



C.M.A.No.82 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.82 of 2017

And

C.M.P.No.689 of 2017

Rajendra Kumar H.Jain
Prop. M/s.Uni-Pharm of India

... Appellant

Vs.

C.Jugraj Jain

... Respondent

Prayer:

Civil Miscellaneous Appeal filed under Order 43 Rule 1(T) of C.P.C., to set aside the order dated 26.10.2016 passed in C.M.P.No.19 of 2016 in A.S.No.609 of 2008 on the file of the XVIII Additional City Civil Court, Chennai.

For Appellant : Ms.S.Geetha
For Respondent : Mr.P.Prithvi Chopda

J U D G M E N T

This appeal has been filed seeking to set aside the order dated 26.10.2016 passed in C.M.P.No.19 of 2016 in A.S.No.609 of 2008 on the file of the XVIII Additional City Civil Court, Chennai.



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2.The learned counsel appearing for the appellant submitted that the respondent/ plaintiff filed a suit in O.S.No.1695 of 2005 on the file of XIII Assistant City Civil Court for decree against the appellant/ defendant to pay a sum of Rs.4,89,100/- together with interest on the principal sum of Rs.3,65,000/- and at the rate of 24% per annum till the date of realization and the said suit was dismissed on 21.07.2008, after trial, against which, the respondent/ plaintiff filed first appeal in A.S.No.609 of 2006 and the Lower Appellate Court passed exparte order against the appellant/ defendant on 20.07.2009. Thereafter, the appellant/ defendant filed petition seeking to set aside the exparte order in C.M.P.No.19 of 2016 in A.S.No.609 of 2008 and the said petition was dismissed on 26.10.2016. Aggrieved by the same, the appellant has filed this appeal.

3.The learned counsel appearing for the appellant further submitted that during the pendency of this appeal, the matter was amicably settled inbetween the parties. To that effect, the learned counsel filed Joint Memo of Compromise filed by the appellant and the respondent dated 20.12.2023, signed by the appellant, learned counsel for appellant, respondent and the learned counsel for the respondent.



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4.The learned counsel appearing for the respondent prayed that since the matter was settled inbetween the parties, Court Fee may be ordered to be refunded in favour of the respondent/ plaintiff.

5.The relevant portion of the Joint Memo of Compromise filed by the appellant and the respondent, dated 20.12.2023, is extracted hereunder:

" JOINT MEMO OF COMPROMISE
FILED BY THE APPELLANT AND THE
RESPONDENT UNDER ORDER XXIII Rule 3
R/w Sec.89 CPC

3. It is humbly submitted that for the sake of convenience the parties are referred to as per their respective litigative status in the Trial Court.

4. It is humbly submitted that the plaintiff had filed a suit in O.S.No.1695 of 2005 on the file on the XIII Assistant City Civil Judge, for decree against the Defendant to pay a sum of Rs.4,89,100/- (Four Lakhs Eighty Nine Thousand and Hundred Only) together with interest on the principal sum of Rs.3,65,000/- and at the rate of 24% per annum till the date



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of realization. The suit was dismissed by the Hon'ble XIII Assistant City Civil Judge on 21.07.2008, after an elaborate trial.

5. It is humbly submitted that the Plaintiff had filed a First Appeal in A.S.No.609 of 2006, against the decree and judgment dated 21.07.2008 and the Hon'ble Lower Appellate Court was pleased to direct summons to the Defendant, which remained unserved. The Hon'ble Lower Appellate Court had directed to issue paper publication in 'Maalaimalar Tamil daily' and thereafter, was pleased to pass an Ex-parte order against defendant on 20.07.2009 reversing the judgment and decree passed in O.S.No.1695 of 2005 on the file of the Hon'ble XIII Assistant City Civil Judge.

6. It is humbly submitted that the Defendant had filed a petition to set aside before the Hon'ble Lower Appellate Court in CMP No.19 of 2016 in A.S.No.609 of 2008 under Order 41 Rule 21 of CPC and the same was dismissed by the Hon'ble Lower Appellate Court on 26.10.2016 against which the present Civil Miscellaneous Appeal was preferred before this Hon'ble Court.



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7. It is humbly submitted that both the Plaintiff and Defendant have agreed to settle the dispute amicably while the subject case was referred to mediation and by the intervention of Learned Mediator and the respective counsels for the parties.

8. It is humbly submitted that both the Plaintiff and Defendant have reconciled their accounts.

9. It is humbly submitted that there is a full and final satisfaction among the plaintiff and Defendant after reconciliation of their accounts and that there are no other mutual claims against each other, and the judgment and decree in the O.S.No.1695 of 2005 may be recorded as settled out of court by mediation.

10. It is humbly submitted that the Plaintiff shall be entitled to seek for refund of the entire court fee paid in respect of O.S.No.1695 of 2005 and A.S.No.609 of 2008 as per Section 89 of CPC and that the Defendant has no objection to the refund of the same.

11. This memo of compromise may form part



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of the judgment."

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6.The Joint Memo of Compromise filed by the appellant and the respondent, dated 20.12.2023, shall form part and parcel of the Judgment. Liberty is granted to the respondent / plaintiff to file appropriate petition for refund of the Court Fee.

7.The civil miscellaneous appeal is disposed of in terms of the Joint Memo of Compromise. No costs. Consequently, the connected miscellaneous petition is closed.

20.12.2023

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The XVIII Additional City Civil Court,
Chennai.



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