



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.11.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD)No.540 of 2013

and

M.P(MD) No.2 of 2013

N.Murugesan

... Petitioner

Vs.

- 1.M/s.Green Valley Packers,
Rep by its Partner R.Suseendran,
S.F.No.301, G.V.Nager,
Thanthonimalai, Karur.
Now at No.75-B, Sankar Nagar,
Pasupathipalayam, Karur-639 004.
 - 2.R.Suseendran
 - 3.S.Kanagambaram
 - 4.K.Pitchaimuthu
 - 5.P.Parameswari
 - 6.N.Sellappan
 - 7.M.Samiyappan
 - 8.M/s.Maheswar Credits,
Karur, Rep. by its Managing Partner
S.Ravichandran,
No.8-A,Nandini Complex,
Pasupathipuram, Karur-1.
 - 9.Tamilselvi
 - 10.Chitra
 - 11.Balaji
- (Revision against R-6 is dismissed
for default vide Court order dated
24.08.2015)
(RR3,5 and 7 to 11 given up)

... Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the petition and order dated 24.01.2013 passed in I.A.No.435 of 2012 in O.S.No.422 of 2002 on the file of the Principal Sub Judge, Karur.



For Petitioner : Mr.P.Thiyagarajan
For R-1 and R-2 : Mr.M.P.Senthil
For R-4 : Mr.V.A.Dhana Aravindha Balaji
For R-3, R-5
R-7 to R-11 : No appearance

ORDER

The above civil revision petition is filed challenging the order dated 24.01.2013 passed in I.A.No.435 of 2012 in O.S.No.422 of 2002 on the file of the Principal Sub Judge, Karur.

2.The only short issue involved in the above civil revision petition is whether the *ex parte* decree passed against all the defendants when it is set aside at the behest of one of the defendants will enure to the benefit of other defendants, who have not chosen to file the similar application.

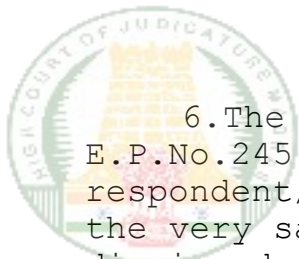
3.The revision petitioner before this Court is the plaintiff. He had filed a suit in O.S.No.422 of 2002 against the defendants who are the partnership firm and the partners for recovery of money due under two promissory notes, totalling a sum of Rs.2,18,160/- together with subsequent interest. The relief claimed in the plaint was as follows:-

"to pass a decree and judgment in favour of the plaintiff as against the defendants, directing the defendants 1 to 8/jointly and severally and defendants 10 to 12 from out of the estate of the deceased fourth defendant to pay the said sum of money to the plaintiff".

4.It appears that an *ex parte* decree came to be passed on 06.01.2006, which reads as follows:-

இன்று இந்நீதிமன்றம் கீழ்க்கண்டவாறு வழங்கும் தீர்ப்பாணை
பிரதிவாதிகள் 1 முதல் 8, 10 முதல் 12 பிரதிவாதிகள் வாதிக் கு
ரூ.50,000/-ஐ செலுத்த வேண்டுமென்றும். மேலும் அசல் நாள் வரை நாள்
ஒன்றுக்கு ரூ.100/-க்கு 8 பைசா வீதம் வட்டியும் தீர்ப்பாணைக்குப்பின் தொகை
வரப்பற்றும் நாள் வரை 6% வட்டியும் சேர்த்து செலுத்த வேண்டுமென்றும்,
மேலும் இவ்வழக்கின் செலவுத் தொகையாக ரூ.6,388.50/- ஐ செலுத்த
வேண்டுமென்றும் உத்தரவிடப்படுகிறது.

5.Pursuant to the said decree, the fourth respondent / fifth defendant alone moved an application for condoning the delay of 810 days in filing an application under Order 9 Rule 13 of the Code of Civil Procedure. The said application appears to have been allowed and *ex parte* decree is set aside by order dated 10.11.2010.



6.The petitioner herein had moved an execution petition in E.P.No.245 of 2010 to bring the property of the second respondent/second defendant/judgment debtor to the Court of sale on the very same day. Thereafter, the suit in O.S.No.422 of 2002 was dismissed for default by judgment and decree dated 16.03.2011. The petitioner/ plaintiff had moved an application in I.A.No.435 of 2012 in O.S.No.422 of 2002 before the learned Principal Subordinate Judge, Karur, to amend the decree and judgment dated 16.03.2011 passed in the above suit. The amendment was sought for on the ground that the *ex parte* decree had been set aside only against the fifth defendant and not against the other defendants. The said application is challenged by the petitioner in this revision petition.

7.The learned counsel for the petitioner would rely on the judgment of the Hon'ble Supreme Court reported in **2009 (1) MLJ 81** in the case of **Bank of India vs Mehta Brothers and others**. He would place reliance on the observation made in paragraph No.16, which reads as follows:-

16.Therefore,Keeping this in mind, let us now consider whether a contested decree by some of the defendants can be set aside while considering the application for setting aside the ex parte decree against one of the defendants. This would, in our view, certainly depend on the nature of reliefs claimed by the plaintiff in his plaint and the nature of the decree in question.....

He would also draw the attention of this Court to the provision of Order 9 Rule 13 with particular reference to the proviso therein and submit that the decree had been set aside only against the fifth defendant and not against the other defendants.

8.The said contention has been refuted by the learned counsel appearing for the respondents 1 and 2 and the learned counsel appearing for the fourth respondent.

9.On hearing the arguments of the learned counsels and perusing the records, it is seen that the original suit has been filed seeking a joint decree against all the defendants. The *ex parte* decree would also indicate that the decree is passed against the defendants jointly and severally. The fifth defendant had moved an application to set aside the *ex parte* decree dated 06.01.2006 and the same has been set aside in toto. Therefore, the contention of the learned counsel for the petitioner that the decree was set aside only against the fifth defendant, cannot be countenanced. Further, the first proviso of Order 9 Rule 13 would clearly indicate that where the decree is of such a nature that it cannot be set aside as against one of the defendants alone, it may be set aside as against all or any of the other defendants also. Further, the judgment and decree which has been relied on by the learned counsel would not apply to the facts of the case on hand, since in the suit a decree



was passed only against one of the defendants who had remained *ex parte* and the suit was dismissed on contest against the defendant. The Hon'ble Supreme Court has observed as follows in Para 13:-

We have carefully examined the provisions under Order 9 Rule 13 of the Code as well as its proviso and other relevant provisions under Order 9 of the Code. A reading of Order 9 Rule 13 of the Code would clearly show that under this provision it was clarified that an *ex parte* decree was ordinarily to be set aside only against the defendant against whom the decree was *ex parte* and the suit was to be revived only qua the said defendant applying for setting aside the *ex parte* decree. It is true that the heading of Order 9 Rule 13 of the Code starts with the expression "setting aside of an *ex parte* decree". But if we examine this provision under Order 9 Rule 13 of the Code as well as its proviso in depth and in detail, it would not be difficult for us to come to a conclusion that under Order 9 Rule 13, it has been clarified that an *ex parte* decree is ordinarily to be set aside only as against the defendants against whom the decree has been *ex parte* and the suit is to be revived only qua the defendant who applied for setting aside the *ex parte* decree. Keeping this in mind, let us now examine whether the proviso to Order 9 Rule 13 of the Code gives ample power to the Court to set aside the decree passed in favour of the contesting defendants at the time of setting aside the *ex parte* decree against other defendants. Therefore, let us now deal with the proviso to Order 9 Rule 13 of the Code. It provides that in cases where the decree is of such a nature that the same cannot be set aside only as against the defendant applying for setting it aside, the decree could also be set aside as against any or all of the other defendants. Therefore, in our view, this proviso confers power on the Court to set aside the entire decree if the Court is of the view that the decree passed was of such a nature that the same could not be set aside only as against the defendant applying for setting aside the decree, the decree could also be set aside as against any or all of the other defendants. Therefore, this proviso clearly confers powers on the court to set aside the entire decree where the said decree was of such a nature that it is expedient in the interest of justice to set aside the decree as against any or all of the other defendants also.

The Hon'ble Supreme Court went on to observe that where a decree is indivisible an application made by one defendant to set aside the *ex parte* decree will enure to the rest. The instant case would fall within this category.

10. Hence, the learned Subordinate Judge has rightly rejected



the application filed for amending the decree. Therefore, I do not find any infirmity in the same. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar (CS)

cp

To

The Principal Subordinate Judge,
Karur.

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-97486[F] dated 12/11/2019)

+1 CC to M/s.P. THIAGARAJAN, Advocate (SR-97709[F] dated 12/11/2019)

C.R.P. (NPD) (MD) No.540 of 2013

and

M.P (MD) No.2 of 2013

_KK/SAR/05.12.2019/5P-4C/