



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 1157 of 2016 and  
C.M.P. No. 14496 of 2016

M/s. Dolphine Chemicals,  
Represented by its Proprietor  
Mr.G.Ravichandran.

... Appellant/Petitioner

Vs

M/s. ACSA Chimica Sri,  
At VIA Pasteur, 3, Sedriano (Milan) Italy - 20018.  
Represented by its Authorized Power Agent  
Mr. Vadivel Saravanan.

... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code, 1908, to set aside the Order and Decreeal Order passed in I.A. No. 143 of 2015 in O.S. No.2479 of 2013 dated 22.03.2016 by the learned XV Additional City Civil Court, Chennai.

For Appellant : Mr. V. R. Appaswamee

For Respondent : No Appearance

#### JUDGMENT

This appeal has been filed by the defendant in the suit O.S. No. 2479 of 2013 on the file of the XV Additional City Civil Court, Chennai.

2. The suit was filed by the respondent against the appellant/defendant, seeking for recovery of a sum of Rs.19,43,673/- (Rupees Nineteen Lakhs Forty Three Thousand Six Hundred and Seventy Three only) for the value of the supplies together with interest and costs. The said suit came to be decreed exparte by the trial court on 16.06.2013. Aggrieved by the same, the Appellant/defendant filed an interlocutory application I.A.No.143 of 2015 under Order 9 Rule 13 CPC to set aside the exparte decree dated 16.06.2013. By order dated 22.03.2016, the learned XV Additional City Civil Court, Chennai has dismissed the application I.A. No. 143 of 2015 in O.S. No.



2479 of 2013. Aggrieved by the same, this appeal has been filed by the Appellant/defendant.

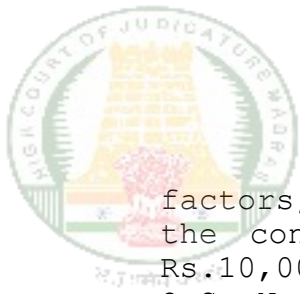
3. The trial court while dismissing the application I.A. No.143 of 2015 filed by the appellant/defendant has given the following reasons:

- a) The trial court while decreeing the suit exparte in favour of the respondent against the appellant has framed the points for consideration and only after detailed discussion has decreed the suit.
- b) The appellant/defendant has been watching the proceedings and only after filing of two transmit execution petitions by the respondent/plaintiff has filed I.A. No.143 of 2015 under Order 9 Rule 13 CPC seeking to set aside the exparte decree.
- c) The appellant/defendant has not filed any medical certificate to prove the illness of the wife of the appellant Mr. G. Ravichandran.
- d) The appellant/defendant has approached the Court with unclean hands.

4. Heard Mr.V.R.Appaswamee, learned counsel for the Appellant. There is no representation on the side of the respondent, though the respondent has been duly served and the name of the respondent is also printed in the cause list today.

5. Admittedly, the application filed under Order 9 Rule 13 CPC in I.A. No. 143 of 2015 has been filed within the prescribed period and there is no delay. However, being a money decree, the appellant/defendant should be put on terms, since admittedly, the execution petitions have been filed by the respondent/plaintiff to execute the exparte decree dated 16.06.2013, passed in their favour. Further, the application filed under Order 9 Rule 13 CPC by the appellant has been accompanied with the written statement of the appellant/plaintiff. The trial court ought to have considered all these factors and ought to have allowed the application on terms instead of dismissing the same.

6. This Court is of the considered view that the appellant/defendant will have to be put on terms for allowing this appeal, since the decree obtained by the respondent is a money decree and the said decree has been obtained for the alleged value of the supplies made by the defendant to the plaintiff.



7. After giving due consideration to the aforementioned factors, this Court is inclined to allow this appeal, subject to the condition that the appellant/defendant deposits a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the credit of the suit O.S. No. 2479 of 2013 within a period of six weeks from the date of receipt of a copy of this Order.

8. Accordingly, this appeal is allowed on condition that the appellant deposits a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the credit of O.S. No. 2479 of 2013 on the file of the XV Additional City Civil Court, Chennai within a period of six weeks from the date of receipt of a copy of this Judgment, failing which, the appeal shall stand automatically dismissed. No Costs. Consequently the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

rgi/nl

To

1. The XV Additional City Civil Court,  
Chennai.
2. The Section Officer,  
V.R.Section, High Court, Madras - 104.

+1cc to Mr.V. R. Appaswamee, Advocate SR.No.53711

C.M.A. No. 1157 of 2016 and  
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GP(CO)  
GMY(08/02/2022)