Nehru Vs. Devaraj

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Court : Chennai

Decided On : Jan-24-2014

Judge : P.R.Shivakumar

Appellant : Nehru

Respondent : Devaraj

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

24. 01.2014 C O R A M THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR C.R.P.(NPD) No.3611 of 2012 Nehru ... Petitioner Vs. Devaraj ... Respondent Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the judgment and decree of the learned Principal Sub Judge, Tindivanam dated 19.01.2012 made in A.S.No.30 of 2011. For Petitioner : Mr.R.Santhanam For Respondent : Mr.B.Gurunathan

ORDER

The plaintiff in the original suit O.S.No.31/2003 on the file of the learned Additional District Munsif, Tindivanam is the petitioner in the present revision. The defendant in the said suit is the respondent herein.

2. The revision petitioner/plaintiff filed the suit against the respondent herein/defendant for recovery of a sum of Rs.9,460/- (Rs.5,500/- towards principal

and Rs.3,960/- towards interest) based on a Pro-note allegedly executed by the respondent herein on 01.01.2000. The suit was resisted by the respondent herein contending that no such loan transaction took place on 01.01.2000; that on the other hand, he had borrowed a sum of Rs.10,000/- on 14.07.1997; that the total amount payable on the said transaction was worked out by the parties on 07.01.2000 at Rs.17,500/-, out of which a sum of Rs.13,500/- was paid on the same day leaving a balance of Rs.4,000/- and that the signatures obtained from the respondent in unfilled forms had been used for creating the suit promissory note as if the respondent borrowed a sum of Rs.5,500/- on 01.01.2000. However, the respondent herein, in his written statement, admitted that out of a sum of Rs.4,000/-, which was due from the respondent, a sum of Rs.1,800/- was adjusted towards payment of LIC premium for the policies taken by the revision petitioner/plaintiff and a further sum of Rs.500/- was paid on the instructions of the revision petitioner/plaintiff to his father and that after such adjustments, a sum of Rs.1,700/- alone remained due from the respondent herein/defendant.

3. The learned trial judge, after trial, decreed the suit as prayed for holding that the transaction that allegedly took place on 14.07.1997 as per the averments made by the respondent herein/defendant in his written statement was not substantiated and that the revision petitioner herein/plaintiff was able to prove the suit transaction of borrowing Rs.5,500/- by the respondent herein/defendant and execution of the suit promissory note on 1.1.2000. Accordingly, the learned trial judge granted a decree dated 29.11.2004 directing the respondent herein to pay a sum of Rs.9,460/- together with an interest on the principal amount, namely Rs.5,500/- at the rate of 12% per annum from the date of filing of the suit till the date of decree and a post decree interest at the rate of 6% per annum and also cost.

4. The said decree passed by the trial court dated 29.11.2004 was challenged by the respondent herein before the learned Principal Subordinate Judge, Tindivanam in A.S.No.30/2011. The learned Principal Subordinate Judge, Tindivanam, after hearing, held that the alleged loan transaction on 01.01.2000 was not proved. Based on the said finding, the learned Principal Subordinate Judge, Tindivanam set aside the decree passed by the trial court by his judgment

and decree dated 19.01.2012 made in A.S.No.30/2011.

5. As the amount involved in the suit is less than 25,000/- rupees, Section 102 of the Code of Civil Procedure gets attracted and the decree of the appellate court is made, a decree not appealable by preferring a second appeal. The same is the reason why the revision petitioner/plaintiff has chosen to challenge the judgment and decree of the lower appellate court invoking the revisional powers of this court under Section 115 of CPC.

6. It is the contention of Mr.R.Santhanam, learned counsel for the revision petitioner that though the judgment and decree of the learned Principal Subordinate Judge, Tindivanam cannot be brought within clauses (a) and (b) of Section 115(1) of CPC, it will squarely fall within the ambit of clause (c) of Section 115 (1) of CPC. According to the submissions made by the learned counsel for the revision petitioner, the learned lower appellate judge, acted with illegality and material irregularity in exercise of his appellate jurisdiction, as he had closed his eyes to the admission made by the respondent herein/defendant and omitted to sustain the claim of the revision petitioner/plaintiff at least to the extent of the admission.

7. Per contra, Mr.B.Gurunathan, learned counsel for the respondent would make an attempt to contend that, since the execution of the promissory note on 1.1.2000 was not proved, it was rightly held by the lower appellate court that it was highly improbable for the respondent to have executed such a promissory note; that in the light of the admissions made by the plaintiff as PW1, the dismissal of the suit filed based on the pro-note dated 1.1.2000, in its entirety could not be found fault with and that such a finding of the lower appellate court could not be termed as illegal or irregular exercise of jurisdiction warranting interference by this court in exercise of its revisional power.

8. This court paid its anxious consideration to the above said contentions made on behalf of the parties to the revision.

9. It is an admitted fact that the revision petitioner and the respondent herein are not strangers to each other and the respondent did enter into a loan transaction

with the revision petitioner by borrowing a sum of Rs.10,000/- on 14.07.1997. It is also an admitted fact that the said amount borrowed was not fully repaid. On the other hand, according to the respondent, when accounts were settled on the said transaction in the first week of January 2000, the total amount due from the respondent was worked out at Rs.17,500/- and a sum of Rs.13,500/- was paid on 7.1.2000 leaving a balance of Rs.4,000/-. The said pleading of the respondent is a clear admission of his liability to pay Rs.4,000/- as on 7.1.2000. Thereafter, according to the respondent, he paid a sum of Rs.1,800/- on behalf of the revision petitioner towards the LIC premium payable by him with the understanding that the said amount would be adjusted towards the amount payable by the respondent to the revision petitioner. It is also the further contention of the respondent that a further sum of Rs.500/- was paid on the advice of the revision petitioner to the father of the revision petitioner and that the said payment of Rs.2,300/- had to be given credit. After making such an averment, the respondent had made a candid admission that a sum of Rs.1,700/- was due. However, there was no clear cut averment as to the dates on which LIC premium was paid by the respondent on behalf of the revision petitioner and the payment of Rs.500/- was made to the father of the revision petitioner.

10. It is not the case of the respondent that the suit claim had become barred by limitation. In fact, the suit was filed on 31.12.2012. Even as per the averment made in the written statement, payment of Rs.13,500/- was made on 7.1.2000. The other payments and adjustments could have taken place only subsequent to the said date. The acknowledgment made by payment of Rs.13,500/- on 7.1.2000, will give rise to a fresh start of limitation and the suit had been filed well within the period of limitation. The same could be the reason why the respondent had not taken any plea regarding limitation.

11. Since the revision petitioner as PW1, had admitted that a hand notebook was maintained by him and there is no entry in the said hand notebook regarding the transaction that allegedly took place on 01.01.2000, it will probablise the case of the respondent that no loan transaction took place on 01.01.2000 and that only a sum of Rs.1,700/- was due on the loan transaction that took place on 14.07.1997. Since the revision petitioner/plaintiff, has not come with clear particulars as to the

date on which the admitted adjustment of LIC premium was made and the admitted payment of Rs.500/- to the father of the revision petitioner was made, we have to draw a necessary inference that the same should have taken place even just a few days or a few months prior to the filing of the suit. Hence the revision petitioner shall not be entitled to claim interest on the admitted amount up to the date of filing of the suit. At the best, he shall be entitled to claim interest on the admitted amount of Rs.1700/- from the date of filing of the suit. As rightly pointed out by the learned counsel for the revision petitioner, the learned lower appellate judge, totally ignored the clear admission made by the respondent/defendant that a sum of Rs.1,700/- was due and the same resulted in an illegal and irregular exercise of power of the lower appellate court, whereby the lower appellate judge chose to simply set aside the decree passed by the trial court.

12. This court is able to find out yet another vital defect in the judgment of the lower appellate court. The lower appellate court has chosen to coin the operative portion of the judgment in a language meaning that the judgment and decree of the trial court were set aside. The lower appellate court has failed to make it clear, what shall be the final result of the suit after setting aside the decree passed by the trial court. Suppose an appeal is dismissed, that will be sufficient to convey the message that the decree passed by the trial court will be in tact. In case the appeal is allowed and the decree of the trial court is set aside, further orders should have been incorporated in the judgment. It should indicate whether the decree is modified and if so, how it is modified. It should also indicate in case of setting aside the decree of the trial court as to whether the suit will stand dismissed, in case the trial court had decreed the suit or whether the suit is remitted back to the trial court for fresh disposal. In case a decree of the trial court dismissing the suit is set aside, the appellate court should say whether the suit is decreed and if so, to what extent or whether the suit is remitted back to the trial court for fresh disposal. The learned lower appellate judge has committed a grave error in providing such an operative part in the judgment, which could even be termed a material irregularity in the passing of the judgment. This court is surprised to note that even the decree drafted by the lower appellate court does not refer to the above said aspects to indicate what shall be the fate of the suit.

13. Above all, the very fact that the learned lower appellate judge chose to ignore the admission made by the defendant, will amount to exercise of jurisdiction with illegality and material irregularity, warranting interference by this court in exercise of its revisional power. Accordingly, this court comes to the conclusion that the judgment and decree of the lower appellate court are liable to be interfered with and the decree passed by the lower appellate court is liable to be set aside. However, the reversal of the decree passed by the lower appellate court shall not result in restoration of the decree passed by the trial court. For the reasons indicated supra, the revision petitioner/plaintiff shall not be entitled to a decree as prayed for in the plaint and on the other hand, he shall be entitled to a lesser relief, namely a decree directing the respondent herein/defendant to pay a sum of Rs.1,700/- together with an interest on the said amount at the rate of 12% per annum from the date of plaint till the date of decree passed by the trial court and a post decree interest from the date of decree of the trial court till realisation, at the rate of 6% per annum. In view of the peculiar facts and circumstances of the case, this court is inclined to direct the parties to bear their respective costs throughout. In the result, the revision succeeds and the same is allowed. The decree of the lower appellate court dated 19.01.2012 made in A.S.No.30 of 2011 totally setting aside the decree passed by the trial court dated 29.11.2004 made in O.S.No.31 of 2003 is set aside. The decree passed by the trial court is modified by decreeing the suit in part, directing the respondent herein/defendant to pay a sum of Rs.1,700/- together with an interest on the said amount at the rate of 12% per annum from the date of plaint till the date of decree passed by the trial court and a post-decree interest from the date of decree of the trial court till realisation, at the rate of 6% per annum. However, there shall be no order as to costs. 24.01.2014 Index : Yes/No Internet : Yes/No asr/- To The Principal Subordinate Judge, Tindivanam P.R.SHIVAKUMAR,J.

asr/- C.R.P.(NPD)No.3611 of 2012 Dated :

24. 01.2014