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C.M.P.No.16478 of 2024

C.M.P.No.16478 of 2024
in
O.S.A.(CAD)SR.No.98009 of 2024

M.SUNDAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

(Order of the court was made by M.SUNDAR, J.)

Captioned 'Civil Miscellaneous Petition' [hereinafter 'CMP' for the sake of convenience] has been filed with a simple and innocuous prayer to dispense with production of certified copy of an order dated 28.03.2024 made in O.P.No.94 of 2021 passed by a Hon'ble Single Judge of this Court.

2.Mr.Thriyambak J.Kannan, learned counsel for petitioner, adverting to support affidavit submitted that a web copy (hard copy) of the impugned order as downloaded from the website of this Court has been filed and on that basis, pleaded that aforementioned dispense with prayer may please be acceded to.

3.Today, this Court in a dispense with petition vide C.M.P.No.14960 of 2024 in C.M.A.SR.No.86395 of 2024 has passed the following order and the same reads as follows:

C.M.P.No.14960 of 2024



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in
C.M.A.SR.No.86395 of 2024

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M.SUNDAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

(Order of the court was made by M.SUNDAR, J.)

Captioned 'Civil Miscellaneous Petition' [hereinafter 'CMP' for the sake of convenience] has been filed with a simple and innocuous prayer to dispense with production of certified copy of an order dated 03.01.2024 made in Commercial Original Suit No.7 of 2023 [previously O.S. No.11/2010 of II Additional District Judge, Salem (CNR No.TNSA 23-000054-2023)] on the file of the Commercial Court (District Judge cadre), Salem. This '03.01.2024 order' shall be referred to as 'impugned order' and 'Commercial Court (District Judge cadre), Salem' shall be referred to as 'said Commercial Court', both for the sake of convenience and clarity.

2.Mr.M.S.Seshadri, learned counsel for petitioner, adverting to support affidavit submitted that a web copy (hard copy) of the impugned order as downloaded from the e-Court website, i.e., https://ecourts.gov.in/ecourts_home has been filed and on that basis, pleaded that aforementioned dispense with prayer may please be acceded to.

3.In the normal circumstances, a simple terse order will suffice but this Court finds that such requests i.e., CMPs with dispense with prayers saying that web copy has been filed are recurring in multiple kinds of appeals. Therefore, with the intention of putting the matter in clear perspective, so that the same will serve as guidelines in days to come, more so owing to



advent and advancement of technology and ICT (Information and Communication Technology) in court proceedings, the following order is made:

(i)'The Code of Civil Procedure, 1908' ['CPC' for the sake of brevity] has a definition clause and the same is Section 2. Sub sections (2), (9) and (14) of section 2 define 'decree', 'judgment' and 'order' respectively and these three provisions read as follows:

'2.Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

(1) xxxxxxxx

(2)“decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include--

(a)any adjudication from which an appeal lies as an appeal from an order, or

(b)any order of dismissal for default.

*Explanation.--*A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

(3) to (8) xxxxxxxx

(9)“Judgment” means the statement given by the



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Judge on the grounds of a decree or order;

(10) to (13) xxxxxxxxxx

(14)“order” means the formal expression of any decision of a Civil Court which is not a decree;'

(ii)As regards appeals to this Court, four Orders under First Schedule to CPC are of relevance and they are Orders XLI, XLI-A, XLI-B and XLIII of CPC.

(iii)In Order XLI captioned 'Appeals from Original Decrees', there is a Madras amendment to Rule (1) thereat. This order provides for appeals against judgments and decrees. The Madras amendment makes filing of certified copy of decree imperative and provides for certified copy of judgment being dispensed with by the appellate court.

(iv)Order XLI-A provides for 'Appeals to the High Court from Original Decrees of Subordinate Courts'. In Order XLI-A also, there is a Madras insert and as regards Rules (1) to (3), Madras insert adopts Kerala which says that one certified copy of judgment is imperative and there is no dispense with provision.

(v)Order XLI-B captioned 'Letters Patent Appeals' ('LPA' for the sake of brevity) also has a Madras amendment and the proviso to Rule (1) thereat makes it clear that it shall not be necessary to file copies of the judgment and decree appealed from. To be noted, Order XLI-B provides for intra-court appeals.

(vi)Order XLIII captioned 'Appeals From Orders' gives an adumbration of orders qua Section 104 CPC



which are appealable. These adumbrations are (a) to (w) but making provision for additions and deletions, there are 18 kinds of orders.

(vii) All aforementioned insertions were made prior to advent (much less advancement) of ICT providing for web copies. Before we proceed further, it is deemed appropriate to write that as regards Madras High Court judgments, decrees and / or orders uploaded in the official website, they are both water marked and QR Coded. To be noted, QR Code necessarily means that one can go to the website and cross check the authenticity of the web copy as unlike the bar code which gives certain particulars, the QR Code takes you to website directly.

(viii) Reverting to dispense with prayer as regards appeals from Original Decrees, one has to necessarily understand the same as appeals to appellate courts other than the High Court as Order XLI-A provides for appeals to High Court from original decrees of subordinate Courts. As already alluded to supra, as regards Order XLI, appeals to appellate courts other than High Court, there is a provision for dispensing with certified copy of the judgment but certified copy of the decree is imperative, number of copies are set out there in Rule (1) but considering the scope of the matter at hand, it is not necessary to go into the same.

(ix) As regards appeals to this Court, i.e., High Court from original decrees of Subordinate Courts, there is no provision for dispensing with printed copies of judgments.



As regards intra court appeals under Order XLI-B, as already alluded to supra, the proviso to rule (1) [as in Madras and Pondicherry] makes it clear that it is not necessary to file copies of judgment and decree appealed from.

(x) Order XLIII is a mere adumbration of 18 kinds of orders which are appealable and there is allusion to this supra in this order.

(xi) For the present, we are putting aside Order XLI as that deals with appeals from original decrees to the appellate court other than High Court.

(xii) As regards Order XLI-A, we are of the view that if it is not necessary to file copies of judgment and decree in intra court appeal under Order XLI-B, there is no reason as to why it should be imperative for Order XLI-A, as the only conceivable reason has paled into insignificance owing to availability of web copies which are authenticated by water marked and QR Coded. To be noted, the only conceivable reason is, in a intra court appeal, records were and are available in the same court and authenticity can be readily ascertained or the case file can be looked into, whereas in appeals under Order XLI-A, records will have to be summoned from the court which made original decree but this territorial barrier has now been eliminated owing to ICT advancement as an order/decreed/judgment made by any court anywhere in Tamil Nadu which is uploaded in the official web site is readily available. Therefore, with regard to Order XLI-A



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appeals, we direct the Registry to place this file before Hon'ble Acting Chief Justice for referring the matter to Hon'ble Rule Committee for considering an appropriate amendment to Rules. In the interregnum, dispense with petitions shall be filed and the same shall be considered on case to case basis.

(xiii)As regards Order XLI-B intra court appeals, we make it clear that Registry shall not insist on certified copies of impugned judgments and/or decrees, i.e., judgments and / or decrees appealed from in the light of Madras amendment to proviso to Rule (1).

(xiv)As a extension of previous point, we deem it appropriate to add that intra court appeals under Section 37 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' [hereinafter 'A and C' Act for the sake of convenience] are not LPAs and Clause 15 will not apply in the light of ***Fuerst Day Lawson*** principle, namely ***Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.***, reported in ***(2011) 8 SCC 333***. However, a set of rules have been made by Madras High Court by exercise of powers under Section 82 of A and C Act. We deem it appropriate to write that in a statutory appeal under Section 37 of A and C Act, which will not qualify as an appeal under Clause 15 of Letters Patent also, Registry shall not insist on certified copy of judgment and/or decree appealed from as long as hard copies of web copies which are downloaded from the official website of Madras High Court (watermarked and QR Coded) are produced. Hon'ble Rule Committee shall



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consider suitable amendments to Rules of this Court made inter-alia under Section 82 of A and C Act too.

(xv)As regards Order XLIII, as already alluded to supra, it is only an adumbration of 18 kinds of orders which are appealable and it will suffice to say that if orders appealed against fall under intra court category under Order XLI-B, Registry shall not insist on certified copies of judgment / order as long as hard copies of web copies which are downloaded from the official website of Madras High Court (watermarked and QR Coded) are produced but if the orders appealed against fall under XLI-A category, a dispense with petition shall be filed for the present (until Hon'ble Rule Committee takes a decision subject to reference to Hon'ble Rule Committee at the discretion of Hon'ble Acting Chief Justice) and the same shall be decided on case to case basis.

(xvi)To be noted, in cases of this nature, limitation will be computed from the date of the order but where certified copies are filed, the obtaining computation now in vogue shall continue.

4.Reverting to the case on hand, it is an appeal against an order which fall under Clause (a) of Rule (1) of Order XLIII, as it is a order returning a plaint under Order VII Rule 10 CPC but this order has been made by said Commercial Court, it qualifies as Subordinate Court within the meaning of Order XLI-A and therefore, in this case, we accept the web copy and accede to the dispense with prayer.



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5.Before we conclude, we make it clear that ideally we would prefer to use the nomenclature 'District Court' and not 'Subordinate Court' but considering the language in which the Order is couched, we have reproduced the same.

6.Captioned CMP is ordered as prayed for. There shall be no order as to costs.'

4.In the light of the aforementioned order, captioned CMP will have the benefit of proviso to Rule (1) of Order XLI-B of the Code of Civil Procedure, 1908. This means that Registry will not insist on certified copies in matters of this nature. Nonetheless, captioned CMP having been brought on board, is ordered as prayed for. There shall be no order as to costs.

(M.S., J.) (K.G.T.,J.)
01.08.2024

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M.SUNDAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

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