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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2021

PRONOUNCED ON : 10.03.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.986 of 2009

Aswathi Minerals Private Limited,
Represented by its
Director Mr.K.Murali,
153/1 Pankaja Mill Road,
Ramanathapuram,
Coimbatore 641 045.

...Appellant/Plaintiff

Vs.

MPL Parts and Services Ltd.,
Represented by its M.D
Mr.Ravindranathan,
No.12, Dr.Nair Road,
T.Nagar,
Chennai 600 017.

...Respondent/Defendant

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the learned Principal District Judge of Coimbatore dated 29.09.2006 passed in A.S.No.121 of 2005 dismissing the appeal, confirming the decree and judgment of the I Additional Subordinate Judge of Coimbatore in O.S.No.631 of 2002 dated 05.07.2005.

For Appellant : Mr.C.Seethapathi

For Respondent : No appearance
Set exparte
vide order dated 25.02.2021

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 29.09.2006 passed in A.S.No.121 of 2005 on the file of the Principal District Court, Coimbatore, confirming the judgment and decree dated 05.07.2005 passed in O.S.No.631 of



2002 on the file of the I Additional Subordinate Court, Coimbatore.

2. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

3. The plaintiff in O.S.No.631 of 2002 is the appellant in this second appeal.

4. Suit for recovery of money.

5. The case of the plaintiff in brief is that the plaintiff's company is involved in promoting Chemicals and Lubricants and had dealings with the defendant on the basis of an agreement and certain terms and conditions dated 28.01.1999 and based on the abovesaid agreement, the plaintiff's company was appointed as the sub-dealer for promoting the products of the defendant's company. The abovesaid agreement was valid for a period of one year with effect from 01.02.1999 and the plaintiff's company is eligible for 4 ½% towards the payment of commission on the net invoice value raised by the defendant or by M/s.Castrol India Limited. As on 20.03.2001, the commission payable by the defendant's company to the plaintiff as per the net invoice was Rs.1,10,403/-. In spite of repeated demands and requests, the defendant has not chosen to settle the plaintiff's due. The plaintiff came to understand that the defendant's company had paid the amount to one K.P.M.Menon and K.P.M.Menon was only a representative of the plaintiff's company and the defendant is not entitled to issue the cheque with regard to the dues payable to the plaintiff's company in the personal name of its representative. The abovesaid representative is no more in the services of the plaintiff. The payment to the representative would not amount to the payment to the plaintiff's company, particularly when the transaction is only between the plaintiff's company and the defendant's company. Hence the plaintiff issued the legal notice dated 20.03.2001, calling upon the defendant to settle the dues for a sum of Rs.1,10,403/- with interest. The defendant sent a reply containing false allegations putting forth that the amount had been paid to one K.P.M.Menon by way of a cheque and the allegations in the reply notice are totally false. Hence, according to the plaintiff, it has been necessitated to lay the suit for appropriate reliefs.

6. The defendant resisted the plaintiff's suit contending that the suit is not maintainable either in law or on facts. By virtue of the agreement dated 28.01.1999, the plaintiff was not appointed as the sub-dealer for promoting the products of the defendant's company and one K.P.M.Menon was appointed by the defendant's company as per the abovesaid agreement as its sub-



dealer for promoting the products of the defendant's company and the plaintiff was not appointed. The same could be gathered from the recitals contained in the agreement as abovestated. There is no scrap of paper on the part of the plaintiff to evidence that the plaintiff's company was appointed as the sub-dealer of the defendant's company or recognized as such. The legal notice issued by the plaintiff is untenable and the same had been properly replied. The defendant's company had only dealings with K.P.M.Menon, who gave his address as K.P.M.Menon, M/s. Aswathi Minerals (P) Ltd, 153/1 Pankaj Mills Road, Ramanathapuram, Coimbatore and reference has been made in the legal notice about the commission paid to K.P.M.Menon by the defendant. The payment of the commission to K.P.M.Menon by the defendant is in accordance with the agreement dated 28.01.1999. The plaintiff has no cause of action to lay the suit. The suit is bad for non-joinder of K.P.M.Menon as a party to the proceedings. The defendant is not liable to pay any amount to the plaintiff by virtue of the agreement dated 28.01.1999. Hence the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A5 were marked. On the side of the defendant, D.W.1 was examined. Ex.B1 was marked.

8. On a consideration of the oral and documentary evidence adduced in the matter and the submissions putforth by the respective parties, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the second appeal has been preferred by the defendant.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

i. Does payment made to and in the name of the representative of a company incorporated under the Companies Act, 1956, amount to payment to the company itself?

ii. Does the first appellate court have jurisdiction to deal with a finding of the trial court favouring the appellant before it when the respondent has not challenged the same and the issue was also not before it?

10. The suit has been laid by the plaintiff/appellant for the recovery of money which according to the plaintiff is the commission payable by the defendant in the light of the agreement entered into between the plaintiff and the defendant dated 28.01.1999, whereunder, according to the plaintiff, it had been appointed as the sub-dealer for promoting the products of the defendant and thus it is putforth by the plaintiff that as per the terms and conditions of the abovesaid agreement, the



plaintiff is eligible for 4 ½ % commission on the net invoice value raised by the defendant and thus it is stated as on 20.03.2001, the commission payable by the defendant to the plaintiff amounts to Rs.1,10,403/- and despite the repeated demands, the defendant had failed to settle the abovesaid amount and the plaintiff came to understand that the defendant has paid the amount to one K.P.M.Menon, who is only a representative of the plaintiff's company and also no more in the services of the plaintiff, by way of a cheque and therefore, according to the plaintiff, when the agreement dated 28.01.1999 is only between the plaintiff and the defendant, the payment made by the defendant to an individual who is noway connected with the abovesaid agreement, would not amount to the payment to the plaintiff and as the defendant failed to pay the amount, despite the issuance of the legal notice and instead sent a reply containing false allegations, according to the plaintiff, it has been necessitated to lay the suit against the defendant for appropriate reliefs.

11. Per contra, the defendant would putforth the case that as per the agreement dated 28.01.1999, the plaintiff was not appointed as the dealer for promoting the products of the defendant's company and only one K.P.M.Menon was appointed by the defendant as the sub-dealer and in such view of the matter, it is putforth that the plaintiff's claim of the commission charges as if it had been appointed as the sub-dealer on the basis of the agreement is totally untenable and contrary to the business ethics and there is no material placed on the part of the plaintiff that K.P.M.Menon was its representative at any point of time and therefore according to the defendant, as K.P.M.Menon had been paid the amount by way of cheque in accordance with the terms of the agreement dated 28.11.1999, there is no cause of action for the plaintiff to institute the suit and accordingly prayed for the dismissal of the plaintiff's suit.

12. In the light of the abovesaid pleas putforth by the respective parties, at the foremost, it is for the plaintiff to establish that it had been appointed as the sub-dealer by the defendant's company for promoting the products of the defendant's company by way of an agreement dated 28.11.1999. The copy of the agreement dated 28.11.1999 has been marked as Ex.A1. On a reading of the contents found in Ex.A1, as rightly concluded by the first appellate court, it is revealed that the agreement of sub-dealership had been given by the defendant only to K.P.M.Menon and not to the plaintiff. It is found that K.P.M.Menon has been addressed in singular and when there is nothing to indicate that Ex.A1 has been directed to the plaintiff's company and on the other hand, it has been directed only to K.P.M.Menon in his individual capacity and when the



plaintiff has not placed any material worth acceptance to show that K.P.M.Menon was in the services of the plaintiff's company at any point of time and left subsequently, particularly he was in the services of the plaintiff's company during the relevant period and when in Ex.A1, K.P.M.Menon has not been addressed as the representative or the director of the plaintiff's company and therefore merely because the address of the plaintiff's company has been mentioned in Ex.A1 and without any material pointing to the fact that K.P.M.Menon had been in the services of the plaintiff's company and been authorized and thus acted on behalf of the plaintiff's company, as held by the first appellate court, the inevitable inclusion that could be arrived at is that it is only K.P.M.Menon who had been appointed as the sub-dealer in his individual capacity and therefore the claim of the plaintiff that it had been appointed as the sub-dealer based on the agreement Ex.A1, as such, cannot be countenanced.

13. P.W.1 examined on behalf of the plaintiff, during the course of cross examination, would claim that he is the Managing Director of the plaintiff's company along with two more Directors and admitted that in the agreement marked as Ex.A1, his name has not been reflected as representing the plaintiff's company and furthermore, would also admit that he has not filed any document to evidence that the agreement dated 28.11.1999 marked as Ex.A1 has been accepted or acknowledged by the Directors of the plaintiff's company and though would claim that they are maintaining the records evidencing the business transactions entered into with the defendant's company for the period of one year with effect from 01.02.1999 and the same are available in the office and admitted that the same has not been whispered in the plaint. If really, as claimed by the plaintiff's company, it is only the plaintiff's company who had been appointed as the sub-dealer, it is evident that the plaintiff would have undertaken the business dealings with reference to the defendant's products based on the agreement Ex.A1 and to sustain its case, the plaintiff would have endeavored to produce the relevant documents to firmly establish that it is only the plaintiff who had been acting as the sub-dealer of the defendant's products during the relevant period based on Ex.A1. On the other hand, despite the availability or the custody of the best evidence pointing to the sub-dealership said to have been carried out by the plaintiff based on Ex.A1 agreement, the plaintiff had suppressed the same, for the reasons best known to the plaintiff. Resultantly, we have only to take the adverse inference against the plaintiff for not producing the best evidence.

14. As above pointed out, merely from the address of the plaintiff's company mentioned in Ex.A1 agreement, below the name of K.P.M.Menon, it cannot be construed straightaway, as



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contended by the plaintiff's counsel, that K.P.M.Menon was only a representative of the plaintiff's company and no more in the services of the plaintiff's company and therefore the discharge of the commission amount to K.P.M.Menon would not amount to discharge of the said amount to the plaintiff's company. When the abovesaid claim of the plaintiff has been challenged by the defendant in the written statement, the plaintiff should have placed acceptable and reliable materials that K.P.M.Menon was in the services of the plaintiff's company at any point of time, particularly at the relevant period. In this connection, P.W.1 would claim that K.P.M.Menon was appointed in their company during 1999, however, would state that no order of appointment has been issued to K.P.M.Menon and further would state that he does not remember when he was inducted into the plaintiff's company and also state that he does not know when he left the plaintiff's company and admitted that the particulars with reference to the service of K.P.M.Menon in the plaintiff's company had not been spelt out in the plaint or in the legal notice marked as Ex.A3. In the light of the abovesaid factors, the claim of the plaintiff that K.P.M.Menon was in the services of the plaintiff at one point of time and subsequently left the plaintiff, as such, cannot be countenanced. If that be so, the records pointing to the same would have produced by the plaintiff or P.W.1, the Managing Director of the plaintiff's company would have come out with the clear particulars with reference to the employment of K.P.M.Menon in the plaintiff's company as to when he had been appointed, what was the nature of the business undertaken by him in the plaintiff's company and when he left the company etc., Atleast to shed more light qua the abovesaid facts, when it has been admitted by the plaintiff in the plaint as well as by P.W.1 that the commission amount had been paid to K.P.M.Menon by way of a cheque by the defendant's company and the date of cheque has also been clearly mentioned in the plaint as wells as by P.W.1, to clarify all the abovesaid factors, as rightly contended by the defendant, the plaintiff should have implead K.P.M.Menon as a party to the proceedings and if K.P.M.Menon had been added as a party, we would have come to know as to whether he had been in the services of the plaintiff's company as claimed by the plaintiff and what was his role in the plaintiff's company etc., When nothing has been placed on record by the plaintiff that K.P.M.Menon was at any point of time in the services of the plaintiff's company and as above pointed out, when Ex.A1 agreement is found to be not entered into between the plaintiff and entered into only with K.P.M.Menon independently and when no nexus between K.P.M.Menon and the plaintiff's company at any point of time has been established by the plaintiff, the claim of the plaintiff that it had been appointed as the sub-dealer and K.P.M.Menon was only a representative of the plaintiff's company, as such, cannot be accepted in any manner.



15. The plaintiff's counsel would also submit that the statement of account projected in the matter marked as Ex.A2 would also go to disclose that the commission amount should be paid only to the plaintiff's company and not to K.P.M.Menon. On a perusal of the statement of account marked as Ex.A2, it is seen that the same is not written on the letter pad of the plaintiff's company. Further, the author of the statement of account has not signed the same. It is not clear as to whether Ex.A2 had been really submitted to the defendant's company, there is no proof evidencing that Ex.A2 statement of account had been acknowledged by the defendant. Further, there is an endorsement in the second page of Ex.A2 mentioning " Let us issue a cheque to Aswathi towards the commission" It is not known or made clear or even established by the plaintiff that the initial below the said endorsement is that of the defendant. It does not bear the date and when the plaintiff has marked Ex.A2 stating that it is the statement of account prepared by the plaintiff and when the plaintiff is found to have not even signed the statement of account, as abovestated, when it is not established by the plaintiff, that it had been sent to the defendant and the defendant has acknowledged the same and when the endorsement, as above pointed out, has also not been established to have been made by the defendant, in such view of the matter, merely from Ex.A2, it cannot be held that the plaintiff had been appointed as the sub-dealer pursuant to Ex.A1 agreement as sought to be projected by the plaintiff. During the course of cross examination of P.W.1, it has been suggested to him that Ex.A2 statement of account has been prepared for the purpose of the case, though P.W.1 had denied the same, considering the abovesaid facts, when the authenticity of Ex.A2 has not been established by the plaintiff in any manner, no credence could be attached to the same.

16. The plaintiff's counsel would also put forth the contention that in the reply notice sent by the defendant marked as Ex.A5, it has been admitted that K.P.M.Menon represented the plaintiff's company and obtained the sub-dealership. No doubt, in the reply notice K.P.M.Menon is said to be appointed as the sub-dealer representing the plaintiff's company. However, as above pointed out, the plaintiff has not placed any material to hold safely that K.P.M.Menon was in the services of the plaintiff's company and left subsequently. If the reply notice is to be taken as the case of the defendant, when it is found that, by way of the reply notice, the defendant has clearly averred that the cheque had been issued for the commission amount to K.P.M.Menon in full quit of the settlement of the commission, when the issuance of the cheque in favour of K.P.M.Menon has not been disputed by the plaintiff as adverted to earlier, it is for the plaintiff to establish, assuming that



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K.P.M.Menon represented the plaintiff's company, that K.P.M.Menon had no authority to receive the cheque in his name on behalf of the plaintiff. Therefore, the plaintiff's counsel cannot take advantage of the contents available in the reply notice, to suit his client's case. On a reading of the reply notice wholly, it is evident that the defendant has clearly averred that it is only K.P.M.Menon who had been appointed as the sub-dealer under Ex.A1 agreement and accordingly the cheque had been issued only in the name of K.P.M.Menon. Even according to the plaintiff, K.P.M.Menon is the representative and infact had entered into the agreement with the defendant, as per Ex.A1, when the cheque had been issued in favour of K.P.M.Menon in accordance with the agreement, as rightly putforth by the defendant, in the reply notice, if the plaintiff has any claim or misunderstanding with K.P.M.Menon with reference to the issues involved, it is for the plaintiff to take appropriate proceedings against him and therefore the plaintiff without resorting to necessary action as per law against K.P.M.Menon, is found to have laid the case without any basis against the defendant. As above pointed out, when the plaintiff has miserably failed to establish that pursuant to the sub-dealership agreement under Ex.A2, it had been dealing the products of the defendant's company and when no material with reference to the same had been projected by the plaintiff, in all, it is seen that as rightly held by the first appellate court, the plaintiff has not been appointed as the sub-dealer and only K.P.M.Menon has been appointed as the sub-dealer under Ex.A2 agreement. In such view of the matter, the payment of the commission amount by the defendant's company in favour of K.P.M.Menon is correct and in accordance with Ex.A1 agreement and not liable to be questioned by the plaintiff.

17. The plaintiff's counsel would putforth the contention that the trial court having held that the defendant had appointed the plaintiff represented by K.P.M.Menon as the sub-dealer, the first appellate court would not have the jurisdiction to deal with the abovesaid finding of the trial court, particularly when the defendant has not challenged the same and the issue was also not before it. However the abovesaid contention does not merit acceptance.

18. Considering the provisions of Section 96 and Order 41 Rule 22 CPC, it is noted that the finding of any issue against the party could be challenged by way of cross objection in terms of the amended provisions of Order 41 Rule 21 CPC. But such finding of cross objection is not necessary to dispute the said finding and the defendant has the right to support the ultimate decree passed by the trial court on the grounds other than which weighed with the trial court and even in the terms of Order 41 Rule 33 CPC, the appellate court has the jurisdiction to pass



any order which ought to have been passed or made in the proceedings before it. The abovesaid position of law has been outlined by the Apex Court in the decision reported in 2020 (15) Supreme Court Cases 681 [State of Andhra Pradesh and others Vs. B.Ranga Reddy (dead) by Legal Representatives and others] as follows:

A. Civil Procedure Code, 1908 - Order 41 Rule 22 and 33- Applicability of Order 41 Rule 22 - Principles explained.

It is the decree against which an appeal lies in terms of Section 96 CPC. Decree in terms of Section 2(2) CPC means formal expression of an adjudication conclusively determining the rights of the parties. The defendant State could not file an appeal against a decree which was of a dismissal of a suit simpliciter. The findings on issue 1 against the State could be challenged by way of cross-objections in terms of amended provisions of Order 41 Rule 22 CPC but such filing of cross-objection is not necessary to dispute the findings recorded in Issue 1 as the defendants have a right to support the ultimate decree passed by the trial court of dismissal of suit on grounds other than which weighed with the trial court. Even in terms of Order 41 Rule 33 CPC, the appellate court has the jurisdiction to pass any order which ought to have passed or made in proceeding before it.

19. In the decision reported in 2003(9) SCC 606 [Banarsi and Others Vs. Ram Phal], the Apex Court has explained the nature and scope of Order 41 Rule 22 CPC with reference to the necessity of filing cross objection against the perverse finding recorded in the judgment or decree and after considering the above position of law prior to the amendments effected in the Code of Civil Procedure by Amendment Act 104/1976 as well as the position of law after the amendments effected in the Code of Civil Procedure as per the Amendment Act 104 /1976 and enunciated that as per the amendments effected in the Code of Civil Procedure, pursuant to the Amendment Act 104 /1976, the filing of the cross objection against the adverse finding is permitted and further held that prior to the amendment no appeal lies against a mere finding, as the appeal remedy is only available against the decree and not against the judgment. However, after the amendment, it has been held by the Apex Court that in the light of the explanation to Order 41 Rule 22(1), though still it is not necessary for the respondent to take any cross objection challenging any finding adverse to him as the decree is entirely in his favour yet, he may support the decree



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Upon hearing, respondent may object to decree as if he had preferred a separate appeal.-(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal, provided he has filed such' objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

[Explanation.-A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.]

(2)- (3) * * *

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the court thinks fit."

Text Pre-amendment:

R.22. Upon hearing, respondent may object to decree as if he had preferred a separate appeal.-(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.



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(2)-(3) * * *

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the court thinks fit."

8. Sections 96 and 100 of the CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal (See Phoolchand and Anr. v. Gopal Lal, [1967] 3 SCR 153; Smt. Jatan Kanwar Golcha v. M/s Golcha Properties (P) Ltd., [1970] 3 SCC 573; Smt. Ganga Bai v. Vijay Kumar and Ors., [1974] 2 SCC 393. No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 of the CPC provide for an appeal against decree and not against judgment.

9. Any respondent though he may not have filed an appeal from any part of the decree may still support the decree to the extent to which it is already in his favour by laying challenge to a finding recorded in the impugned judgment against him. Where a plaintiff seeks a decree against the defendant on grounds (A) and (B), any one of the two grounds being enough to entitle the plaintiff to a decree and the Court has passed a decree on ground (A) deciding it for the plaintiff while ground (B) has been decided against the plaintiff, in an appeal preferred by the defendant, in spite of the finding on ground (A) being reversed the plaintiff as a respondent can still seek to support the decree by challenging finding on ground (B) and persuade the appellate court to form an opinion that in spite of the finding on ground (A) being reversed to the benefit of defendant-appellant the decree could still be sustained by reversing the finding on ground (B) though the plaintiff-respondent has neither preferred an appeal of his own nor taken any cross objection. A right to file cross objection is the exercise of right to appeal though in a different form. It was observed in Sahadu Gangaram Bhagade v. Special Deputy Collector. Ahmednagar



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and Anr., [1971] 1 SCR 146 that the right given to a respondent in an appeal to file cross objection is a right given to the same extent as is a right of appeal to lay challenge to the impugned decree if he can be said to be aggrieved thereby. Taking any cross objection is the exercise of right of appeal and takes the place of cross-appeal though the form differs. Thus it is clear that just as an appeal is preferred by a person aggrieved by the decree so also a cross objection is preferred by one who can be said to be aggrieved by the decree. A party who has fully succeeded in the suit can and needs to neither prefer an appeal nor take any cross objection though certain finding may be against him. Appeal and cross-objection - both are filed against decree and not against judgment and certainly not against any finding recorded in a judgment. This was well-settled position of law under the unamended CPC.

10. The CPC Amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross objection. The amendment inserted by 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:-

(i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent;

(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent;

(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.



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11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross objection. The law remains so post amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross objection to & finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent.

20. The abovesaid proposition of law enunciated by the Apex Court had been reiterated in the subsequent decision reported in 2013 (9) SCC 261 [Hardevinder Singh Vs. Paramjit Singh and Others] as follows:

B. Civil Procedure Code, 1908 - Order 41 Rule 22(1) - Respondent's right to file cross objection in appeal - Nature and scope of - Filing of cross-objection against adverse finding recorded in judgment of decree - Is permissible after amendment of Order 41 Rule 22 vide Act 104 of 1976 - Withdrawal of appeal or dismissal thereof for default - Would not affect adjudication of said cross-objection on merits.

Held:



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After the 1976 amendment of Order 41 Rule 22, the insertion made in sub-rule (1) thereof makes it permissible to file a cross-objection against a finding. The difference is basically that a respondent may defend himself without taking recourse to file a cross-objection to the extent the decree stands in his favour, but if he intends to assail any part of the decree, it is obligatory on his part to file the cross-objection. Post-amendment, read in the light of the Explanation to Order 41 Rule 22(1) though it is still not necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour, yet he may support the decree without cross-objection. It gives him the right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue. After the aforesaid amendment in CPC, if the appeal stands withdrawn or dismissed for default, the cross-objection taken to a finding by the respondent would still be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC.

Banarsi v. Ram Phal, (2003) 9 SCC 606 relied on

Applying the abovesaid principles of law to the case at hand, it is found that the defendant is entitled to challenge the adverse finding rendered against it by the trial court also while supporting the decree in its favour without preferring any cross objection. What is provided in the explanation in Order 41 Rule 22 CPC (after the amendment) is that the defendant is also given the right to take cross objection to a finding recorded against him while answering an issue or while dealing with the issue or even without filing the cross objection is still entitled to support the decree, even on the issue that was held against him by the trial court without filing the cross objection. The position of law being above, the contention of the plaintiff's counsel that the first appellate court had acted without jurisdiction in dealing with the finding of the trial court favouring the plaintiff without the defendant challenging the same, as such, cannot be sustained in the eyes of law.

21. For the reasons aforesaid, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendant.

22. In conclusion, the judgment and decree dated 29.09.2006 passed in A.S.No.121 of 2005 on the file of the Principal District, Coimbatore, confirming the judgment and decree dated 05.07.2005 passed in O.S.No.631 of 2002 on the file of the I Additional Subordinate Court, Coimbatore are confirmed. Resultantly, the second appeal is dismissed. No costs.



Consequently, connected miscellaneous petition, if any, is closed.

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Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Principal District Court,
Coimbatore.
2. The I Additional Subordinate Judge,
I Additional Subordinate Court,
Coimbatore.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

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