

Universal Machinery Co. Vs. Vinag Mining Co.

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Court : Karnataka

Decided On : Mar-18-1981

Reported in : AIR1981Kant249; 1981(1)KarLJ580

Judge : G.N. Sabhahit, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 9, Rule 13

Appeal No. : Misc. First Appeal No. 1241 of 1978

Appellant : Universal Machinery Co.

Respondent : Vinag Mining Co.

Advocate for Def. : V.T. Raya Reddy, Adv.

Advocate for Pet/Ap. : R.J. Babu, Adv.

Judgement :

1. This appeal is by the petitioner/defendant and is directed against the order dated, 4-7-1978 passed by the Civil Judge, Bellary, in Miscellaneous Case No. 33 of 1975, on his file, dismissing the petition of the present appellant for setting aside the ex parte decree passed against him Original Suit No. 115 of 1974.

2. The brief facts relevant for the decision of this case are these:

One Vinag Mining Company, a Firm registered under the Indian Partnership Act, instituted suit against the present petitioner appellant viz., Universal Machinery Company, for recovery of Rs. 51,335/- with interest. in Original Suit No. 15 of 1974 on the file of the Court of the Civil Judge, Bellary. Summons was ordered to be issued against the present petitioner appellant who was defendant in the suit. Summons is at Exhibit P-1. The summons was sent both by post and through Court. In the summons, the office of the Court at Bellary wrote the name of the person concerned to whom the summons was addressed as 'Universal Mining Company' instead of writing 'Universal Machinery Company' which is the name of the petitioner-Company. . That was so in both the summonses. On receipt of the summons, the Company wrote a letter to the Court as per Ext. P-3 in the Miscellaneous application, which reads :

'XX XX XX XX

We received on 8th July 1974 a registered cover from your Court addressed to our name of the envelope.

On opening the cover, we found a summons of settlement of issue in the above suit signed by your Honour.

No copy of any plaint accompanied the summons and we do not know the subject matter of the suit. Service of summons without copy of plaint is bad in law and of no effect.

In any event, from the cause title on the summons, it is clear that we are not a party to the suit. We have no partner by the name of Mani Moti Sett. The summons is therefore returned herewith.

A similar summons without copy of plaint from your Court came to be served on us through City Civil Court, Calcutta, and was accepted by our office under misapprehension. This summons is returned herewith for the reasons stated above.

XX XX XX XX'

This letter is dated 10-7-1974. The Court, however, did not give any importance to this letter and proceeded to decree the suit ex parte against the present petitioner.

In the meanwhile, it appears, there was a suit filed by the present petitioner/appellant against the present respondent at Title Suit No. 1207 of 1972. It was a suit for restraining the present respondent from recovering any amount from the present petitioner/appellant. In that suit, it appears that a written statement was filed on 15-1-1975 which was not brought to the notice of the present petitioner by their Counsel. Thereafter, a certified copy of the decree passed in the suit before Bellary Court was produced before that Court in Calcutta on 11-6-1975. Thereafter, the present petitioner came to know that an ex parte decree is passed against him by the Court at Bellary and he hastened to institute a petition for setting aside the said ex parte order under Order IX, Rule 13 read with, Section 151 of the Code of Civil Procedure, before the Court at Bellary. He affirmed therein that he came to know about the ex parte decree when a copy of it was produced before the Court in Calcutta.

The learned Civil Judge, who heard the matter, however, found that the petition was barred by time and, in that view he dismissed the said petition for setting aside the ex parte decree. Aggrieved by the said order, the present appeal is instituted by the present petitioner/appellant.

3. The learned Advocate appearing for the appellant vehemently contended that the decree passed by the Civil Judge at Bellary in Original Suit No. 15/1974 is a nullity in the eye of law and it has to be set aside on being pointed out that such a decree has resulted by 'the mistake of an officer of the Court and that no party shall suffer on account of the mistake committed by the Court or its officers. In that view, he submitted that there was no question of limitation to institute the application. He further submitted that even otherwise, the petitioner has not shown sufficient cause for the delay.

4. As against that, the learned Advocate appearing for the respondent/plaintiff argued supporting the order passed by the learned Civil Judge.

5. The points, therefore, that arise for my consideration in this appeal are:

(1) Whether the decree passed by the learned Civil Judge in Original Suit No. 15 of 1974 is a nullity in the eye of law? and

(2) Whether there was sufficient cause to condone the delay in filing the petition to set aside the ex parte decree?

6. It is a settled principle of law that no order or decree can be passed by a Court without notice to the other side. Audi alteram partem is a maxim in law.

7. In the, instant case, it is true that the name of the appellant is correctly described in the plaint in Original Suit No. 15 of 1974. But, while sending the summons to the defendant obviously, the officer of the Court who prepared the summons has committed a grave error. Instead of writing the name of the defendant on the summons, he has mentioned the name of one Universal Mining company instead of writing the 'Universal Machinery Company'. In addition to this, the copy of the plaint was not enclosed with the summons. Therefore, there was absolutely nothing to indicate to the Present Petitioner-Company that the summons was, in fact addressed to itself i. e., 'Universal Machinery Company' and not to some other Company viz. 'Universal Mining Company.

8. When the Company was faced with such a situation, it addressed a letter to the Court as per Exhibit P-3 immediately on receipt of the summons. In. the circumstances, it was obviously the duty of the Court, to look into the matter and verify whether the summons was properly served before in ex parte decree could be passed' against the present Universal Machinery Company. The Court however, did not look into the matter and, in a mechanical manner, proceeded to pass an ex parte decree against the Universal Machinery Company, against whom no suit summons was ever served. Therefore. In the eye of, law, the decree becomes, a nullity.

9. If an authority is required for the pro position, it is to be found in a recent decision of the Supreme, Court in the case of Grindlays Bank Ltd v. Central Govt. Industrial tribunal, (AIR 1981 SC 4606). . In paragraph 10 of the judgment, this is what the Supreme Court has observed (at p. 609):

'XX XX XX XX

We are inclined to the view that where a party is prevented from appearing at the hearing due to a sufficient cause, and is faced with an ex parte award, it is as if the party is visited with an award without a notice of the proceedings. It is needless to stress that where the Tribunal proceeds to, make, an award without notice to a party is visited with an award is nothing but a nullity. In such circumstances, the 'tribunal has not only the power but also the duty to, set aside. exparte award and to direct, the matter to be heard afresh.'

It is further laid down by the Supreme Court in the case of Kiran Singh v. Chaman Paswan : [1955]1SCR117 , that a void order which is a nullity in, the eye of law, can be challenged at any time and even' in a. collateral proceeding.

10. Therefore, on the facts of this case, as pointed out by the Supreme Court as quoted above, the learned Civil 'Judge had not only the power to set aside such. a decree passed against the present petitioner, but it was also his duty to do so in the interest of justice. The reason is not far to seek. - It was on account of the' mistake of an officer of the Court that the summons was not properly addressed to the present petitioner and it was addressed to a. wrong person with dew result that the present appellant, who was defendant in the suit, had no notice of the suit. It was also partly due to lack of diligence on the pan of the Court because inspite of a letter addressed to the Court, the Court did not care to 'verify the truth in the allegation. It is for that reason that I say that the learned Civil Judge had not only the power to set aside the decree but also it was his bounden duty to do so Instead of doing that the learned Civil Judge has dealt in detail about the delay and has dismissed the petition on the sole ground that there was delay in filing the petition, and that order cannot be sustained.

11. In this context. it is necessary to recalls that the Supreme Court of India, in the case of Sangram Singh v. Election. Tribunal, Kotah, : [1955]2SCR1 , has emphasised the fact that a code of procedure must be regarded as such. The Supreme Court of India has further observed (at p. 429):

'It is procedure, something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties, not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Our laws of procedure are grounded on, a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and properly should not continue in their absence and that they should not be precluded from participating in them.

xx xx xx xx'

12. It is for that reason that I state that the learned Civil Judge had a bounden duty on the facts of the present case to set aside the ex parte decree passed by him in flagrant violation of the principles of natural justice.

13. Even otherwise, taking the petition merely under Order IX, Rule 13 of the Code of Civil Procedure. which. it is not, the reasons advanced by the petitioner was sufficient to condone the delay.

14. The learned Civil Judge makes much of the fact that in the written statement filed by the present respondent before the Calcutta Court in Title Suit No. 1207 of 1972. it was averred that there was an ex parte decree in Original Suit No. 15 of 1974.

15. It may at once, be mentioned. that there is no specific averment that such an ex parte decree was against the petitioner. As opted above, it received the summons which was addressed to 'Universal Mining Company'. Hence, it cannot be said that the pre. sent appellant /petitioner had the notice of the decree passed against him.

16. Moreover, the learned Advocate appearing for the appellant has filed an affidavit before this Court to the effect that he could not, in the pressure of work go through the written statement and inform the contents to the party.

17. For the foregoing reasons, it cannot be improbable that the Present appellant came to know of the ex parte decree against him when a certified copy of It was produced in the Court at Calcutta and that in the context becomes the date on which the present appellant was posted with knowledge of the decree and he filed the miscellaneous petition within thirty days thereafter. Even in that view, the learned Civil Judge was not justified in rejecting the petition only on the ground of limitation.

18. In the result, therefore, the appeal is allowed; the impugned order passed by the Civil Judge is set aside. The ex parte decree passed by the learned Civil Judge in Original Suit No. 15 of 1974 is hereby set aside. The learned Civil Judge is directed to take the suit on, file and, after giving opportunity to the present defendant and parties, he should hear the suit in accordance with law and dispose it off expeditiously.

18. No costs of this appeal.

19. Appeal allowed.