



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.Nos.2882 and 2883 of 2017

and

C.M.P.No.13595 of 2017

C.R.P.No.2882 of 2017

V.Sadagopan

... Petitioner

Vs.

1.M/s.Canara Bank,
Overseas Branch,
Represented by its Senior Manager,
Vela Towers,
46, Azad Street,
Khaderpet,
Tiruppur-641 601.

2.M/s.Kotak Mahindra Bank Limited,
Door No.1, Park Avenue Ground Floor,
Avinashi Road,
Tiruppur-641 603.

3.M/s.M.M.Clothing Inc.,
Represented by its Partner, Mainsha Suraj Tawde,
Door No.1, Indira Naar,
Murugampalayam,
Tiruppur.

... Respondents



PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order of the I Additional District Court, Tiruppur, dated 17.03.2016 in I.A.No.2123 of 2015 in O.S.No.40 of 2012.

For Petitioner : Mr.P.Valliappan
Senior Counsel
for Mr.R.Baskar

For Respondents : Mr.Ragunathan for R1
Mr.Balamurali for R2

C.R.P.No.2883 of 2017

V.Sadagopan

... Petitioner

Vs.

M/s.Canara Bank,
Overseas Branch,
Represented by its Senior Manager,
Vela Towers,
46, Azad Street,
Khaderpet,
Tiruppur-641 601.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to direct the I Additional District Court, Tiruppur, to number the application under Order 9 Rule 13 of the Civil Procedure Code in unnumbered I.A.No. Of 2016 in O.S.No.40 of 2012.

For Petitioner : Mr.P.Valliappan
Senior Counsel
for Mr.R.Baskar

For Respondent : Mr.Ragunathan

COMMON ORDER

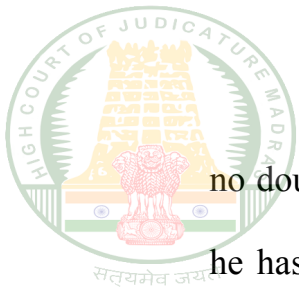


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These Civil Revision Petitions are directed against (i) the refusal of the trial Court to number the application filed by the second defendant/revision petitioner herein to set aside the ex-parte decree passed against him in O.S.No.40 of 2012 and (ii) challenging the amendment of the plaint by including the relief against the second defendant.

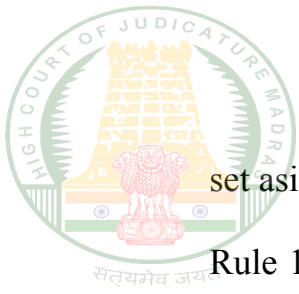
2. Heard Mr.P.Valliappan, learned Senior Counsel appearing for the revision petitioner in both these revision petitions and Mr.Raghunathan, learned counsel appearing for the first respondent/plaintiff in C.R.P.No.2882 of 2017 and the respondent in C.R.P.No.2883 of 2017, and Mr.Balamurali, learned counsel appearing for the second respondent/first defendant in C.R.P.No.2882 of 2017, namely, Kotak Mahindra Bank Limited.

3. Mr.P.Valliappan, learned Senior Counsel appearing for the revision petitioner would state that originally the suit was filed by Canara Bank/the plaintiff, against three defendants, namely, (1) Kotak Mahindra Bank, (2) the revision petitioner and (3) M.M.Clothing INC., Private Limited/third defendant, represented by its partner. He would invite my attention to the relief sought for in the said suit, namely, recovery of a sum of Rs.19,60,292/- from the first defendant Bank. The learned Senior counsel would further submit that



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no doubt, the revision petitioner was served with summons in the said suit and he has also engaged a lawyer to represent him in the said suit. However, the revision petitioner has not chosen to defend the suit, considering the fact that no relief was sought for as against the revision petitioner. Subsequently, the revision petitioner was set *ex-parte* on 19.03.2013. Thereafter, the suit was contested by the first defendant Bank alone and pending trial, the plaintiff has taken out an application seeking amendment of the plaint to amend the prayer portion to include the relief as against not only the first defendant but also the second defendant [jointly and severally] and the said application came to be allowed by the trial Court. The learned Senior Counsel invites my attention to Rule 31 of the Civil Rules of Practice and would state that the Rule mandates that the revision petitioner was to be put on notice about the application for amendment. He would further state that when the original claim was not directed against the second defendant, but only by way of amendment, the prayer was sought as against the second defendant, the revision petitioner ought to have been put on notice, even prior to the amendment being ordered. He would further invite my attention to the provisions of Order IX Rule 13 C.P.C and state that the revision petitioner, though remained *ex-parte* and did not choose to contest the suit, despite the fact that the suit was subsequently decreed on contest by the first defendant, the revision petitioner is entitled to



set aside the *ex-parte* decree. He would specifically refer to Proviso to Order IX Rule 13 C.P.C in this regard. The learned Senior Counsel would also point out to the relevant dates and state that on the date of seeking amendment to include the relief as against the revision petitioner, the claim was clearly time barred. In this connection, the learned Senior Counsel would invite my attention to Articles 23, 26 and 103 of the Limitation Act.

4. However, I do not deem it necessary to test the maintainability of the suit on the ground of the claim being barred by limitation as against the second defendant, at this stage. Admittedly, the revision petitioner/second defendant has sought to set aside the *ex-parte* decree as against him and also challenges the order of the amendment to include the relief sought for as against him though originally not sought for.

5. Mr.Ragunathan, the learned counsel appearing for the plaintiff Bank would state that the decree has been passed on merits and as a drawee, the second defendant cannot wriggle out of the liability and therefore, the decree does not deserve to be set aside. Equally, he would sustain the order of amendment on the ground that the revision petitioner, despite service of summons into the suit, chose to stay away voluntarily and now cannot claim



that he ought to have been put on notice.

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6. The learned counsel appearing for the first defendant Bank, Mr.Balamurali, would contend that it is not as if the plaintiff did not make any allegations as against the revision petitioner/second defendant in the plaint and he would point out to Paragraph No.20 of the plaint where specific allegations are made against the second defendant. He would therefore state that the second defendant, despite the fact that the allegations were made against him, did not choose to contest the suit and therefore, he has to suffer the consequences. Hence, he prays for dismissal of this revision petition.

7. I have carefully considered the rival submissions made on both sides and perused the materials available on record.

8. The suit was originally instituted as against the three defendants by the plaintiff, namely, Canara Bank was for recovery of a sum of Rs.19,60,292/- . The plaintiff at that length of time opted to seek relief only as against the first defendant Bank and not against the second defendant. It is under these circumstances that the second defendant, though served with summons, did not choose to contest the suit, finding that no relief was sought for against the



second defendant. The second defendant was set *ex-parte* and the trial of the suit was proceeded with. At that juncture, the plaintiff thought it fit to amend the plaint by modifying the suit relief to seek joint and several liability/claim as against the defendants 1 and 2. That being the position, the revision petitioner ought to have been put on notice at least at that stage, despite the fact that he was set *ex-parte* in the suit on early dates.

9. Rule 31 of the Civil Rules of Practice is extracted hereunder for easy reference:

“Notice- (1) Unless the Court otherwise orders notice of an interlocutory Application shall be given to the other parties to the suit, matter or proceedings or their pleader not less than three days before the day appointed for the hearing of the application

(2) such notice shall be served on the pleader whenever the party appears by such pleader.

(3) Notice of the application may be served on a party not appearing by pleader by registered post, acknowledgement prepaid, to the address given in the pleading and in the event of its non-service on the party or of the party not appearing on the day fixed in the notice, the Court may direct that the notice shall be delivered or sent to the proper officer to be served by him or by one of his subordinates on the party. If the party be absent or refuses to receive the notice the procedure prescribed in Rule 15 or Rule 17 of Order V of the Code, as the case may be shall be



followed.”

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10. Order IX Rule 13 of the Code of Civil Procedure is extracted hereunder for easy reference:

*“ Setting aside the decree ex-parte against the defendant-
In any case in which a decree is passed ex-parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.*

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

[Provided further that no Court shall set aside a decree passed ex-parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim].”

11. On a careful perusal of the provisions extracted herein above, it is seen that the revision petitioner ought to have been put on notice before the



amendment application was entertained. Only by way of amendment, the plaintiff for the first time seeks a decree against the revision petitioner. In all fairness, even though the revision petitioner had been set *ex-parte* earlier, the Court ought to have directed notice to be issued to the revision petitioner.

12. The revision petitioner is also entitled to seek the *ex-parte* decree as against him to be set aside. Unfortunately, the trial Court has returned the application filed under Order 9 Rule 13 C.P.C by merely stating that the suit has been disposed of on merits and therefore, the revision petitioner is not entitled to seek setting aside of the decree. The proviso to Rule 13 permits such setting aside of a decree. Unfortunately, the trial Court has lost sight of its power. I am, therefore, inclined to allow these revisions.

13. Considering the larger interest of the parties and to avoid further wastage of judicial time, since the parties have elaborately argued the maintainability of the application filed under Order IX Rule 13 C.P.C even before me, I am inclined to straight away allow the application filed under Order IX Rule 13 C.P.C taken out by the second defendant. The *ex-parte* decree passed against the revision petitioner/second defendant alone is set aside and the order passed in I.A.No.2123 of 2015 in O.S.No.40 of 2012 permitting

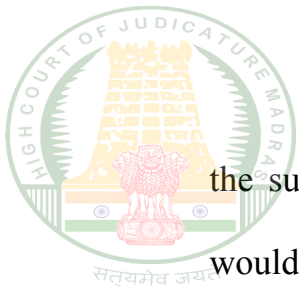


to amend the plaint to seek the relief as against the revision petitioner/second defendant is also set aside. The amendment application shall be heard, after giving an opportunity to the revision petitioner to file a detailed counter and thereafter, the application shall be decided, at any event, within a period of 60 days from the date of receipt of a copy of this order.

14. Mr.Raghunathan, the learned counsel appearing for the plaintiff states that the entire *ex-parte* decree cannot be bifurcated or separated or set aside against the revision petitioner alone and the entire *ex-parte* decree would have to go.

15. I am unable to countenance the said submission made by the learned counsel appearing for the plaintiff for the simple reason that the suit was contested by the first defendant and post amendment, the trial Court has dismissed the suit as against the first defendant on merits. Admittedly, the plaintiff has not challenged the same till date and the trial Court has proceeded to grant *ex-pate* decree only against the second defendant. In the light of the above, I see no reason as to why the *ex-parte* decree as against the second defendant/revision petitioner alone should not be set aside.

16. It is open to the revision petitioner to canvass the maintainability of



the suit claim on the question of law. In other words, the plea of limitation would also be available to the revision petitioner to be taken up during the hearing of amendment application.

17. Accordingly, these Civil Revision Petitions are allowed. There shall be no order as to costs. Connected miscellaneous petition is closed.

17.06.2025

Speaking Order/Non-speaking Order

Index : Yes

Neutral Citation : Yes

ssb

To

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Tiruppur.

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46, Azad Street,
Khaderpet,
Tiruppur-641 601.

3.M/s.Kotak Mahindra Bank Limited,
Door No.1, Park Avenue Ground Floor,
Avinashi Road,
Tiruppur-641 603.

11/13



CRP.Nos.2882 and 2883 of 2



4.M/s.M.M.Clothing Inc.,
Represented by its Partner, Mainsha Suraj Tawde,
Door No.1, Indira Naar,
Murugampalayam,
Tiruppur.

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CRP.Nos.2882 and 2883 of 2



P.B. BALAJI,J.

ssb

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