

Dr.Jamuna Vs. Karmegam

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Court : Chennai

Decided On : Jun-20-2013

Judge : K.Ravichandrabaabu

Appellant : Dr.Jamuna

Respondent : Karmegam

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

20. 6.2013 CORAM: THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU C.R.P. (NPD) No.3403 of 2009 Dr.Jamuna .. Petitioner Vs. Karmegam .. Respondent PRAYER: Petition under Article 227 of the Constitution of India against the decreetal order dated 29.6.2009 in unnumbered E.A.S.R.No.13212 of 2008 in E.P.No.40 of 2004 in O.S.No.208 of 1998 on the file of the Principal District Munsif Court, Alandur. For Petitioner : Mr.G.Vijayakumar For Respondent : Mr.B.Vijay

ORDER

This Civil Revision Petition is filed as against an order of dismissal dated 29.6.2009 passed in unnumbered E.A.S.R.No.13212 of 2008 filed by the petitioner under Section 47 read with Section 151 of the Code of Civil Procedure (for brevity, ".the CPC".) seeking for dismissal of the execution petition as not maintainable.

2. Heard Mr.G.Vijayakumar, learned counsel for the petitioner and Mr.B.Vijay, learned counsel for the respondent. 3.1. The petitioner herein is the judgment-debtor in a suit for compensation on the file of the Sub Court, Poonamallee in O.S.No.208 of 1998 filed by the respondent herein. The suit came to be decreed ex parte on 10.2.2000. Thereafter, the respondent herein filed E.P.No.40 of 2004 before the District Munsif Court, Alandur seeking for execution of the decree passed in O.S.No.208 of 1998. In the said execution petition, notice was ordered to the petitioner. He has also entered appearance by filing vakalat through his counsel. The said execution petition was filed on 9.7.2004 and the petitioner entered appearance through his counsel on 28.9.2004. When the matter was called on 12.12.2005, the petitioner did not appear and consequently, he was set ex parte on the said day for non filing of counter. On the same day, an order of attachment was also passed. 3.2. Thereafter, the petitioner filed E.A.No.5 of 2006 to raise the attachment, in which a conditional order was passed on 16.3.2006, However, the said E.A.No.5 of 2006 itself came to be dismissed for non payment of cost on 3.4.2006. The petitioner filed E.A.No.53 of 2006 to restore E.A.No.5 of 2006 and consequently, by an order dated 5.6.2006, E.A.No.5 of 2006 came to be restored and the said application was also allowed by raising the attachment. 3.3. It is seen that the petitioner has not filed any counter in the Execution Petition and, therefore, the matter was posted for filing counter. In the meantime, the petitioner filed E.A.No.84 of 2006 to stay further proceedings of the execution on the ground that an application under Section 5 of the Limitation Act to set aside the ex parte decree passed in O.S.No.208 of 1998 is pending on the Original Side. The said E.A.No.84 of 2006 also came to be dismissed for default on 9.1.2008 and the main Execution Petition was posted for filing counter on 25.1.2008. 3.4. Thereafter, when the matter was taken up on 14.2.2008 for hearing, the petitioner did not appear and he has also not filed counter. Consequently, he was set ex parte on 14.2.2008 and an order of attachment was also ordered on the same day. Thereafter, the petitioner filed the present unnumbered application before the Executing Court under Section 47 read with Section 151 of the CPC for the relief as stated supra. The Court below rejected the said application by observing that the same is not maintainable in view of the fact that the petitioner has not taken any steps to set aside the order made on 14.2.2008, wherein and whereby he was

set ex parte in the execution proceedings. Aggrieved against the said order passed by the Court below, the present revision is filed.

4. The learned counsel for the petitioner submitted that the petitioner is entitled to maintain an application under Section 47 of the CPC before the Executing Court and, therefore, the order of the Court below in rejecting the said application is not correct.

5. Certainly there is no doubt about the position that the party to the proceedings can maintain an application under Section 47 of the CPC. But in this case, the facts and circumstances, as referred to above, would disclose that on 14.2.2008 itself the Court below passed an order setting the petitioner ex parte and also made an order of attachment on the very same day. Admittedly, the petitioner has not taken any steps so far to set aside the said order dated 14.2.2008. Thus, the petitioner having been set ex parte on 14.2.2008 and in the absence of any application filed by him seeking to set aside the said ex parte order, he is not justified in filing an application under Section 47 of the CPC, especially when he is set ex parte in the main Execution Petition itself.

6. First of all, the petitioner should come into the picture once again in the main proceedings by filing appropriate application to set aside the ex parte order dated 14.2.2008. If he has not come into the picture by getting such ex parte order set aside, he cannot be permitted to say that he is a party to the proceedings and consequently, entitled to file an application under Section 47 of the CPC. Party to the proceedings contemplated under Section 47 of the CPC does not mean and include the person who is set ex parte also. No doubt, Explanation-I to Section 47 of the CPC contemplates a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit. But, a careful reading of such Explanation-I would show that it has not dealt with a plaintiff or a defendant against whom an ex parte order or decree is passed by the Court. Therefore, in my considered view, the said Explanation-I to Section 47 of the CPC refers about a plaintiff or a defendant who had participated in the proceedings and not in respect of a plaintiff or a defendant who has been set ex parte. The word ".ex parte". has not been defined under the CPC. However, the

dictionary meaning of the said word ".ex parte". reads as ".with respect to or in the interests of one side only".. Therefore, if a person is set ex parte, unless he files appropriate application and gets the said order set aside, he cannot be treated as a party entitled to continue the proceedings without getting the ex parte order set aside.

7. In fact, a perusal of the order passed by the Court below would also show that the application filed by the petitioner was returned by the Court below on two occasions by questioning the maintainability of the very application and on each occasion, it appears, that the petitioner had represented the said application only by contending that it is maintainable under Section 47 of the CPC without taking any steps to get the order dated 14.2.2008 set aside. Therefore, I find that the order passed by the Court below is just and proper and in accordance with law, with which I find no ground to interfere in this Civil Revision Petition.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, M.P.No.1 of 2009 is closed. The learned counsel for the respondent submits that the suit is of the year 1998 and the Execution Petition is of the year 2004 and the same is pending all these years without getting the decree satisfied. Therefore, the Executing Court is directed to dispose of the Execution Petition within a period of thirty days from the date of receipt of a copy of this order.
sasi To: The Principal District Munsif Court Alandur

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