11.2011, is hereby set aside and the application to condone the delay is hereby allowed. The petitioner is directed to deposit a sum of Rs.2,00,000/-, with interest at the rate of 12% from 19.03.2002 till 31.10.2019. This amount shall be deposited within a period of four weeks from the date of receipt of a copy of this order and a memo shall be filed before the Court below. On receipt of such memo, the Court below shall set aside the exparte decree and proceed further to decide the suit on merits. If the petitioner does not deposit the amount as directed by this Court, the petition to set aside the exparte decree shall be dismissed and thereby, the exparte decree passed in favour of the respondent shall be restored.

24. It is made clear that this Court has not expressed anything on the merits of the case. Any findings given by this Court in this petition will not have any bearing in the Court below deciding the suit on its own merits and in accordance with law.

25. In fine, this Civil Revision Petition is allowed and the Court below is directed to complete the proceedings in O.S.No.179 of 2004 within a period of three months from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous



26. In view of this order, no further orders are necessary to be passed in C.R.P.(MD).No.871 of 2013 and the same is closed, accordingly. No Costs.

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Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

PJL

To
The Principal District Judge,
Trichy.

+2 CC to M/s.P.THIAGARAJAN, Advocate (SR-93624 & 93625[F] dated
22/10/2019)

+1 CC to M/s.J.MARIA ROSELINE, Advocate (SR-93762[F] dated
23/10/2019)

Pre-Delivery Order
made in
C.R.P (MD) Nos.1303 of 2012 and
871 of 2013
22.10.2019

JMN(24.10.2019) 12P : 5C