

V. Mohanraj and Another Vs. V. Jayamoorthy and Another

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Court : Chennai

Decided On : Dec-21-2016

Judge : The Honourable Ms. Justice R. Mala

Appeal No. : C.R.P. [NPD].No. 545 of 2014 & M.P. No. 1 of 2014

Appellant : V. Mohanraj and Another

Respondent : V. Jayamoorthy and Another

Judgement :

(Prayer: Civil Revision Petition preferred under Section 115 of C.P.C. against the order and decreetal order dated 07.02.2014 passed in I.A.No.11599 of 2013 in O.S.No.4820 of 2011 by the Hon'ble III Assistant Judge, City Civil Court, Chennai.)

1. Civil Revision Petition is filed against the order dated 07.02.2014 passed by the learned III Assistant Judge, City Civil Court, Chennai in I.A.No.11599 of 2013 in O.S.No.4820 of 2011.

2. The respondents herein as the plaintiffs have filed a suit in O.S.No.4820 of 2011, for recovery of money. Before filing the suit, the respondents have issued notice to the petitioners/defendants. For which, the petitioners sent a reply. Since suit summons was not served on the petitioners, substituted service has been ordered. Publication in Makkal Kural has been effected. The petitioners was set ex parte and ex parte decree was passed on 27.04.2012. After receipt of the notice in the Execution Petition proceedings on 04.07.2013, the petitioners filed an

application for setting aside the ex parte decree along with an application to condone the delay of 457 days. The trial Court, while allowing the application for condonation of delay, passed a conditional order to deposit 50% of the decree amount i.e., Rs.34,000/- on or before 21.12.2014, failing which, the petition stands dismissed. The petitioners instead of complying with the conditional order, have come forward with the present revision.

3. Learned counsel for the petitioners would submit that the petitioners themselves had admitted that they are subscribers of chit and they are the successful bidders of the chit and have received a sum of Rs.50,000/- as chit amount. At that time, for security reason alone, they have executed a letter of undertaking dated 06.06.2008 and they are not liable to pay any amount. It is further submitted that they have not received any summons.

4. Learned counsel for the petitioners further submits that in stead of onerous condition, the petitioners may be directed to pay some amount as compensation. Hence, he prays to reduce the amount. To substantiate his arguments, the following citations have been produced.

i] V.K.Industries and Others Vs M.P.Electricity Board, Rampur, Jabalpur reported in AIR 2002 Supreme Court 1151,

ii] N.S.Yamuna Vs A.Venugopal reported in 2000 [III] CTC 724 and

iii] M.Madhu Vs L.Mahalingam reported in [2012] 4 MLJ 450.

5. Resisting the same, learned counsel for the respondents would submit that even though the respondents filed their affidavit, to substantiate the same, they are not examined as a party. Hence, he prays for dismissal.

6. Considered the rival submissions made by both sides and perused the typed set of papers.

7. The respondents filed O.S.No.4820 of 2011 for recovery of money, on the basis of the letter of undertaking executed by the petitioners on 06.06.2008 for a sum of Rs.50,000/-. After issuance of notice dated 31.07.2010, the petitioners sent a reply

dated 09.08.2010, in which, the transaction itself has been disputed. Suit summons has not been served on the petitioners, since it was returned as 'door locked'. Subsequently, Substituted Service was effected by way of publication in Makkal Kural and on that basis, they were set ex parte and ex parte decree was passed on 27.04.2012. As soon as receipt of Execution Petition notice issued by the respondents, the petitioners filed an application to set aside the ex parte decree along with condonation of delay of 457 days. After hearing both sides, the trial Court passed a conditional order directing the petitioners to deposit 50% of the decree amount i.e., Rs.34,000/- on or before 21.12.2014, failing which, the petition stands dismissed.

9. Learned counsel for the petitioners would submit that the first petitioner is a household worker and he is unable to mobilise funds to comply with the conditional order imposed by the trial Court. He relied upon the decision of the Apex Court in V.K.Industries and Others Vs M.P.Electricity Board, Rampur, Jabalpur reported in AIR 2002 Supreme Court 1151, in which, it was held that the conditional order to deposit a sum of Rs.2,00,000/- and to furnish a bank guarantee for the remaining suit claim within a period of two months are onerous, harsh and unreasonable in the facts and circumstances of this case and the appellants are directed to deposit a sum of Rs.50,000/-, within a period of four weeks. So it is appropriate to incorporate paragraph Nos.5 and 6.

5. Ordinarily, a money decree is not stayed unconditionally and the judgement debtor would be put on terms. Even so, such conditions must be reasonable having regard to all relevant factors. Although ex parte decree was passed against the appellants, once it is set aside on the ground of non-service of suit summons the money decree did not exist for execution. It is no doubt true that in restoring a case the Court may impose conditions to deposit costs or the decretal amount or some portion thereof or to ask the defendant to give security but such conditions should be reasonable and not harshly excessive. In the impugned order the appellants are put on terms to deposit a sum of Rs.2,00,000/- and to furnish a bank guarantee for the remaining suit claim within a period of two months. In our view these terms are onerous, harsh and unreasonable in the facts and circumstances of the case and that too even before the trial of the suit on merits.

6. On 29.10.2001, the learned counsel for the appellants stated that within two weeks, a sum of Rs.50,000/- shall be deposited in the trial Court and notice was issued on that day. During the course of hearing the learned counsel informed that a sum of Rs.50,000/- is already deposited in the trial Court.

10. The other citations are not applicable to the case on hand, since both the cases are in respect of setting aside the ex parte decree. The issue in the present case is to set aside the conditional order passed in the application for condoning the delay of 457 days.

11. Under such circumstances, I am inclined to modify the conditional order passed by the trial court on 07.02.2014 in I.A.No.11599 of 2013 in O.S.No.4820 of 2011, by directing the petitioners to pay compensation of Rs.10,000/- to the respondents on or before 23.01.2017, failing which, the petition stands dismissed.

12. Call on 24.01.2017 for reporting compliance.

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