



CRP.No.2156 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 04.07.2025

Order pronounced on : 14.07.2025

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.2156 of 2023
& CMP.No.13116 of 2023

Muniyammal (Died)

1.Gnanamurugan

2.Elumalai

..Petitioners

Vs.

K.Vijayarangan

..Respondent

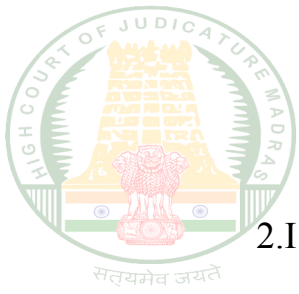
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order and decree dated 10.03.2023 made in I.A.No.1 of 2022 in A.S.No.05 of 2021 on the file of the learned Subordinate Judge, Arakkonam.

For Petitioners : Mr.A.Gouthaman

For Respondent : Dr.C.Ravichandran

ORDER

This revision throws up a very interesting proposition of law as to whether the defendant, who had been set ex-parte in a suit and his attempt to set aside the ex-parte decree was unsuccessful, is entitled to put forth his defense in a First Appeal challenging the ex-parte decree.

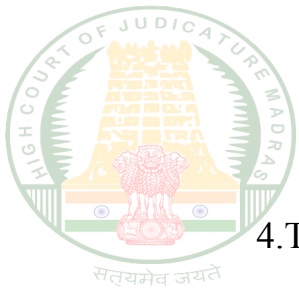


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2.I have heard Mr.A.Gowthaman, learned counsel for the petitioners/defendants and Dr.C.Ravichandran, learned counsel for the respondent/plaintiff.

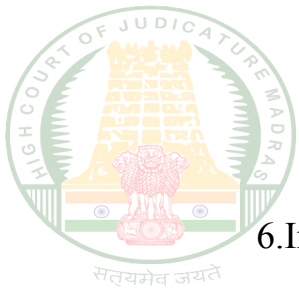
3.The admitted facts are as follows:

The plaintiff filed a suit against the revision petitioners herein for declaration and permanent injunction. The said suit came to be decreed ex-parte on 30.01.2008. The defendants took out an application to set aside the ex-parte decree and the same came to be allowed on 18.07.2011. However, the respondent/plaintiff challenged the same before this Court in revision proceedings in CRP.Nos.3870 of 2011 and 3880 of 2011 and the revisions came to be allowed and consequently, the setting aside application came to be dismissed. The said revisions were allowed by this Court on 25.04.2019 and the ex-parte decree was restored. Thereafter, the revision petitioners chose to file a First Appeal, challenging the ex-parte decree and pending the said First Appeal, the petitioners filed I.A.No.1 of 2022 seeking permission to receive documents in evidence in the First Appeal. The First Appellate Court, in and by order dated 10.03.2023, has dismissed the said application, as against which, the present revision has been filed.



4.The learned counsel for the revision petitioners would contend that merely because the ex-parte decree has become final, it would not preclude the defendants from challenging the ex-parte decree by way of a First Appeal, which remedy is available under the statute, namely, Code of Civil Procedure and the same cannot be taken away. He would also contend that the Order IX Rule 13 of the CPC, the application to set aside the ex-parte decree was final only with regard to the non appearance of the defendants and not assigning sufficient reasons for setting aside the same. He would therefore contend that there is no legal bar for the defendants to file a First Appeal and challenge the decree that has been passed against the revision petitioners.

5.The learned counsel for the petitioners would further submit that the application to receive additional documents was filed under Order XLI Rule 27 of CPC and the same ought to have been taken up along with the main appeal and the Appellate Court erred in taking up the application independently and disposing of the same, which according to the learned counsel for the revision petitioners, is against well settled principles of law enunciated by the Hon'ble Supreme Court as well as this Court.

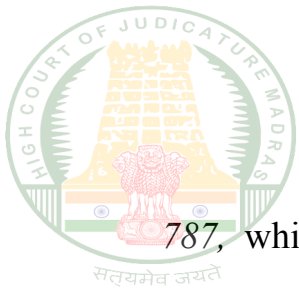


6. In support of his contention, the learned counsel for the revision

petitioners would place reliance on the following decisions:

1. *N.Mohan Vs. R.Madhu* ((2020) 20 SC 302).
2. *Bhanu Kumar Jain Vs. Archana Kumar and Others* ((2005) 1 SCC 787).
3. *Union of India (UOI) Vs. Ibrahim Uddin and Others* ((2012) 8 SCC 148).
4. *Bhivchandra Shankar More Vs. Balu Gangaram More and Others* ((2019) 6 SCC 387).
5. *The Koushik Mutually Aided Cooperative Housing Society Vs. Ameena Begum & Another* (SLP.(C).No.5489 of 2021 dated 01.12.2023).
6. *Rajathi Ammal and Others Vs. Vankatasubbu Reddiar (Died) and Others* (CRP(NPD).No.2979 of 2016 dated 09.09.2021).

7. Per contra, Dr.C.Ravichandran, learned counsel for the respondent/plaintiff would contend that the Trial Court has not committed any grave error in deciding the interlocutory application separately, without postponing the decision in the said application to receive additional documents along with the First Appeal at the time of final disposal of the First Appeal. He would state that the defendants having unsuccessfully attempted to set aside the ex-parte decree, though may be entitled to file a statutory First Appeal, the grounds of challenge available to the defendants would be very limited and by no stretch of imagination, would permit the defendants to canvas or put forth their defense. He would rely on the decision of the Hon'ble Supreme Court in *Bhanu Kumar Jain Vs. Archana Kumar and Another*, reported in (2005) 1 SCC



787, which has also been relied on by the learned counsel for the revision petitioners, and also placed reliance on the decision of this Court in *A.Meiazhagan Vs. Mangayarkkarasi and Others*, passed in *A.S.No.640 of 2016* dated 25.04.2017, in support of his contention.

8.I have carefully considered the submissions advanced by the learned counsel on either side.

9.The facts are not in dispute. The defendants, who are the revision petitioners herein, suffered an ex-parte decree and their attempt to have the said decree set aside was initially fruitful before the Trial Court. However, in revisions, this Court had set aside the order of the Trial Court and thereby the ex-parte decree came to be restored. It is thereafter that the First Appeal has been preferred by the revision petitioners. Insofar as the maintainability of the First Appeal, there is no quarrel. The law is now well settled on this point. The Hon'ble Supreme Court in *Bhanu Kumar Jain's case*, has held that the dismissal of an application under Order IX Rule 13 of CPC would not bar filing of an appeal under Section 96 of the CPC. This view was also affirmed by a later Three Judges Bench of the Hon'ble Supreme Court in *N.Mohan's case*. The view in *Bhivchandra Shankar More's case* is also approved. The same view was



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also reiterated by the Hon'ble Supreme Court in *Koushik Mutually Aided Cooperative Housing Society's case*.

10.However, the point for consideration in the present revision is as to whether (i) the First Appellate Court was right in taking up the interlocutory application under Order XLI Rule 27 CPC independently, without hearing the application along with the First Appeal, while finally disposing of the First Appeal; (ii) whether the defendants having lost their right to set aside the ex-parte decree could be permitted to rely on fresh documentary evidence on their side in the First Appeal.

11.Coming to the first question regarding consideration of an interlocutory application under Section XLI Rule 27 of CPC in a First Appeal, the Hon'ble Supreme Court in *Union of India Vs. Ibrahim Uddin's case*, has held that as a general principle, the Appellate Court should not travel outside the record of the Lower Court and cannot take any evidence in appeal, except for the provisions of Rule 27 of Order XLI of the CPC, in and whereby the Appellate Court has the power to record additional evidence in exceptional circumstances. The Hon'ble Supreme Court also held that such permission can be only subject to the condition laid down in the rule and the parties are entitled



as a matter right to admission of additional evidence in the First Appeal.

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12.As regards the stage of consideration of an application under Order XLI Rule 27 of CPC, the Hon'ble Supreme Court held that it should be considered at the time of hearing of the appeal on merits and the issue is whether the Appellate Court is able to pronounce judgment on the materials before it, without taking into consideration the additional evidence sought to be adduced and that such occasion would arise only on examining the evidence as it stands and the Court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court.

13.The above ratio would certainly apply to a case where the parties had gone through a regular trial and both the plaintiff and the defendants had let in oral and documentary evidence and the aggrieved party who was on First Appeal sought to introduce additional evidence. Under such circumstances, as held by the Hon'ble Supreme Court, the consideration as to whether such documentary evidence would be necessary or not, would have to be decided at the time of hearing of the appeal on merits.

14.The facts of the present case are however peculiar. The defendant has



lost his right to defend the suit, after being set ex-parte an ex-parte decree came to be passed. The defendants' application to set aside the ex-parte decree has also become final with the order passed in revisions before this Court.

15. In view of the above, the defendants have lost their right to file a written statement and contest the suit. No doubt, the defendants are entitled to avail the statutory remedy under Section 96 of CPC, by way of challenging the ex-parte decree in a First Appeal. However, the moot point is whether in such a First Appeal challenging an ex-parte decree, the defendants can be permitted to lead any evidence. Firstly, the defendants have lost their right to file a written statement itself and therefore, there cannot be any amount of evidence in the absence of pleadings. This fundamental principle, if kept in mind, would straight away lead to the answer to the second issue that arises for consideration in this revision.

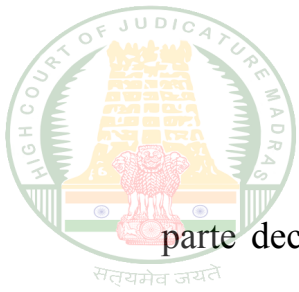
16. The law is more than well settled that no amount of evidence can be adduced in the absence of pleadings. The only grounds on which the defendants can challenge the ex-parte decree are only with regard to the entitlement of the plaintiff to such a decree, based on the plaint and the documents which have been marked at the time of recording ex-parte evidence. No other evidence or



plea can be looked into. While so, in such circumstances, I do not find any error committed by the First Appellate Court in independently taking up the application under Order XLI Rule 27 of CPC. It was not necessary for the First Appellate Court to follow the general settled principle with regard to the consideration of an application for additional evidence along with the hearing of the appeal on merits.

17.In fact, in *Bhanu Kumar Jain's case*, the Three Judge Bench of the Hon'ble Supreme Court, has held that the defendant who has suffered an ex-parte and also was not successful in getting the same set aside under Order IX Rule 13 of CPC could only argue the First Appeal on the merits of the suit, in order to contend that materials brought on record by the plaintiffs were not sufficient for passing a decree in favour of the plaintiffs or that the suit itself was otherwise not maintainable.

18.In *A.Meiazhagan's case*, this Court followed the ratio laid down by the Hon'ble Supreme Court in *Bhanu Kumar Jain's case* and held that excepting the challenge to the merits of the ex-parte decree, the defendants cannot canvas anything beyond the same. It was also held by this Court that without resorting to Order IX Rule 13 of CPC, by showing sufficient cause to set aside the ex-



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parte decree, the appellant cannot take recourse under Order XLI Rule 27 of

CPC to introduce evidence without any pleadings before the Trial Court. In the case on hand, even the defendants resorting to Order IX Rule 13 of CPC to set aside the ex-parte decree was admittedly unsuccessful. Therefore, in my considered opinion, the defendants cannot attempt to achieve what they could not otherwise achieve before the Trial Court, by invoking provisions of Order XLI Rule 27 of CPC. The First Appellate Court has rightly dismissed the application. In view of the above, I do not find any infirmity or illegality in the order passed by the Trial Court.

19.In fine, the Civil Revision Petition is dismissed. There shall be no orders to costs. Connected Civil Miscellaneous Petition is closed.

14.07.2025

Speaking/Non-speaking order

Index : Yes/No

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To

The Subordinate Judge, Arakkonam.

P.B.BALAJI.J.



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Pre-delivery order made in
CRP.No.2156 of 2023
& CMP.No.13116 of 2023

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