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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.10.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)Nos.706 & 986 of 2020

Muthukumar

... Petitioner in both
the CRPs

Vs.

Pari

... Respondent in both
the CRPs

COMMON PRAYER: Civil Revision Petitions are filed under Section 115 of Civil Procedure Code, to allow these Civil Revision Petitions and set aside the Fair and Decreetal Order, dated 01.02.2020 made in E.A.Nos.90 of 2013 & 41 of 2018 in E.P.Nos.10 of 2013 & 10 of 2010 in O.S.No.142 of 2001 on the file of the Subordinate Court, Paramakudi.

For Petitioner : Mr.PT.S. Narendravasan

For Respondent : M/s.M. Sakundala Devi



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COMMON ORDER

The issue involved in both the Civil Revision Petitions are arising out of the suit filed in O.S.No.142 of 2001 and hence the following common order is passed.

2(i). The Civil Revision Petition in C.R.P.(MD)No.706 of 2020 is filed by the defendant in the suit to set aside the Fair and Decreetal Order, dated 01.02.2020 passed in E.A.No.41 of 2018 in E.P.No.10 of 2010 in O.S.No.142 of 2001 on the file of the Subordinate Court, Paramakudi. The said E.A.No.41 is filed inter alia praying to return of articles found in the inventory report dated 07.05.2013.

2.(ii). The Civil Revision Petition in C.R.P.(MD)No.706 of 2020 is filed by the defendant in the suit to set aside the Fair and Decreetal Order, dated 01.02.2020 passed in E.A.No.90 of 2013 in E.P.Nos.10 of 2010 in O.S.No.142 of 2001 on the file of the Subordinate Court, Paramakudi. The petition in E.A.No.90 of 2013 is filed under section 47 of CPC to dismiss the execution petition.



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3. The defendant in the suit is the revision petitioner herein and the plaintiff in the suit is the respondent herein in both the revision petitions. For sake of convenience, the parties are referred as plaintiff and defendant as per the ranking in the suit.

4. The suit in O.S.No.142 of 2001 was filed for specific performance. The defendant after receiving notice had entered appearance and filed written statement. Thereafter failed to appear for trial. Hence, the defendant was called absent and exparte decree was passed. Based on the decree, the plaintiff had filed E.P.No.10 of 2010.

5. In the meanwhile, the defendant had preferred petitions to set aside the exparte decree along with delay condonation petition and the same were dismissed. Thereafter, the defendant had filed E.A. No.90 of 2013 taking a plea that even though it is an exparte decree the Trial Court ought to have discussed the case on his written statement and on merits. But the Trial Court has passed only three line judgment and the same is extracted hereunder:



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“வா.சா.1 விசாரிக்கப்பட்டார். வா.சா.ஆ.1 மற்றும் 2 ஆவணங்கள் குறியீடு செய்யப்பட்டன. பிராதிற் கோரிக்கைகள் நிருபணமாகின் வழக்கு வாதிக்கு ஆதரவாக வாதி வழக்குரையில் கோரியபடி செலவுத் தொகையுடன் தீர்ப்பாண பிறப்பிக்கப்படுகிறது.”

6. After perusing the above judgment, this Court is of the considered opinion that the Trial Court has terribly erred in passing such cryptic judgment, without any reasoning. The Trial Court is duty bound to consider the case on merits, especially in the suit for specific performance the Trial Court ought to consider whether the alleged sale agreement is genuine, the plaintiff was ready and willing, the plaintiff has means to pay, the plaintiff had performed his part of the contract, whether the sale agreement was executed for any loan transaction, limitation etc. Further, in the suit for specific performance the entire burden is on the plaintiff. Even if the defendant failed to appear, even if the defendant filed written statement and failed to appear thereafter, even if the defendant failed to prove the counter plea, the plaintiff ought to prove his case since the entire burden is on the plaintiff to prove his case. Thereafter the pendulum may shift to



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defendant. The Trial Court failed to see whether the plaintiff had proved his case. And the cryptic judgment discloses the Trial Court had not analyzed whether the plaintiff had proved his case. Hence the Trial Court had failed to exercise its jurisdiction and the plaintiff had not proved his case at all.

7. Under section 2(9) of Civil Procedure Code the word “judgment” is defined, wherein it states “judgment means the statement given by the judge on the grounds of a decree or order”.

8. Under Order 20 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



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thereon, and the reasons for such decision.”

9. Hence, as per C.P.C. the judgment for Small Cause Courts shall contain points for determination and decision thereon. For other judgments a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision. The present case comes under the category of “other judgments”. Even though it is *exparte* then also it comes under the definition of “judgement” alone. Therefore, the Trial Court ought to have stated the concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. When the judgment of the Trial Court is not containing the above ingredients then the same cannot be considered as valid judgment.

10. The judgment without the aforesaid ingredients was considered by the Hon’ble Division Bench of this Court in the case of ***Meenakshisundaram Textiles v. Vallilammal Textiles Ltd., Tiruppur***, reported in ***(2011) 7 MLJ 652***



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and it has been held as follows:

“5. ...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



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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.

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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, 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."

11. In the case of **G.Selvam and others V. Kasthuri (deceased) and**



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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 C.P.C., and also the ratio 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.

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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.

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



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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 V. C.C. Chandregowda (dead) by LR's 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 (C.N. Ramappa Gowda V. C.C. Chandregowda (dead) by LR's and another) and the Division Bench of this Court, reported in 2013 (4) CTC 545 (Chitrakala Vs. P.Mahesh and others) (cited supra)



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(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 Division Bench remanded the matter back to the trial court for fresh disposal.”

12. In the case of ***K.Balakrishnan v. S.Dhanasekar***, reported in ***2018 (1) LW 599*** the Court 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



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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 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:



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(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) A.P.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.



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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 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*



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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.”

13. The Learned Counsel had relied on the judgment passed in the case of ***R.Stella v. A. Antony Francis*** reported in ***(2019)3 MWN (Civil) 647*** and the relevant paragraph No.18 is extracted hereunder:

“19. 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 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



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substantial right of the parties.

20. 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. The plaintiff has assumed that it is only Rs.2,50,000/- and the Court has also mechanically executed a sale deed and given possession to the plaintiff. This patent illegality has substantially affected the rights of the defendant in this case.

21. 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.

22. In the considered view of this Court, the petitioner has to be given one opportunity to contest the suit on merits, since it involves her substantial rights over the property. However, this opportunity can be given by subjecting the petitioner to condition. Admittedly, the petitioner has received a sum of Rs.2,00,000/- as advance. Therefore, at the worst, the plaintiff will be entitled to this amount with interest and he cannot be deprived of the same.”

14. In the case of ***J.Savithri Vs. Selvaraj and others***, reported in ***2024 (1) MWN (Civil) 117***, the Court had held as under:



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“6. When I have found the judgment and decree itself to be contrary to law applicable under the Hindu Succession Act and the Code of Civil Procedure, I am not bound by this technical objection taken by the learned counsel for the petitioner. Infact the Supreme Court in the case of K.P.Natrajan and another Vs. Muthalamman and others reported in 2021 (15) SCC 817 (Per V.Ramasubramaniyan J.) has held that during the course of dealing with a revision under Section 5 of the Limitation Act, if it is found the decree is contrary to law, it can be interfered with. If in a collateral proceeding, it comes to the notice of the Court that the judgment is a contrary to law, even then the High Court, under Article 227 of Constitution of India, is empowered to set aside the decree”.

15. From the aforesaid judgements it is clear that if the defendant contests the suit or remain exparte, then also the Trial Court has a duty to follow Order 20 Rule 4 of CPC. The judgment or the exparte judgment shall contain the ingredients of

- i. *the concise statement of the case,*
- ii. *the points for determination,*



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- iii. the decision thereon and*
- iv. the reasons for such decision.*

If the aforesaid ingredients are absent or the judgment is cryptic unreasoned judgment, then the same is ex facie illegal. In a collateral proceeding, if it comes to the knowledge of the Court if the judgment is ex facie illegal, then under Article 227 the High Court has power to interfere with the illegal judgment. Hence, when a Court considers an application for delay to set aside the exparte decree, this must also be taken into consideration, since the ex facie illegal judgment cannot be allowed to continue. Further it involves substantial right of the parties and the Courts cannot allow the ex facie illegal judgment to be executed in EP proceedings. 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. For the aforesaid reasons, the impugned judgment ought to be set aside.



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16. Accordingly theses Civil Revision Petitions are allowed and the impugned Fair and Decreetal Order, dated 01.02.2020 passed in E.A.Nos.90 of 2013 & 41 of 2018 in E.P.No.10 of 2010 in O.S.No.142 of 2001 on the file of the Subordinate Court, Paramakudi, are hereby set aside. In order to grant one more opportunity to the defendant, the Execution Court is directed to consider the E.A.Nos.90 of 2013 & 41 of 2018 under section 47 of Civil Procedure Code and thereafter, pass an order on merits, in accordance with law. No Costs.

28.10.2024

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

- 1.The Subordinate Court, Paramakudi.
2. The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.



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S.SRIMATHY, J.

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Order made in
C.R.P(MD)Nos.706 & 986 of 2020

28.10.2024