

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL MISCELLANEOUS APPEAL No.1127 of 2018

JUDGMENT :

This Civil Miscellaneous Appeal is preferred challenging the order dt.29.06.2018 in I.A.No.4528 of 2017 in O.S.No.510 of 2012 passed by the Chief Judge, City Civil Court, Hyderabad.

The respondent/plaintiff filed the said suit against M/s. Viraja Universal Packaging Industries Limited for recovery of money and an *exparte* decree was passed on 22.07.2014 treating the summons as having been served on the appellant/defendant on the ground that the appellant did not appear and file written statement.

The appellant's contention is that it is M/s. Viraja Universal Packing Company Private Limited and it was described wrongly in the plaint as "M/s. Viraja Universal Packaging Industries Limited"; that summons were received in E.P.No.212 of 2016 in O.S.No.510 of 2012 on 29.07.2017 and on enquiry, it was realized that the appellant was wrongly described as "M/s. Viraja Universal Packaging Industries Limited". The appellant, therefore, contended that *exparte* decree be set aside and the appellant be given an opportunity to contest the suit.

The respondent/plaintiff filed a counter affidavit opposing the same and denying that the appellant was wrongly described in

the cause title in the suit. It is alleged that the same address was shown in the plaint as the address of the defendant (as that of the appellant) and those notices were received by the appellant. It was alleged that the appellant had knowledge of filing of the suit and its plea that it had knowledge of the decree in O.S.No.510 of 2012 only on 29.07.2017 is false.

By order dt.29.06.2018, the Court below dismissed the said application. It observed that the docket order in O.S.No.510 of 2012 shows that summons were not served on the defendant on 04.09.2012 and the respondent was ordered for taking steps. Thereafter, publication was filed on 18.12.2012 and subsequently the defendant was called absent and set *exparte* and after *exparte* evidence of respondent was recorded on 04.07.2014, judgment was pronounced on 22.07.2014. The Court below held that since the respondent's case is that they served notices in the E.P. and in the suit to the same address, though they denied the contention that the name of the appellant is described incorrectly, the appellant cannot claim that its application was within 30 days from the date of knowledge.

Challenging the said order dt.29.06.2018, this Civil Miscellaneous Appeal is filed.

Heard learned counsel for the appellant/defendant and the learned counsel for the respondent/plaintiff.

It is not in dispute that in the plaint, the defendant is described as “M/s. Viraja Universal Packaging Industries Limited” and that the correct name of the defendant is “M/s. Viraja Universal Packing Company Private Limited”.

There is a clear distinction in law between a Private Limited Company (which is the defendant) and a Public Limited Company (which is mentioned in the plaint as defendant) and there is a clear difference in the name of the appellant and the description of the defendant in the suit, though the address given may be the same.

Therefore, it is obvious that the appellant was not a party to the suit and the party/defendant in the suit is M/s. Viraja Universal Packaging Industries Limited.

Merely because paper publication was ordered in the suit on the defendant as described in the plaint, when *exparte* decree is sought to be executed against the appellant, the appellant is entitled to come before the Court and seek to have the said decree set aside by pointing out that the appellant was not shown as a party in the suit and the description of the defendant varies substantially from that of the appellant.

The Court below, therefore, could not have taken the view that merely because address is the same, the appellant is the defendant in the suit and it had knowledge of the *exparte* decree.

This view of the Court below is clearly perverse and unsustainable.

Therefore, the Court below was not correct in taking the view that the appellant did not file an application under Order 9 Rule 13 C.P.C., to set aside the *exparte* decree within 30 days from the date of knowledge. The said application is filed within time and deserves to be allowed.

Accordingly, the Civil Miscellaneous Appeal is allowed; order dt.29.06.2018 in I.A.No.4528 of 2017 in O.S.No.510 of 2012 is set aside and I.A.No.4528 of 2017 is allowed. The *exparte* decree dt.22.07.2014 in O.S.No.510 of 2012 of the Court below is set aside and the said suit is restored to its file. The respondent/plaintiff shall take steps to correct the description of the appellant/defendant in the cause title and body of the plaint. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

28.03.2019
Msr

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