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C.M.A.Nos.1150 & 1151 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.09.2024

Pronounced on : 19.10.2024

CORAM : JUSTICE N.SESHASAYEE

C.M.A.Nos.1150 & 1151 of 2023
and CMP.Nos.11141 & 11142 of 2023

J.Krishna Kumar Mundhra

... Appellant in both CMAs/
Respondent / Defendant

Vs

J.Shyamdev Mudhra

... Respondent in both CMAs/
Petitioner /Plaintiff

COMMON PRAYER : Civil Miscellaneous Appeals filed under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908, praying to set aside the fair and decretal order dated 11.05.2023 made in I.A.No.3 of 2023 & I.A.No.5 of 2023 in O.S.No.3295 of 2023 on the file of the V Assistant Judge / Vacation Judge, III Assistant City Civil Court, Chennai.

For Appellant : Mr.V.Raghavachari, Senior Counsel
Assisted by Mr.P.Krishnan

For Respondent : Mr.N.Muralikumaran, Senior Advocate
M/s.McGan Law Firm



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COMMON JUDGMENT

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The appellant in both the appeals is the younger brother of the respondent herein. He now challenges an order passed by the V Assistant City Civil Court dismissing I.A. No.5 of 2023 in O.S. No.3295 of 2023, which he had filed for vacating the order of ex-parte injunction granted in I.A. No.3 of 2023.

2. The brief facts which are necessary for the current purpose, may be stated as below:

- a) The suit property herein is a residential house in a plot measuring 2784.75 sq.ft. This property is stated to be part of a larger plot measuring more than 10,000 sq.ft. Claiming that the plaintiff is in possession of the said property, he had laid the present suit for bare injunction. The suit was laid on 03.05.2023 before the vacation court. Along with the suit, the plaintiff took out an interlocutory application in I.A. No.3 of 2023 for an order of interim prohibitory injunction against the defendant/appellant herein to protect his possession. That was granted by the trial court.



b) But, according to the defendant, he is in possession of the property.

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Now by virtue of the ex-parte order of injunction passed in I.A. No.3 of 2023, the plaintiff came to the property with several black and white clothed men and attempted to evict him forcibly from the property. According to him, the defendant cell-phonically called the police and the police too responded to the same and came to the scene of occurrence. However, the police could not prevent the plaintiff from taking forcible possession of the property based on the ex-parte interim order of injunction. Therefore, the defendant preferred a complaint, based on which a case was registered against the plaintiff/respondent herein and other unknown persons in Crime No.108 of 2023 on the file of Mambalam Police station for offences under Sections 147, 294(b), 447 and 506(i) IPC.

c) In the following vacation court, the appellant herein took out I.A. No.5 of 2023 for vacating the ex-parte order of injunction. According to the defendant, the learned Vacation Judge was not keen to dispose of the same immediately, but ultimately he did hear both sides and dismissed the application filed by the defendant for vacating the injunction and made the order of interim injunction granted under I.A. No.3 of 2023 absolute.



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d) Challenging this order, the defendant has come forward with these two appeals.

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3. When the matter came up before the vacation court of this court, a learned single Judge of this court passed an order on 13.05.2023 in C.M.P. No.11141 of 2023, suspending the order of injunction granted in I.A. No.3 of 2023.

4. The plaintiff took up this matter before the Hon'ble Supreme Court in SLP (C) No.11163 of 2023 and that came to be disposed of by the Hon'ble Supreme Court vide its order dated 30.05.2023 with a direction to the parties to preserve the status quo that was at the time when the SLP was disposed of. Indeed, the respondent herein raised the issue of maintainability of these appeals before the Hon'ble Supreme Court, and the Supreme Court has directed this court to decide the issue of maintainability. The operative portion of the order of the Hon'ble Supreme Court reads thus:

"Be that as it may, after hearing Mr.Muralikumaran and Mr.S.Nagamuthu, learned senior counsel of the two parties, we are of the opinion that since the appeal is pending before the High Court, it would be better that the appeal be decided expeditiously and, in the meanwhile, the parties shall



maintain status quo as on date. With these observations, special leave petition is disposed of. In case the appeal is to be decided by the learned District Judge, then in that event it shall be transferred to that court by the High Court."

5. This now leaves this court to consider two aspects:

- (a) the maintainability of these appeals; and*
- (b) the sustainability of the order of interim injunction passed by the vacation Judge of the City Civil Court in I.A. No.3 of 2023.*

Since the need to decide the appeals on merits depends on the outcome of the issue of maintainability of the appeals, that issue is taken up.

Issue of Maintainability

6. As could be gathered from the facts-narration above, the vacation court sitting on the original jurisdiction has passed an order of interim injunction. However, only one vacation court is constituted and the same court is vested with both the original jurisdiction as well as appellate jurisdiction. Necessarily an appeal against the order passed by a vacation court cannot be filed before the same court. It is in these circumstances, these appeals came to be filed. However, in its order in SLP (C) No.11163 of 2023, the Supreme Court has directed: *"In case the appeal is to be decided by the learned*



District Judge, then in that event it shall be transferred to that court by the

High Court." It is hence, deciding the issue of maintainability of the appeals has become imperative.

7. The learned counsel for the respondent/plaintiff raised two aspects on maintainability:

- a) Maintainability of the appeals per se; and
- b) Even if the appeals are considered as validly laid before this Court, should they not be transmitted to the City Civil Court, once the courts are re-opened after the vacation?

8. The learned counsel for the respondent/plaintiff argued:

- a) An appealable order of the Subordinate court will lie only to the District Court and not the High Court.
- b) As per the notification declaring summer vacation for the City Civil Court during May, 2023, two different Judges were constituted as vacation Judges, one for the first half and the other for the second half of May, 2023. The order now under challenge was passed by a Judge during the first half of the vacation, and hence the appeal against the same should have been filed only before the Judge who presided the



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vacation court during the second half of May, 2023. When the appeals could have been validly filed before a different Judge during the second half of the vacation, this court should not have entertained the appeals.

- c) Sec.15(2-C) of the Madras City Civil Court Act, 1892, positively stipulates that appealable orders passed by any Assistant Judge of the City Civil Court will lie to the Principal Judge of the Court. Necessarily, the appeals cannot be maintained, at any rate, after the regular courts have reopened after vacation.

Reliance was placed on the ratio in ***Jumna Bai Vs S.Rm.M.Rm.Ramanathan Chettiar*** [(1928) 28 LW 684], ***V.S.A.Krishnan Mudaliyar Vs S.A.Sabapathi Mudaliar*** [(1945) 58 LW 7], ***Sundaresan Chettiar Vs Abhirami Ammal*** [(1946) 59 LW 677] and ***Sri Rangam Municipality Vs R.V. Palaniswami Pillai*** [(1951) 67 LW 327].

9. Claiming that this Court has jurisdiction to retain the appeals in its file, Mr.V.Raghavachari, the learned senior counsel appearing for the appellant/defendant made the following pointed submissions:

- a) So far as the courts subordinate to the Madras High Court are concerned, they are constituted under two independent statutes. The



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first is the Tamilnadu Civil Courts Act, 1873, which governs the establishment of courts outside the Presidency town, and the next is the Madras City Civil Court, Act, 1892, under which additional civil courts are established within the Presidency town.

- b) So far as the courts constituted under the Tamilnadu Civil Courts Act, 1873 are concerned, Sec. 30 thereof enables the High Court to declare holidays and vacations for an aggregate of two months every year. Under Section 30(2) of the Act, a Vacation Judge is required to be constituted whenever vacations are notified. Section 30(6) provides that on reopening of the Courts, the cases received by the Vacation Court are required to be transmitted to the courts where they would have been filed but for the vacation.
- c) So far as the Madras City Civil Court Act, 1892 is concerned, the preamble of the Act states that the intention behind the legislation is to establish an additional civil court for the city of Madras. Here the statute has very carefully employed the expression "*additional civil court*", since the High Court has the original jurisdiction. To state it differently, inasmuch as the High Court has the original civil jurisdiction, all that the Madras city requires is only additional civil courts, and not any Principal civil court of Original Civil jurisdiction



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as in the Tamilnadu Civil Courts Act, 1873. What could be deduced from this is that the statute also recognizes or equates the original side of this court as the principal court of original civil jurisdiction and this interpretation is consistent with the preambular expression: an Act for establishing an additional civil court for the city.

- d) A comparative analysis of the aforesaid provisions only indicates, while receiving and transmitting of all cases by the vacation courts to the other courts is available under Section 30(6) of the Tamilnadu Civil Courts Act, 1873, no need was felt in making similar provision in the City Civil Court Act, 1892, since the original side of the High Court itself is the Principal Court of original civil jurisdiction.
- e) This apart, even under clause 13 of the Letters Patent, this court has every jurisdiction to withdraw any suit to its file, which implies it will not be incompetent for this court to entertain these appeals.

Discussion & Decision:

10. Rival submissions are weighed for their merit. The first leg of the respondent's contention is that, inasmuch as the vacation judge for the second half of the summer vacation was a different officer and not the same officer who passed the order impugned in these appeals, they could have



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been filed before the Presiding vacation Judge for the second half of the summer, and hence this court should not have taken the appeals on its file.

This argument is impressive at the first blush, but fails to sustain the impression it made on a deeper consideration. Principally, any order is passed by the Court and it must be distinguished from the Judge, even though it is the Judge who pens the order for the Court. Suppose the appeal is filed during the second half of the vacation court before another Presiding Officer, and if that judge chooses to hear the matter and decides to remand it, which is one of the procedural possibilities, who will hear the matter on the original side after remand? Obviously, it has to be the same Judge. Given the fact that summer vacation spans for a bare 30 days, it may be an improbable situation, still there is a theoretical possibility that it may happen. Therefore, just as an appeal from an appealable order passed by a vacation court may not lie before the same Judge, an appeal also cannot lie before different judges of the same vacation court. Therefore, there is nothing wrong in the appellants approaching this court with these appeals. After all *ubi jus ibi remedium*, and the Court must invent ways and means to do justice and cannot plea helplessness citing the rule book, which is but a handmaid of justice, and refuse to hear him. Justice shall be truly enthroned when this Court expands its power to do justice wherever adherence to rule



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book on jurisdiction may create absurd consequences not in contemplation of the rule maker.

11. The second aspect is about retaining these appeals after the vacation. According to the appellant, since there is no provision parallel to Sec.30(6) of the Tamil Nadu Civil Courts Act, 1873 in the CCC Act to enable the vacation court constituted under the CCC Act to transmit the cases filed before it to the courts which would have jurisdiction after the vacation, and since city civil courts are constituted only as additional courts to the High Court, this court has power to retain the appeals filed before it even after the vacation.

12. The issue whether the appeal filed before the vacation court of the High Court should be transmitted to the appropriate city civil court post vacation is concerned, it requires to be emphasised that even though the Original side of this court is conceptualised as the Principal Court of Original Civil jurisdiction inasmuch as the CCC Act has indicated in its preamble that it intends to constitute only additional civil courts, still it should not be forgotten that a vacation court constituted under Sec.18 of the CCC Act is intended to be a contingency mechanism during vacation. Hence a single



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court is constituted as a vacation court without reference to the pecuniary jurisdiction. (If it were a vacation court constituted under the Tamil Nadu Civil Courts Act, then its jurisdiction is unfettered vis-a-vis both the pecuniary as well as territorial jurisdiction). The vacation court is temporary in character and its constitution during vacation is not aimed to erase the pecuniary jurisdiction of regular courts but only to suspend it during vacation. If however, it is considered otherwise, then it will mean Sec.18 of the Act will enjoy the privilege to override Sec.15 of CCC Act under which pecuniary jurisdiction of different classes of civil courts is prescribed.

13. Turning to the authorities which the respondent has placed before this court, all the cases relied on by him arise out of some proceedings instituted before the High Court which ought to have been filed before the mofussil courts (now Courts subordinate to the High Court) constituted under the Tamil Nadu Civil Courts Act, when those courts were closed for vacation.

a) ***Jumna Bai case*** [(1928) 28 LW 684] was a leading case on the point.

The points which confronted the learned Single Judge of this court were twofold: (i) maintainability of any proceedings, suits, and appeal which are filed before the High court, but ought to have been filed before the mofussil court but could not be filed there owing to



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vacation; and (ii) maintainability of any interlocutory proceedings which are instituted before the High Court in matters which are pending before the mofussil court due to inability to institute there owing to vacation. The learned single Judge held that even under clause 13 of the Letters Patent, the High Court cannot exercise jurisdiction in the first class of cases, since it requires pendency of suits before the courts subordinate to the High Court. The learned Judge proceeded to hold that the High Court is not the venue where fresh suits or appeals could be filed when the courts subordinate to the High Court, before which they had to be filed, are on vacation, and those “*plaints and petitions shall be returned for presentation to be presented to the proper courts.*” While dealing with this issue, the learned single Judge had held:

*“...I do not find any provision of law by which the High Court can in the first instance receive a plaint which ought to be filed in some inferior court within the presidency and pass orders pending the disposal of the suit. **It may be that the High court has concurrent jurisdiction along with the City Civil Court and the Small Cause Court within the limits of the ordinary Original Civil Jurisdiction, and in respect of suits arising within that area the matter may be different.**”*



The learned Judge has made a conscious distinction between City Civil Courts and Small Causes Courts within the Presidency town and the courts subordinate to the High Court outside the limits of the Presidency town, and vis-a-vis the former class of courts, the High Court has concurrent jurisdiction. Therefore, the appeals are maintainable against an appealable order passed by the vacation court of the City Civil Court.

- b) In ***Krishna Mudaliyar case*** [(1945) 58 LW 7] a Full Bench of our High Court has approved the decision of ***Jumna Bai case*** where the Court held that during summer recess when supplementary proceedings are proposed to be instituted in any suit pending before those courts which are outside the original jurisdiction of the High Court, the suit itself can be temporarily withdrawn under clause 13 of the Letters Patent to the file of this court, and can be retransferred for trial once the courts are re-opened after vacation.
- c) In ***Palaniswami case*** [(1951) 67 LW 327] a Division Bench of this Court was confronted with a situation where a suit was temporarily transferred invoking Sec.24 CPC for moving an application for injunction in a suit pending before a mofussil court. The issue was more on whether the pending suit must be withdrawn to the original



side or not.

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d) ***Sundaresan Chettiar case*** [(1946) 59 LW 677] is where some urgent orders were required on an Original Petition under the Guardian and Wards Act when the jurisdictional court was on vacation, and a learned Single Judge of this Court held that it could be received by the High Court and could be transmitted to the court concerned once that reopens after vacation. That was also a case where Sec.24 CPC appeared to have been invoked.

14. What could be gathered from the tenor of the above set of authorities is that the practice which has gained ground in this Court is that when the High Court receives any proceedings which ought to have been filed before a mofussil court when those courts are on vacation, then they are required to be transmitted to those courts when they are re-opened. Now, how far the present set of cases are any different merely because the orders that came to be challenged were passed by the vacation court, which for the reasons stated, are not the ideal courts for instituting these appeals? Does the fact that the High Court assumes the role of the Principal Court of Original Civil jurisdiction vis-a-vis the Courts constituted under the City Civil Courts Act make any difference?



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15.1 This Court considers that the appropriate approach to the issue would be whether the High Court could have been approached if there is a competent court functioning to receive the appeals? Contextually, if it were not for vacation, would the appellants have moved this Court with their appeals, or would the High Court have received them onto its file? The answer to both is an obvious No. Therefore, the High Court's jurisdiction was invoked essentially because the appellants did not have a competent appellate court for them to institute their appeals during vacation. And the High Court exercising jurisdiction under the circumstances is purely contingent, and hence it would be only appropriate that once the competent appellate court becomes functional after the summer recess, the High Court transmits these appeals to the City Civil Court.

15.2 Here, the appellant comes out with an argument that under Sec.30(6) of the Tamil Nadu Civil Courts Act, post vacation, the cases which were filed before the vacation court are transmitted to the court of competent jurisdiction before which they would have been filed but for the vacation, but there is no parallel provision in the CCC Act and hence it must be construed as enabling the High Court to retain the appeal filed before its



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vacation court even though in ordinary circumstances such appeal would have to be filed only before the first appellate court established under the CCC Act.

15.3 Sec.30(6) of the Tamil Nadu Civil Courts Act reads as below:

Sec. 30- Vacation:

(1) to (5)...

(6) On the reopening of the District Court, a Subordinate Judge's Court or a District Munsif's Court after the summer vacation, all suits, appeals and other proceedings pending in the Court of the Vacation Civil Judge which, but for this section, would have been instituted or pending in such District Court, Subordinate Judge's Court or District Munsif's Court, as the case may be, shall stand transferred to such District Court, Subordinate Judge's Court or District Munsif's Court and any decree, order or proceeding passed by the Vacation Civil Judge shall, after such transfer, be deemed to be decree, order or proceeding passed by the Court concerned.

And, it is true that in Sec.18 of the CCC Act under which vacation courts are constituted during summer recess for the city civil courts, there is no provision similar to Sec.30(6) of the Tamil Nadu Civil Courts Act. This Court considers that it does not make any difference. It can be explained. Now, let the Vacation Court of the High Court be taken away from the line



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of consideration. Suppose a suit or an appeal which has to be filed before a court of competent civil jurisdiction with limited pecuniary jurisdiction is filed before the vacation court. Now, with the annual vacation coming to an end, the vacation court will also come to an end. What will happen to all the suits and appeals filed before the vacation court and where to post them? If the arguments of the appellant are reckoned then these suits and appeals need not be transmitted to regular courts of competent jurisdiction because there is no express provision in the CCC Act which enables it. It will lead to very absurd consequences, as there will be no courts to which the cases instituted during vacation courts could be transmitted and the vacation court itself will stand abolished after the duration of the vacation. Therefore it is necessary for this court to supply *casus omissus* into Sec. 18 of the CCC Act, a provision similar to Sec.30(6) of the Tamil Nadu Civil Courts Act. And, merely because the High Court steps to entertain an appeal before its vacation court in circumstances such as the one involved in this case, it does not imply that this Court should necessarily retain the appeal.

15.4 That the High Court might have powers to remove any appeal pending before the City Civil Court under Sec.24 CPC, only underscores the point that the High Court has the power to deal with the appeals which are



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pending before any court subordinate to it, but it does not envisage that the High Court should necessarily retain any appeal which it was required to receive as a contingent measure.

16. This Court, therefore, holds that these appeals when they were filed before this Court though were maintainable, yet there is no reason for this Court to retain them in its file after the City Civil Courts have begun to function after the summer vacation. Therefore, this Court directs that both these appeals be transferred to the Court of the Principal Judge, City Civil Court, to enable the said Court to deal with them as per law. The appeals are disposed of in the manner indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

19.10.2024

Index : Yes / No

Neutral Citation : Yes / No

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To:

1.The V Assistant Judge / Vacation Judge
III Assistant City Civil Court, Chennai.

2.The Section Officer



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VR Section

High Court, Madras.

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N.SESHASAYEE.J.,
ds

Pre-delivery Judgment in
C.M.A.Nos.1150 & 1151 of 2023

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