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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2021

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.1039 of 2009

Union of India owning
Southern Railway Rep. by its General Manager,
Park Town, Chennai - 600 003. ...Appellant

Vs.

1.Kursheed Unnisa
2.Banumathi
3.Badrunnisa
4.Mustaq
5.Adakar
6.Noorjahan
7.Badrunnissa
8.Mustaq

... Respondents

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 23.12.2003 passed in A.S. No.205 of 2002, on the file of the V Additional City Civil Court, Chennai, upholding the decree and judgment dated 27.01.1999 passed in O.S. No.2876 of 1993, on the file of the XV Assistant City Civil Court, Chennai.

For Appellant : Mr.Vijay Anand

For Respondents : No appearance

JUDGMENT

The appellant, Union of India represented by its General Manager, Southern Railways, Chennai, is the second defendant in O.S.No.1197 of 1985 and fifth defendant in O.S.No.2876 of 1993 on the file of XV Assistant City Civil Court, Chennai. He has filed the present appeal against the concurrent judgments passed by both the Courts below.

2. The facts of the case in nutshell as follows:

One M.H.A.Khader was employed with the present appellant and he died while in service. The plaintiffs Noorjahan and her



children filed O.S.No.1197 of 1985 before the XV Assistant City Civil Court, Chennai, for a declaration that they are the legal heirs of the deceased M.H.A.Khader and also for a consequential relief of permanent injunction restraining the present appellant from disbursing the amounts due and payable to the deceased M.H.A.Khader to any person other than the plaintiffs. The suit was decreed ex parte on 27.11.1989 and subsequently, on a petition filed under Order IX Rule 13 Code of Civil Procedure by one Kursheed Unnisa, the first defendant, the suit was restored to file. In the mean while, the said Kursheed Unnisa also filed O.S.No.2876 of 1993 before the XV Assistant City Civil Court, Chennai, for a declaration that she is the legally wedded wife of the deceased M.H.A.Khader and that the present appellant should not disburse the amount to any person other than her. After setting aside the ex parte decree passed in O.S.No.1197 of 1985, both the suits, viz., O.S.No.1197 of 1985 and O.S.No.2876 of 1993 were tried together. By a common judgment dated 27.01.1999, the learned XV Assistant Judge, City Civil Court, Chennai, dismissed the suit in O.S.No.1197 of 1985 and decreed the suit in O.S.No.2876 of 1993.

3. Aggrieved over the same, the present appellant filed A.S.No.205 of 2002 before the V Additional Judge, City Civil Court, Chennai on the ground that since the amounts were already disbursed to the plaintiffs in O.S.No.1197 of 1985, based on the ex parte decree they cannot once again be directed to pay the amount in favour of the plaintiff in O.S.No.2876 of 1993. The learned V Additional Judge, City Civil Court, Chennai, after analysing the evidence on record and the findings of the trial Court, dismissed the appeal filed by the present appellant. Aggrieved over the same, now the present second appeal is filed by the appellant.

4. Notice of motion was ordered and after several adjournments, the matter is posted today for final hearing.

5. Mr. Vijay Anand, learned counsel appearing for the appellant contended that since based on the ex parte decree passed in O.S.No.1197 of 1985, amounts were already disbursed in favour of the plaintiffs in O.S.No.1197 of 1985, both the Courts below should not have directed them to disburse the amount to the plaintiff Khursheed Unnisa in O.S.No.2876 of 1993.

6. The deceased M.H.A.Khader was employed as a Senior Booking Clerk in the Southern Railways, Chennai (appellant herein), and he died on 31.03.1983 while in service. After his demise, there were two rival claimants, for the terminal



benefits, one was Noorjahan @ Banumathi, Badrunnisa, Mustaq, Adakar (since deceased) and the other one is Kursheed Unnisa. While Noorjahan @ Banumathi claimed to be the legally wedded wife of the deceased M.H.A.Khader, Kursheed Unnisa also claimed that she is the legally wedded wife of the deceased M.H.A.Khader. In fact, Noorjahan @ Banumathi was the nominee as per the service records of the deceased. The appellant / Union of India represented by its General Manager, Southern Railways, Chennai, directed both the claimants to settle the issue in a competent Civil Court and subsequently, based on the ex parte decree passed in O.S.No.1197 of 1985, the appellant disbursed the terminal benefits to Noorjahan @ Banumathi and her three children namely, Badrunnisa, Mustaq, Adakar (since deceased). Subsequently, ex parte decree was set aside and the suit was contested. In fact the suit filed by Noorjahan @ Banumathi was tried along with the suit in O.S.No.2876 of 1993 filed by Kursheed Unnisa. After full contest, the learned XV Assistant Judge, City Civil Court, Chennai, declared Kursheed Unnisa, as the legally wedded wife of the deceased M.H.A.Khader and no appeal was filed by Noorjahan @ Banumathi who is the plaintiff in O.S.No.1197 of 1985 (defendants 1 to 4 in O.S.No.2876 of 1993). On the other hand, the present appellant filed the appeal before the V Additional Judge, City Civil Court, Chennai, in A.S.No.205 of 2002 contending that since they had already disbursed the amount due to the deceased M.H.A.Khader in favour of Noorjahan @ Banumathi and her children as per ex parte decree, the trial Court ought not to have directed them to disburse the amount in favour of Kursheed Unnisa. The First Appellate Court dismissed the appeal filed by the present appellant on the ground that the appellant immediately after the setting aside of the ex parte decree in O.S.No.1197 of 1985, should have issued a notice to the plaintiffs in O.S.No.1197 of 1985 to refund the amounts back to them and that in the absence of any such steps being taken by the appellant, they cannot maintain the appeal.

7. The main apprehension of the appellant is that since they have already paid the amount to Noorjahan @ Banumathi and her children based on the ex parte decree of the trial Court and now that the final orders of the Trial Court being in favour of one Kursheed Unnisa, they are not in a position once again to disburse the amount which was already paid by them. Order IX Rule 13 Civil Procedure Code provides for setting aside the ex parte decree in case the defendant satisfies the Court that there is sufficient cause for his non-appearance on the date of hearing. The defendant against whom ex parte decree is ordered has two options viz., (1) file application under Order IX Rule 13 Civil Procedure Code and (2) file an appeal under Section 96 (2) of Civil Procedure Code. As against the order of setting



aside the ex parte decree, neither the plaintiffs in O.S.No.1197 of 1985 or the present appellant filed any appeal/revision. The appellant was one of the defendants in both the suits filed before the trial Court. In such circumstances, the plea taken by the appellant that once payment was made, they cannot be penalised by directing them again to make payment of the terminal benefits. It has also been contended by the learned counsel for the appellant that the disbursement to one of the two claimants was made three years after ex parte decree and that there has to be a reasonable period upto which ex parte decrees can be set aside and belated setting aside the ex parte decree definitely jeopardises interest of the appellant.

8. In such cases of the rival claimants, normally an employer has to obtain necessary indemnity bond from the beneficiary in whose favour payment is made in order to indemnify the employer from making 'wrong payment'. The appellant has not clarified on this aspect. Nevertheless, it is the duty of the employer to comply with the orders of the Court and this Court does not find any perversity in the orders of both the Courts below. There is also no substantial question of law involved in this second appeal and hence, the second appeal deserves to be dismissed.

9. In the result,

- i. the second appeal is dismissed. There shall be no order as to costs.
- ii. the decree and judgment dated 23.12.2003 passed in A.S. No.205 of 2002, on the file of the V Additional City Civil Court, Chennai and the decree and judgment in O.S. No.2876 of 1993, on the file of the XV Assistant City Civil are upheld.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

mtl

To

- 1.The V Additional City Civil Court, Chennai.
- 2.The XV Assistant City Civil Court, Chennai.



3. Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.M.Vijay Anand, Advocate, S.R.No.49595

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SR-II (CO)
CB(29/10/2021)