

S. Ganapathy Konar Vs. E. Ganapathy Konar

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Court : Chennai

Decided On : Feb-04-1994

Reported in : (1994)2MLJ198

Appellant : S. Ganapathy Konar

Respondent : E. Ganapathy Konar

Judgement :

ORDER

Abdul Hadi, J.

1. These civil revision petitions have been filed by the plaintiff in O.S. No. 35 of 1988 on the file of the District Munsifs Court, Valliyur (which was originally O.S. No. 12 of 1982 on the file of the District Munsif s Court, Tirunelveli).

2. C.R.P. No. 3163 of 1993 has been filed against the order dated 26.7.1993, allowing I.A. No. 680 of 1992 in the said suit. The application was filed by the respondent/defendant for excusing the delay of 33months in filing the application to set aside the ex pane decree dated 5.1.1989 in the abovesaid suit.

3. C.R.P. No. 3164 of 1993 is against the order dated 26.7.1993, allowing I.A. No. 681 of 1992 filed by the defendant-respondent for setting aside the abovesaid ex pane decree dated 5.1.1989.

4. Even at the outset, I may state that curiously the above I.A. No. 681 of 1992 has been numbered even before the abovesaid I.A. No. 680 of 1992 has been allowed. In other words, both the applications have been numbered together and posted for hearing together and an order has been passed in both the applications on the same day, viz. 26.7.1993.

5. In I.A. No. 680 of 1992 after setting out what is contained in the affidavit and counter-affidavit, the court below has allowed the said application, observing only as follows in paragraph 4 thereof:

So, on the sole ground that the respondent in the said application (petitioner herein) has not appeared before the court below, the application has been straightaway allowed, despite the fact that the delay is as much as 33 months, that is roughly about 1000 days and despite the fact that the allegations in the supporting affidavit have been stoutly denied in the counter affidavit. The learned Judge has not even found that he is satisfied with the averments made in the supporting affidavit for excusing the abovesaid. Inordinate delay of about 1000 days. Admittedly, there was no oral evidence by the petitioner in the said application. Yet, even without finding that it is satisfied with the reasons given in the supporting affidavit for excusing the delay, the court below cannot straightaway excuse the abovesaid inordinate delay, solely on the ground that the respondent before it did not appear on 26.7.1993 when the application was taken up. Putting it very mildly, it is very much regrettable that the court below has acted in this way.

6. In I.A. No. 681 of 1992 also, the court below, after referring to the affidavit and counter-affidavit, has allowed the said application, observing only the following:

Here again, only because the respondent before it (petitioner herein) was not present, the court below has straightaway allowed the said application, after referring to the allowing of I.A. No. 680 of 1992. Even assuming that I.A. No. 680 of 1992 has been rightly allowed, the court below cannot straightaway allow I.A. No. 681 of 1992 on the sole ground that the respondent before it (petitioner herein) remained *ex parte*, as stated above,

7. Despite all the abovesaid features, the learned Counsel for the respondent points out that the petitioner should have only filed petitions to set aside the abovesaid ex pane orders in I.A.Nos.68() of 1992 and 681 of 1992 and that the petitioner cannot file civil revision petitions in this Court instead. In other words, according to him, these civil revision petitions are not maintainable, when there is a remedy available to set aside the abovesaid ex pane orders in I.A.Nos.680 and 681 of 1992.

8. I have considered these submissions. The powers under Section 15 of the Civil Procedure Code are no doubt discretionary and hence, this Court would normally refuse to interfere under the said section, if there is any other remedy open to the party. Vide : Sheo Prasad Singh v. Kasiuri Kuar (1988) 10 All. 119 and Ittiachan v. Velappan I.L.R. (1885) Mad. 484.

9. Nevertheless, it has also been held in several decisions, including of this Court, that in exceptional cases, the High Court can interfere even if there is any other remedy open to the party aggrieved. In Kashirao Panduji v. Ramchandra Balaji , it has been held that though the ordinary rule is that where the aggrieved party has another remedy available, the High Court would not be willing to interfere, it is unquestionable that even if there be such remedy the High Court may interfere in exceptional cases.

10. Similar rulings are therein The Official Receiver, Guntur v. Amara Seshayya and Ors. : AIR1941 Mad24 , Bagyalakshmi v. Bappu Ayyar : AIR1946 Mad90 and Ranganayaki v. Shivarama : AIR1930 Mad216 . It has also been held in Ram Sundar v. Paras Rum A.I.R. 1946 Oudli 88 and Ballelal v. Manoharlal , that even when other remedy is open, the High Court shall in-therefore, where non-interference would result in multiplicity of proceedings, delay and in unnecessary expenses to the parties, (vide : Sri Krishnadass v. H. Chandook Chand I.L.R. (1909) Mad. 334.

11. I have no doubt that, in the light of what has been stated above, the present case is a fit one which would come under the above referred to exceptional cases. Therefore, the abovesaid impugned orders of the court have necessarily to be set aside. Accordingly, they are set aside and the civil revision petitions are allowed.

However, in the circumstances of the case, there will be no order as to costs. The court below is directed to try the abovesaid I.A. No. 680 of 1992 afresh according to law, after hearing both the parties and if necessary, after allowing the parties to lead evidence. In case I.A. No. 680 of 1992 may be taken up for disposal afresh in accordance with law. If I.A. No. 680 of 1992 is dismissed, the abovesaid I.A. No. 681 of 1992 will also have to be dismissed. The court below is directed to deal with the matter afresh thus as expeditiously as possible within four weeks from the date of receipt of a copy of this order. No costs.

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