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C.R.P(NPD)(MD).No.256 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.06.2023

Pronounced on : 30.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(NPD)(MD).No.256 of 2018

and

C.M.P(MD)No.1121 of 2018

Sindha Beevi

... Petitioner/Defendant

Vs.

S.M.K.Peer Mohammed
represented through his Power Agent
Peerpathu.

... Respondent/Plaintiff

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 18.07.2017 passed in I.A.No.06 of 2016 in O.S.No.127 of 2010 on the file of the District Munsif-cum-Judicial Magistrate, Cheranmahadevi.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.S.Suresh Kumar Isaac Paul



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ORDER

This Civil Revision Petition is filed against the fair order and decreetal order dated 18.07.2017 passed in I.A.No.6 of 2016 in O.S.No. 127 of 2010 on the file of the District Munsif-cum-Judicial Magistrate, Cheranmahadevi.

2. The brief facts of the case:

The revision petitioner is the defendant in O.S.No.127 of 2010 on the file of the District Munsif-cum-Judicial Magistrate, Cheranmahadevi. The revision respondent has filed the main suit in O.S.No.127 of 2010 against the revision petitioner for mandatory injunction. An ex-parte decree was passed in the suit on 06.12.2010. The revision petitioner/defendant filed petition in I.A.No.6 of 2016 to condone the delay of 1736 days in filing petition for setting aside decree. The petition was resisted by the revision respondent/plaintiff. After hearing both, the Trial Court had dismissed the petition on 18.07.2017. Aggrieved by the dismissal order the revision petitioner/defendant has preferred this Civil Revision Petition.

3. Heard both side and perused the records in this Civil Revision Petition.



4. The learned counsel appearing for the petitioner has argued that the petitioner was set ex-parte and the Trial Court has passed ex-parte judgment on 06.12.2010. The Trial Court has not made minimum requirement of consideration of pleadings. The ex-parte judgment of the Trial Court is not in conformity with provision of Order 20 Rule 4 of the Civil Procedure Code. The suit is for mandatory injunction for removal compound wall and while so, the judgment has to make discussion about the documents. The judgment should contain statement of the case, the points for determination, the decision thereon and the reasons for such decision. A judgment which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called as a judgment. But, in this case the judgment of Trial Court has not contained the minimum facts and application of those facts on evidence. Of course, the petitioner remained ex-parte as she was affected by jaundice and after her recovery her husband suffered from jaundice. The Trial Court has not assigned convincing reasons while dismissing the application for condonation of delay bearing in mind of the ex-parte judgment passed in the suit, that too, which is filed for mandatory injunction for removal of wall. The petitioner has right over the wall. The Trial Court has not considered the reason assigned by the petitioner, who



has a valid case to defend in the suit and she must be given an opportunity and the suit has to be decided on merits. In support of his argument the learned counsel for the petitioner has relied on the following citations.

1) **2001 (1) CTC 683 (Ratansingh Vs. Vijaysingh and Ors.)**, wherein the Hon'ble Supreme Court has held in paragraph No.11 as follows:

“11. In order that a decision of a court should become a decree there must be an adjudication in a suit and such adjudication must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit and such determination must be of a conclusive nature”.

2) **2011(3) CTC 168 (Meenakshisundaram Textiles Vs. Valliammal Textiles Ltd.)**, wherein the Division Bench of this Court has held in paragraph No.16 as follows:

“16.Code of Civil Procedure does not define either an ex parte judgment or an ex parte decree. It refers only to a judgment and a decree. In the event a judgment is rendered when the defendant fails to defend the suit by his absence, that judgment is known to be an ex parte judgment and the decree drawn on the basis of that judgment is known as an



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exparte decree. Hence, judgment must be available to the extent to indicate that the Court has applied its mind to the pleading, relief claimed thereunder, the evidence and the conclusion arrived at by the Court on the above.”

3) 2019 (5) Law Weekly 161 (R.Stella Vs. V.Antony Francis), wherein this Court has held in paragraph Nos.15 and 17 as follows:

“15.This judgment suffers from two patent illegalities. The first illegality is that the judgment is not in conformity with Order XX Rules 4 & 5 of the Civil Procedure Code, and it is apparently, on the face of it illegal.

17.The above said facts, which pertains to mandatory legal requirements, ought to have been considered by the Court below, while deciding the application filed for condoning the delay in filing the petition to set aside the exparte decree.”

4) 2020 (5) Law Weekly 361 (Shanthimalai Trust represented by its Managing Trustee Vs. Arunachala Education and Environment Development Trust (AEED Trust) represented by its Managing Trustee), wherein this Court observed and held in paragraph



Nos.23, 24, 25, 26 and 27 are as follows:

“23.Clause (c) of Sub Rule (1) of Rule 6 assumes significance in this regard. The Court is required to postpone the hearing of the suit to a future date, if it is proved that the summons were served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons. Therefore, when the Court finds that some more time was left for the defendant to appear and answer the summons, as per Rule 1 of Order 5, the Court has to necessarily await or direct issuance fresh summons under Clause (c) of Sub Rule (1) of Rule 6 of Order 9 of the Code of Civil Procedure.

24. Any contrary interpretation would lead to rendering the provisions of Rule 1 of Order 5 otiose. Once the Code mandates that the defendant shall have a minimum of 30 days for filing his statement of defence, it automatically implies that an exparte decree shall not be passed within those 30 days. Even in Service Law, if a notice is issued to a delinquent calling upon him to furnish his explanation within a specific period and an order is passed before the expiry of the said period, the order is unsustainable. The said principle of law would also apply to a Civil Court, after the 2002 Amendment of the Code of



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Civil Procedure and a Civil Court cannot and should not proceed to pass an ex parte judgment or a decree within 30 days from the date of service of summons in the suit.

25. I have no doubt in my mind that the action of the Sub Court, Thiruvannamalai, in proceeding ex parte within 30 days from the date of filing of the suit, leave alone from the date of service of summons and granting an ex parte decree on the 28th day of filing of the Suit is clearly illegal and it does not require any further examination to be declared as such.

26. The next ground urged by MR.V.Selvaraj, is also quite relevant. The ex parte judgment dated 28.04.2009 reads as follows:

“In the Court of the Principal Subordinate Judge, Tiruvannamalai

*Present: Thiru M.Sambasivam, B.Sc., B.L.,
Principal Subordinate Judge.*

Tuesday, the 28th day of April, 2009.

Original suit No.47 of 2009

Arunachala Education and Environment

Development Trust (AEED Trust)

Rep by its Managing Trustee - Plaintiff

~VS~

1.Shanthimalai Trust, Rep. By its Managing Trustee.

2.The State of Tamil Nadu Rep. By its District Collector.

*3.The District Revenue Officer,
Tiruvannamalai.*

*4.The Revenue Divisional officer,
Tiruvannamalai.*



5.The Tashildar, Tiruvannamalai ...Defendants

This original suit has been coming before me for hearing in the presence of Thiru K.Srinivasan, Advocate for the plaintiff, and the defendants 1 to 5 were called absent, set exparte, as such this court made the following:

JUDGMENT

Suit for declaring the title of the plaintiff trust over the suit properties and restrain the 1st defendant trust and its men by means of permanent injunction from ever interfering with the peaceful possession and enjoyment of the plaintiff trust over the suit properties and restrain the defendants 2 to 5 by means of permanent injunction from cancelling the patta granted in favour of the plaintiff and for costs.

2. Proof Affidavit of P.W.1 filed and recorded and Ex.A1 to A15 are marked. Suit is decreed as prayed for with costs.

Pronounced by me in the open court, this the 28th day of April, 2009.

s/d

*Principal Subordinate Judge,
Tiruvannamalai."*

27. This definitely is not in compliance with the provisions of Order 41 Rule 31 of the Code of Civil Procedure. This Court has repeatedly pointed out that even in cases where the defendants remain exparte, the Court is bound to apply its mind to the facts of the case and consider the evidence offered by the plaintiff at least on a prima facie basis, before coming to a conclusion. It could be seen that the judgment



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suffers total non-application of mind and not even one single requirement of law have been adhered to. The judgment extracts the prayer in the suit and states that proof affidavit of P.W.1 filed and recorded Exs.A1 to A15 marked, the suit is decreed as prayed for with cost. This is nothing but total dereliction of duty on the part of the learned Subordinate Judge.”

5. Per contra, the learned counsel for the respondents has vehemently contended that the respondent has filed the suit for mandatory injunction for removal of compound wall made by the petitioner. So she very well knew about the case. The petitioner was set ex-parte on 03.11.2010. An ex-parte judgment was passed on 06.12.2010 after lapse of 30 days from 03.11.2010. The petitioner has not produced any acceptable material to substantiate her alleged ailment regarding jaundice. The delay 1763 days delay is not an ordinary delay and in order to prevent the respondent from enjoying the fruits of the decree and to harass the respondent, the petitioner purposely filed the petition. The Trial Court has correctly passed the impugned order dismissing the petition. The petitioner has no valid case and the Civil Revision Petition may be dismissed.



6. On perusal of records and on hearing both it is clear that the petitioner is defendant in O.S.No.127 of 2010 on the file of the District Munsif-cum-Judicial Magistrate, Cheranmahadevi. She was set ex-parte on 03.11.2010. The ex-parte judgment was passed by the Trial Court on 06.12.2010. Both are residing in same village and the dispute between parties is regarding two walls. The main contention of the revision petitioner is that the judgment is not in conformity with provisions of Civil Procedure Code and when the suit is for mandatory injunction to remove the walls, the Trial Court is bound to apply its mind to the facts of the case and consider the evidence offered by the plaintiff at least on a prima facie basis, before coming to a conclusion even in cases where the defendants remain ex-parte. On perusal of records, it is clear that the Trial Court has passed judgment dated 06.12.2010 as follows:

தீர்ப்பு

“வாதி ஏற்கனவே வா.சா.1 ஆக முதல்நிலை பிரமாண வாக்குமூலத்தின் மூலம் முதல்நிலை விசாரணை செய்யப்பட்டுள்ளார். வா.சா.ஆ.1 மற்றும் 2 ஆகிய சான்றாவணங்கள் குறியீடு செய்யப்பட்டுள்ளது. தீர்ப்பு பகரப்பட்டது. ஆவணங்கள் பரிசீலிக்கப்பட்டது. வாதி கோரியபடி வழக்கு செலவுத் தொகையின்றி தீர்ப்பளிக்கப்படுகிறது. கால அவகாசம் இரண்டு மாதங்கள்.”



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2010-ம் ஆண்டு டிசம்பர் திங்கள் 6-ம்
நாளாகிய இன்று என்னால் அவையறிய
பகரப்பட்டது”.

As this Court repeatedly held in various cases and also relied on by the petitioner side citations reported in **2011(3) CTC 168 and 2020 (5) LW 361** even in ex-parte cases the Trial Court has to make brief summary of facts and to consider the evidence prima facie to come conclusion. A mere perusal of the judgment of Trial Court, basic ingredients of judgment are not available as per the provision of the Code of Civil Procedure. There is no minimum requirement of consideration of plaint and evidence in the above judgment and so, it is not in conformity with provisions of Code of Civil Procedure as rightly argued by the learned counsel for the defendant placing reliance in **2011(3) CTC 168 and 2020 (5) Law Weekly 361**. However, the question arises in this civil revision petition is about the order passed in the petition for condoning the delay of 1736 days in filing petition to set aside the ex-parte judgment and decree. At this juncture, the petitioner's counsel submitted that the respondent has not taken any execution proceedings till date to execute the decree and therefore, the delay may be condoned by giving an opportunity to the petitioner as held by this court in **2019-5 Law weekly 161**. There is no contra material placed by the respondent that he has taken execution proceedings. Hence, the argument of the



petitioner side cannot be brushed aside. The petitioner states that he is illiterate and he suffered by jaundice and took country treatment by staying out of station. Therefore, this court is of the opinion that the petitioner has to be given an opportunity to put forth her case and the case has to be decided on merits. At the same time, the inconvenience caused to the respondent has to be taken into consideration. Considering the above facts and circumstances, the delay is to be condoned by imposing condition to meet out the inconvenience caused to the respondent.

7. In the result, this Civil Revision Petition is allowed on condition that the petitioner shall pay a cost of Rs.5,000/- (Rupees Five Thousand only) to the respondent within a period of two weeks from the date of receipt of a copy of this order, failing which this Civil Revision Petition stands dismissed automatically without any further reference to this Court. No costs. Consequently connected Miscellaneous Petition is closed.

30.08.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The District Munsif-cum-Judicial Magistrate,
Cheranmahadevi.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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