

K. Meena Vs. Kalaimani

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Court : Chennai Madurai

Decided On : Jul-28-2016

Judge : B. Gokuldas

Appeal No. : C.R.P.(MD).No. 461 of 2005 & C.M.P.(MD).No. 2104 of 2005

Appellant : K. Meena

Respondent : Kalaimani

Judgement :

(Prayer: Civil Revision Petition filed against the fair and decreetal order, dated 23.12.2004 made in C.M.A.No.11 of 2004 on the file of the District Judge, Karur, confirming the fair and decreetal order, dated 16.04.2004, made in I.A.No.67/2004 in O.S.No.448 of 1997, on the file of the Additional District Munsif, Karur and allow this civil revision petition.)

1. Civil Revision Petition is filed against the order, dated 23.12.2004 made in C.M.A.No.11 of 2004 on the file of the learned District Judge, Karur, confirming the order, dated 16.04.2004, made in I.A.No.67/2004 in O.S.No.448 of 1997, on the file of the learned Additional District Munsif, Karur.

2. The respondent/plaintiff filed the suit in O.S.No.448 of 1997 on the file of District Court, Karur, for specific performance. The case of the respondent/plaintiff is that the suit property belongs to the petitioner/defendant, who entered into an agreement for sale on 12.02.1996 with the plaintiff/respondent, for a sale

consideration of Rs.30,000/-. The petitioner/defendant received a sum of Rs.25,000/- as advance from the respondent/plaintiff on the date of the agreement for sale and agreed to conclude the transaction, within 10 months therefrom. Though the respondent/plaintiff is ready and willing to pay the balance sale consideration, the petitioner/defendant failed to comply with the terms of the agreement entered into on 12.02.1996. Hence, the respondent/plaintiff filed the above suit.

3. The Trial Court decreed the suit *ex parte* on 05.01.2004. Thereafter, the respondent/defendant filed an interlocutory application in I.A.No.67 of 2004 to set aside the *ex parte* order, dated 05.01.2004. However, the same was dismissed, after contest, on 16.04.2004. Aggrieved against the said dismissal order, the petitioner/defendant filed an appeal in C.M.A.No.11 of 2004, on the file of District Court, Karur. The lower appellant Court also confirmed the dismissal order dated, 16.04.2004. Aggrieved against the said order, the petitioner/defendant is before this Court.

4. The learned counsel appearing for the petitioner submitted that the lower Appellate Court failed to notice that the suit was decreed *ex parte* on 05.01.2004 and immediately, the petitioner/defendant filed a petition on 06.01.2004 seeking to set aside the *ex parte* decree. This would clearly go to show that on the part of the petitioner/defendant there was no negligence and she did not adopt any dilatory tactics. Further, in the Interlocutory Application, the petitioner/defendant clearly explained the reason for her non appearance and she has also sworn an affidavit in that regard. In any event, the courts below should have afforded an opportunity to her to have her cause be decided on merits. In support of his submissions, the learned counsel for the petitioner relied on the following decisions:-

i) 2011 (3) CTC 168 (Meenakshisundaram Textiles v. V.Valliammal Textiles Ltd.)

ii) 2009 (2) CTC 132 (Ponnusamy Poosari v. Nallan Poosari)

5. On the contrary, the learned counsel for the respondent/plaintiff submitted that earlier, even in the previous round, the petitioner/defendant had filed an application to condone the delay of more than 500 days in filing the petition to set

aside the exparte decree order and the said application was allowed with costs. While so, in the present round also, before the Trial Court, the petitioner/defendant, did not choose to effectively contest the matter resulting in passing of the exparte order, dated 05.01.2004 and that is why, both the Trial Court as well as the lower Appellate Court rightly declined to show any indulgence in her favour. Thus, the courts below analysed the attitude of the petitioner/defendant and thereafter, rightly dismissed the application to set aside the exparte decree and the same need not be interfered with by the Court sitting in the revision jurisdiction at this distance of time. Hence he pleaded for dismissal of the civil revision petition.

6. At the outset, this Court is unable to endorse the submissions made by the learned counsel for the respondent/plaintiff for the simple reason that the Trial Court in the exparte order, dated 05.01.2004, proceeded to touch, in a way, the merits of the matter, with the following observation:-

(Tamil)

7. The above observation to the effect that the claim of the plaintiff stood proved clearly reflects the fact that the Trial Court did not simply pass the impugned exparte order for default or for non prosecution, but it has prima facie alone gone into the merits of the matter. In other words, when the Court decides, a matter on its merits, through an exparte judgment, as laid down by a Division Bench of this Court in Meenakshisundaram Textiles v. V.Valliammal Textiles Ltd. (Cited supra), in such exparte judgment also, essential ingredients of judgment must be available to the extent to indicate that the Court has applied its mind to the pleading, the relief claimed thereunder, the evidence and the conclusion arrived at by the Court on those elements. But, the perusal of the judgment rendered by the Trial Court ex facie does not suggest that the said Court apply its mind to the above aspects.

8. The lower Appellate Court also did not look into the said issue thereby to take a different decision. In such circumstances, the judgment of the Courts below do not fall in line with the observations made by the Honourable Division Bench in the decision cited supra. Therefore, I am of the view that petitioner/defendant must afford an opportunity to contest her case on merits.

9. In such view of the matter, the civil revision petition is allowed and the orders passed by the Courts below are set aside and the matter is remitted back to the Trial Court for consideration afresh. It is made clear that the matter involves a simple issue relating to specific performance. The Trial should be conducted on a day to day basis, thereby the entire proceedings be concluded, within a period of 3 months from the date of receipt of a copy of this order. Further, it is made clear, that the parties are directed to cooperate with the conduct of the trial, enabling the Trial Court to conclude the proceedings, within time frame as directed by this Court. Connected miscellaneous petition is closed.

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