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CRP.No.4022 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.4022 of 2024
and C.M.P.No.22121 of 2024

1.Rajendran
2.Kalaivani
3.Manikandan

.. Petitioner

Vs.

Shanmugam

.. Respondent

Prayer:- Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the order dated 04.10.2018 passed in I.A.No.364 of 2018 in O.S.No.36 of 2008 on the file of the District Munsif cum-Judicial Magistrate and set aside the same and allow the I.A.No.364 of 2018.

For Petitioners : Mr.K.Gandhi Kumar

For Respondent : Mr.L.Rajendran

ORDER

This petition has been filed as against the order dated 04.10.2018 made in I.A.No.364 of 2018 in O.S.No.36 of 2008 on the file of learned District Munsif-cum-Judicial Magistrate, Vazhapady.



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2. The petitioners are the defendant in the suit filed by the respondent/plaintiff seeking for the relief of specific performance and permanent injunction.

3. The suit filed by the respondent/plaintiff was decreed exparte by Judgment and Decree, dated 28.03.2008. Thereafter, the respondent filed Execution Petition in R.E.P.No.547 of 2008 and due to non-appearance of the petitioners/defendants, they were set exparte in the Execution Petition also. Immediately, the petitioners filed R.E.A.No.66 of 2009 to set aside the exparte order in the above execution petition along with application under Section 5 of the Limitation Act, which was also dismissed for non appearance and an application was filed in I.A.No.1760 of 2014 with a delay of 1265 days. Thereafter, the delay in re-presentation was condoned and application under Section 5 of the Limitation Act, 1963, was filed to set aside the exparte decree was numbered as I.A.No.450 of 2015 with a delay of 963 days and subsequently transferred to the District Munsif cum Judicial Magistrate, Vazhapady and re-numbered as I.A.No.364 of 2018. The reasons assigned for the said delay is that the they did not receive summons and the same was received by some third person and further they



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are small farmers, living in other district as Coolie workers and would visit their property monthly once or twice, as a result of which the suit was decreed exparte. It came to be known only on 09.09.2009 and therefore, the petition has been filed with a delay. The Court below dismissed the condone delay application on the ground that no sufficient reasons were assigned for the inordinate delay. Therefore, the Court below proceeded to dismiss the application.

4. Mr.K.Gandhi Kumar, learned counsel for the petitioner submitted that the Court below did not take into consideration certain vital aspects before passing the exparte decree. The learned counsel would further submit that the judgment does not satisfy the requirements of Order XX Rules 4 and 5 of C.P.C., and there are absolutely no reasons given in the judgment and it suffers from non-application of mind and the Court below has not even stated in the judgment as to what is the balance amount that has to be paid by the plaintiff.

5. The learned counsel submitted that substantial right over the property is involved and therefore, the Court below ought to have taken



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into consideration the serious infirmities that have been pointed out before the Court, while considering the condone delay petition. The learned counsel in order to substantiate his submissions, relied upon the Judgment passed by this Court in *K.Balakrishnan vs. S.Dhanasekar*, reported in 2018 (1) LW 599.

6. Per contra, Mr.L.Rajendran, learned counsel appearing on behalf of the respondent/plaintiff submitted that the judgment and decree was passed in this case on 28.03.2008 and R.E.P.No.547 of 2008 was filed for execution of the sale deed which was also set exparte. Thereafter, the petitioners filed R.E.A.No.66 of 2009 and the same was also dismissed for default. It is clear that the petitioners were aware about the decree even during the year 2009 itself. It is only thereafter, the petitioner had filed the application under Section 5 of the Limitation Act, 1963, to condone the delay of 963 days in filing the petition to set aside the exparte decree. The learned counsel submitted that the petitioners have not explained the inordinate delay and has not given any sufficient cause to justify the condonation of delay and therefore, the Court below was right in dismissing the application and there are absolutely no grounds to interfere



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with the order passed by the Court below.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. The respondent has filed a suit for specific performance. On perusal of the judgment passed by the learned District Munsif cum Judicial Magistrate, Vazhapady, it would merely states as follows:

“PW1's Proof Affidavit filed. Ex.A1 to A3 marked. Plaint and documents perused. Claim proved. Suit is decreed as prayed for with cost. Time for payment of balance sale consideration is 1 month from the date of decree”

9. In the opinion of this Court, 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. The second illegality is that the Judgment does not even say what is the balance amount that has to be deposited by the plaintiff. The minimum requirement for a suit for specific performance, namely, the readiness and willingness that requires to be proved, has not even been dealt with in the judgment.



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10. 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.

11. It will be relevant to take note of certain judgments on this aspect.

(i). This Court in *Meenakshisundaram Textiles v. Vallilammal Textiles Ltd., Tiruppur*, reported in (2011) 7 MLJ 652, has been held as follows:

“5. We have heard the respective learned counsel on either side on the above question. Section 2(9) of the Code of Civil Procedure defines a “judgment” as meaning, the statement given by the judge on the grounds of a decree or order. In this context, Order XX Rules 4 (1) & (2) are also referable, which read as under:-

“4. Judgment of Small Cause Courts.-(1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts.-- Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.”

Order XX Rule 4(1) relates to the judgment of a Court of Small Causes. Inasmuch as the said judgment does not require more than the points for determination and that the decision thereon, a judgment of a Court of Small Causes shall not fall under Section 2(9) of the Code of Civil Procedure. Insofar as the judgment of other Court is concerned, in terms of Order XX Rule 4(2), it shall contain a concise statement of



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the case, the points for determination, the decision thereon, and the reasons for such decision and therefore it shall fall under Section 2(9) of the Code of Civil Procedure and in that sense, all the ingredients contained in Order XX Rule 4(2) must be available in that judgment. This is more so in view of the provisions of Order XX Rule 5 relating to the duty of the Court to state its reasons on each issue. That Rule reads as under:-

“5. Court to state its decision on each issue.-- In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.”

6. In terms of the above provisions, every judgment should contain a concise statement of the case, the points for determination, 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 “judgment”. The judgment should contain the brief summary of the facts, the evidence produced by the plaintiff in support of his claim and the reasoning of the learned Judge either for decreeing the suit or its dismissal. The Civil Procedure Code does not say that the Court is bound to grant a decree in case the defendant is absent. Judgment means cognitive process of reading a decision or drawing conclusion. Judgment is the basic requirement for a court and it means a decision or conclusion reached after consideration and deliberation. To put it differently, the basics of a judgment are to support by most cogent reasons that suggest themselves the final conclusion at which the Judge has conscientiously arrived.

15. As against the requirement of a judgment, Section 2(14) of the Code of Civil Procedure relating to an “order” is also referable. In terms of that Section, an “order” means the formal expression of any decision of a Civil Court which is not a decree. When it comes to the judgment, it should state the grounds of a decree, which includes an order. Hence,



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there is a vast difference between a judgment, a decree based on such judgment and an order.

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 ex parte decree. Hence, even for an ex parte judgment and the decree, the basic ingredients of 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.”

(ii). This Court in *G.Selvam and others v. Kasthuri (deceased) and others*, reported in 2015 (4) CTC 673, has held as follows:

“7. The main contention raised by Mr.R.Muthukumarasamy, learned Senior Counsel appearing for the petitioner is that the judgment and decree passed by the Trial Court is liable to be set aside on the ground that the Trial Court had passed a preliminary decree by non-speaking judgment. The learned Senior Counsel further submitted that the judgment passed by the Trial Court is against the settled propositions of the Hon'ble Apex Court as well as this court. The learned Senior Counsel further contended that since the judgment and decree passed by the Trial Court is against the provisions of Order 20 Rule 5 of C.P.C., and also the ratios laid down by the Hon'ble Supreme Court and this court, the Civil Revision Petition filed under Article 227 of the Constitution of India challenging the said judgment and decree is maintainable.

25. As per Order 20 Rule 4 of Civil Procedure Code, Judgments of the Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.



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26. *In the case on hand, all the defendants were set exparte. The trial court did not frame any issue for deciding the suit. The trial court simply examined P.W.1 and found that the claim made by him is proved. The judgment pronounced by the trial court is clearly contrary to the provisions of Order.20 Rule 4 and Rule 5 of Civil Procedure Code.*

27. *In the judgment reported in 2012 (5) SCC 265 (C.N. Ramappa Gowda vs C.C. Chandregowda (dead) by LRs and another, cited supra, the Hon'ble Supreme Court held that in a suit, where the defendants failed to file their written statement, the non-filing of the written statement should not have any penal consequences and the court should proceed cautiously and exercise its discretion in a just manner and even in the absence of written statement, burden of proof would remain on plaintiff and his mere assertion in plaint would not be sufficient to discharge the burden.*

28. *In that case, challenging a cryptic unreasoned judgment and decree, resulting from failure to file a written statement despite repeated opportunities having been given for the same, it has been held that the High Court was justified in remanding the matter to the lower Court for de novo trial by giving fresh opportunity to the defendants to file written statement.*

29. *Following the ratio laid down in the judgment reported in 2012 (5) SCC 265 (Ramappa Gowda vs C.C. Chandregowda (dead) by LRs and another,) the Division Bench of this Court, reported in 2013 (4) CTC 545 (Chitrakala vs P. Mahesh and others) (cited supra) (wherein, I was a party to the judgment), held that the burden of proof lies on plaintiff, irrespective of there being any Written Statement or evidence of rebuttal, plaintiff to succeed in Suit only on the basis of strength in his case and not on the basis of weakness in Defendant's case.*

30. *Further, the Division Bench held that the decree cannot be passed solely on the plaint averments, as these averments are not substantiated. Hence the Divison Bench remanded the matter back to the trial court for fresh*



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disposal.”(iii). This Court in *K.Balakrishnan v. S.Dhanasekar*, reported in 2018(1) *LW 599*, has held as follows:

“6. The only ground raised by the appellant is that the trial court passed the ex parte decree without giving detailed reason or appreciating The evidence adduced by the plaintiff. The learned counsel for the appellant/defendant submitted that the respondent/plaintiff herein filed the suit before the Additional District Munsif Court for permanent injunction. The trial court passed the ex parte decree against the appellant/defendant. Challenging the judgment and decree passed by the trial court, the appellant/defendant preferred an appeal before the Sub Court by raising a ground that the trial court failed to record reasons in the judgment for granting relief in favour of the plaintiff. According to the learned counsel for the appellant/defendant, the trial court has simply decreed the suit, by recording a finding that on the basis of the evidence of P.W.1 and the documents marked as Ex.A1 to A7, the plaintiff has proved the case. In the said judgment, except the aforesaid fact, there is no discussion or appreciation of evidence adduced by the plaintiff nor any reason in the judgment for granting relief in favour of the plaintiff. According to the learned Senior counsel for the appellant/defendant, in the light of the decision of the Hon'ble Supreme Court as well as this court, the settled legal principles of law is that judgment must contain the bare minimum facts, the point for determination, evidence adduced and the evidence which are basis for deciding the issues. It is the further contention of the learned Senior counsel that as per the definition under Section 2(9) of C.P.C., the judgment means there must be adjudication of dispute. The judgment should contain brief summary. Therefore, the present judgment passed by the trial court is cryptic and an unreasoned judgment. Hence, the judgment



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and decree passed by the trial court as well as the judgment and decree passed by the Appellate court are liable to be set aside. In support of his submission, the learned counsel for the appellant/defendant relied on the following decisions:

- (i) SMT. SWARAN LATA GHOSH VS. H.K.BANERJEE AND OTHERS [1969(I) 1 SCC 709];
- (ii) C.N.RAMAPPA GOWDA VS. C.C. CHANDREGOWDA (DEAD) BY LRS. AND ANOTHER [(2012)5 SCC 265];
- (iii) SHANTILAL GULABCHAND MUTHA VS. TATA ENGINEERING AND LOCOMOTIVE COMPANY LTD. AND ANOTHER [(2013)4 SCC 396];
- (iv) AZIZ AHMED KHAN VS. I.A. PATEL (A.I.R. 1974 (V.61,C.1));
- (v) M/s. MEENAKSHI SUNDARAM TEXTILE VS. VALLIAMMAL TEXTILE LTD. [2011) 3 L.W 80].

22. Hence, in the light of the principles laid down by the Hon'ble Supreme Court as well as this court, the trial court without considering Section 2(9), C.P.C. which defines a meaning a formal expression of civil court. Any decision of civil court is not a decree. In a suit, court may take certain decision of objective consideration and those decisions must Contain discussion of the matter, issues in the suit, reason which led the court to pass such orders.

23. In the case of C.N.RAMAPPA GOWDA cited supra, the Hon'ble Supreme court has considered the issue of unreasoned judgment and decree passed by the trial court and held that it is a well-acknowledged legal dictum that assertion is no proof and hence, the burden lay on the plaintiff to prove his/her case even if there was no written statement to the contrary or any evidence of rebuttal and the Hon'ble Supreme Court observed that the trial court adopted an erroneous approach by inferring that merely because there was no evidence of denial or rebuttal, the plaintiff's case could be held to have been proved. The trial court therefore, while accepting the plea of the plaintiff ought to have recorded reasons even if it were based on exparte evidence. By placing reliance upon the judgment in Balraj



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Taneja's case, it Was held that if the plaint itself indicates that there are disputed question of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to to pass a Judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Further, in the concluding portion of the judgment, it was held that the trial court has decreed the suit without assigning any reason how the plaintiff is entitled for half-share in the property. Such judgment is absolutely cryptic in nature.

24. Therefore, in the light of the decisions of the Hon'ble Supreme court as well as the decision of the Division Bench of this court reported in 2011(3) L.W. 80 (supra), while passing the exparte judgment, the trial court has not satisfied the requirement under Section 2(9) of C.P.C. The trial court has passed a cryptic and unreasoned judgment in granting exparte decree in favour of the plaintiff.”

12. It is clear from the above judgments that where the defendant contests a suit or submits himself to a decree, it is the bounden duty of the trial Court to follow the procedure under Order XX Rule 4 of the Civil Procedure Code, by giving the concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. If this is not satisfied and a cryptic unreasoned judgment is passed, it is ex facie illegal. When a Court considers an application for delay to set aside the exparte decree, this must also be taken into consideration. If the original judgment itself is ex facie illegal, it cannot be allowed to continue



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and under such circumstances, it will have a bearing, while the Court considers an application to condone the delay to set aside the exparte decree. The Court need not have a pedantic approach in this regard, since it involves the substantial right of the parties.

13. In this case, the cryptic judgment has resulted in the trial Court not even determining what is the balance amount that has to be deposited by the plaintiff. This patent illegality has substantially affected the rights of the defendant in this case. This Court in exercise of its jurisdiction under Article 227 of the Constitution of India, is exercising superintendence over all the Courts and tribunals throughout the State. This Court cannot turn a blind eye when its attention is drawn to an ex facie illegal judgment. This Court has to necessarily interfere with the same, failing which, there will be failure of justice and it will amount to perpetuating illegality.

14. In the considered view of this Court, the petitioners have to be given one opportunity to contest the suit on merits, since it involves their substantial rights over the property. However, this opportunity can be



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given by subjecting the petitioners to condition. Admittedly, the petitioners have received a sum of Rs.70,000/- as advance. Therefore, at the worst, the plaintiff will be entitled to this amount with interest and he cannot be deprived of the same.

15. In the result, the fair and final order passed by the Court below in I.A.No.364 of 2018, dated 04.10.2018, is hereby set aside and the application to condone the delay is hereby allowed. The petitioners are directed to deposit a sum of Rs.70,000/- with interest at the rate of 9% from 24.07.2003 till 01.10.2024. This amount shall be deposited within a period of four weeks from the date of receipt of a copy of this order and a memo shall be filed before the Court below. On receipt of such memo, the Court below shall set aside the exparte decree and proceed further to decide the suit on merits. If the petitioners do not deposit the amount as directed by this Court, the petition to set aside the exparte decree shall be dismissed and thereby, the exparte decree passed in favour of the respondent shall be restored.

16. It is made clear that this Court has not expressed anything on the



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merits of the case. Any findings given by this Court in this petition will not have any bearing in the Court below deciding the suit on its own merits and in accordance with law. It is also made clear that in view of this order, the further proceedings in E.P.No.20 of 2018 on the file of the learned District Munsif cum Judicial Magistrate, Vazhapady shall be kept suspended.

17. In fine, this Civil Revision Petition is allowed and the Court below is directed to complete the proceedings in O.S.No.36 of 2008 within a period of six months from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes/No

To,

The District Munsif cum Judicial Magistrate
Vazhapady



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A.D.JAGADISH CHANDIRA, J.,

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