

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 04.11.2019	Judgment Pronounced on 02.01.2020
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THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRP No.4975 of 2014
and
M.P.No.1 of 2014

M.Ilambarathi Petitioner/Defendant

vs

Matrix Cellular (International) Services Pvt. Ltd.,
2nd Floor, No.4/606, First Main Road
Nehru Nagar, Rajiv Gandhi Salai
Kottivakkam,
Chennai - 600 041. Respondent/Plaintiff

This Civil Revision Petition has been filed under Section 115 of Code of Civil Procedure praying to set aside the fair and decretal order dated 11.10.2014 made in I.A.No.13297 of 2014 in O.S.No.3603 of 2014 by the II Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.P.Ranganatha Reddy
for
M/s.King & Partridge
For Respondent : Mr.M.Madan Babu
for
Mr.R.Bharath Kumar

ORDER

The petitioner has come forward with the present Civil Revision Petition praying to set aside the fair and decretal order dated 11.10.2014 made in I.A.No.13297 of 2014 in O.S.No.3603 of 2014 by the II Assistant Judge, City Civil Court, Chennai.

2. The defendant in O.S.No.3603 of 2014 on the file of the II Assistant Judge, City Civil Court at Chennai is the petitioner herein. Before the said Court, the respondent in this Civil Revision Petition filed a suit as against the revision petitioner under Order XXXVII of the Code of Civil Procedure for the direction directing the defendant (revision

petitioner herein) to pay the plaintiff (respondent herein) a sum of Rs.1,21,855/- along with interest at 24% per annum from the date of filing of the suit till realisation.

3. Since the suit is filed under Order XXXVII of Civil Procedure Code, the revision petitioner/defendant had to apply for leave under Order XXXVII Rule 3 of the Code to defend her in I.A.No.13297 of 2014. The learned II Assistant Judge, City Civil Court, Chennai, after affording an opportunity to the respondent/plaintiff, by order dated 11.10.2014, dismissed the application filed by the revision petitioner by saying that the petitioner/defendant not shown any triable issues in this case. Accordingly, decree has been granted in favour of the respondent/plaintiff.

4. Aggrieved over the said finding, the petitioner/defendant is before this Court with the present Civil Revision Petition.

5. When the petition came up for hearing, learned counsel appearing for the petitioner/defendant relied on the judgment of this Court reported in 2013 (5) CTC 260 (S.Balasubramanian and V.Govindan) and 2013 (2) MWN (Civil) 160 (Shivsu Canadian Clear International Limited ..vs.. Freightcan Global Logistics Private Limited) and made his submission as the Civil Revision has also been maintainable against the order passed under Order XXXVII Rule 3(5) of Code of Civil Procedure.

6. On the other hand, the learned counsel appearing for the respondent/plaintiff was present and made his submission that since there is a provision available in the Code of Civil Procedure to challenge the order passed under Order XXXVII Rule 3 of Code of Civil Procedure by way of appeal, filing the Revision Petition by the petitioner/defendant is not maintainable. In this regard, the learned counsel appearing for the petitioner relied the judgment of this Court pronounced in CRP (NPD) No.2435 of 2009 dated 12.11.2009. He has further relied the judgment of this Court pronounced in CRP (NPD) No.409 of 2004 dated 05.01.2008. Both the Civil Revision Petitions were filed challenging the order passed under Order XXXVII Rule 3 of Code of Civil Procedure. While at the time of deciding the said Civil Revision Petitions, this Court has held that only a regular appeal will lie against the order so passed by the trial Court and resultantly, the Civil Revision Petition filed by the revision petitioner are per se not maintainable and that the interlocutory order refusing leave to defend partakes form of judgment, thereby making it vulnerable to assault only through substantive and regular and subsequent appeal, where the revision petitioner/defendant can avail second opportunity to present its defence by filing an appeal.

7. The submission made by the learned counsel appearing on either side are having the same force. Therefore, in the said occasion, first of all, for disposing this Civil Revision Petition, We have to decide whether the Civil Revision Petition filed by the petitioner is maintainable in accordance with law or not.

8. Though it was decided by this Court in the judgment reported in 2013 (2) MWN (Civil) 160 cited supra, after referring various judgments, as the Civil Revision Petition is maintainable, similar issue has been decided by the Hon'ble Apex Court only in the Civil Appeal No.8194 of 2015 decided on October 1, 2015, further reported in (2015) 10 SCC 521 (State Bank of Hyderabad ..vs.. Rabo Bank). Further, our Hon'ble Apex Court, while at the time of deciding the same issue only in Civil Appeal No.230 of 2007, decided on January 16, 2007, which is reported in (2007) 2 SCC 275 (Ajay Bansal ..vs.. Anup Mehta and others) in para-18 has held as follows:-

"In the aforementioned situation, we are of the opinion that interest of justice would be met if we direct the writ petition to be converted into a first appeal. The respondents may file certified copy of the judgment and decree. Deficit court fee, if any, should also be paid by the respondents. Filing of such certified copy and deposit of court fee, if any, must be completed within eight weeks from date. Indisputably, it would be open to the appellant to raise the contention that it was a fit case where the learned Civil Judge could have granted leave to defend the suit. All the contentions of the parties shall, however, remain open."

Further, it was held as follows:-

"Decree passed by Civil Judge in summary suit by refusing defendant's prayer for grant of leave to defend under Order 37 Rule 3(5) CPC, Appeal from the decree lay under S.96 CPC."

9. More on that, in the judgment reported in 2003 (4) CTC 48 (Surya Dev Rai ..vs.. Ram Chander Rai and others), in para-4, our Hon'ble Apex Court has held as follows:-

"4. Section 115 of the Code of Civil Procedure as amended does not now permit a revision petition being filed against an order disposing of an appeal against the order of the trial court whether confirming, reversing or modifying the order of

injunction granted by the trial Court.
"

10. The learned counsel appearing for the petitioner/defendant further relied the case of (Wada Arun Asbestos Private Limited ..vs.. Gujarat Water Supply and Sewerage Board) reported in (2009) 2 SCC 432 and made his submission as Revision is maintainable. In the judgment referred by the learned counsel appearing for the petitioner/defendant, it was held by our Hon'ble Apex Court that:-

"16. It is in the aforementioned backdrop, the question as to whether a revision petition was maintainable against an order granting conditional leave must be considered. We will proceed on the basis that an order imposing a conditional leave to defend the suit was a jurisdictional question and, thus, a revision application would be maintainable as has been held by various High Courts, notable amongst them are The New Ashapuri Co- operative Housing Society Ltd. & Anr. v. Arvindkumar Manilal Patel [AIR 1975 Gujarat 76]; Fateh Lal v. Sunder Lal [AIR 1980 Rajasthan 220]; Modi Ram & Anr. v. Smt. Sugan Bai [AIR 2005 Rajasthan 12]; and A.K. Velan v. M/s. Narnyanan and Co. (P) Ltd. [AIR 1972 Madras 118].

17. But if a right of appeal from the decree is conceded to a defendant, in our opinion, he cannot be denied a right to challenge an order which was subject to revision in his memorandum of appeal filed from the decree ultimately passed.

18. This Court in Santosh Kumar v. Bhai Mool Singh [1958 SCR 1211] noticing that a clear defence to the suit having been made out, no condition could be imposed, stated the law thus :

"11-A. ... This is a surprising conclusion. The facts given in the affidavit are clear and precise, the defence could hardly have been clearer. We find it difficult to see how a defence that, on the face of it, is clear becomes vague simply because the evidence by which it is to be proved is not brought on file at the time the defence is put in.

12. The learned Judge has failed to see that the stage of proof can only come after the defendant has been allowed to enter an appearance and defend the suit, and that the nature of the defence has to be determined at the time when the affidavit is put in. At that stage all that the Court has to determine is whether "if the facts alleged by the defendant are duly proved" they will afford a good, or even a plausible, answer to the plaintiff's claim. Once the Court is satisfied about that, leave cannot be withheld and no question about imposing conditions can arise; and once leave is granted, the normal procedure of a suit, so far as evidence and proof go, obtains.

13. The learned High Court Judge is also error in thinking that even when the defence is a good and valid one, conditions can be imposed. As we have explained, the power to impose conditions is only there to ensure that there will be a speedy trial. If there is reason to believe that the defendant is trying to prolong the litigation and evade a speedy trial, then conditions can be imposed. But that conclusion cannot be reached simply because the defendant does not adduce his evidence even before he is told that he may defend the action."

11. Applying the said principle with the case in our hand, here the Court below has not granted conditional leave to the revision petitioner. In other words, the jurisdictional question does not arise. Consequent to the dismissal of the application filed by the petitioner/defendant, since the decree has been passed in favour of the respondent/plaintiff, it was concluded as the suit was finally disposed. Therefore, refusing the conditional leave cannot be equated with the order of granting conditional leave and consequence of the orders in respect of granting and refusing the conditional leave is different one. The same has to be challenged only in accordance with the character of order passed by the trial Court. Therefore, culling out the entire judgments referred as above, I am of the opinion that the Revision filed by the revision petitioner/defendant is not maintainable. However, following the above mentioned situation, in the interest of justice, I am of the opinion directing the Registry to convert the Civil Revision Petition into a First Appeal is necessary. The petitioner/defendant may file the certified copy of the judgment and decree. Deficit Court fee, if any, should also be paid by the petitioner/defendant. Filing of such certified copy and deposit of Court Fee, if any, must be completed within 8 weeks from this date. In otherwords, it is open to the revision

petitioner/defendant to raise the contention that it was a fit case where the learned Civil Judge could have granted leave to defend the suit.

12. In the light of the above observations, Civil Revision Petition is dismissed. The petitioner herein is directed to comply with the order stated in para No.11 of this judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mra

To:

The II Assistant Judge,
City Civil Court, Chennai.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No. 825
+1cc to Mr.King & Partridge, Advocate, S.R.No.981

CRP. No.4975 of 2014
and
M.P.No.1 of 2014

SV(CO)
GN(18/02/2020)

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