

Aiyadurai. Vs. Balaiyah

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Court : Chennai

Decided On : Jul-13-2012

Judge : M.Venugopal, J.

Acts : [Code of Civil Procedure,\(CPC\) 1908](#) - Order 9 Rule 13, Order 26 Rule 13

Appeal No. : C.R.P. PD. No.971 of 2010 and' M.P. No.1 of 2010

Appellant : Aiyadurai

Respondent : Balaiyah

Advocate for Def. : Mr. R. Karthikeyan, Adv.

Advocate for Pet/Ap. : Mr. T. Sezhian, Adv.

Judgement :

Civil Revision Petition filed against the judgment and Decree dated 30.9.2009 passed in C.M.A. No.4 of 2008 on the file of the learned Sub Judge, Chidambaram.

ORDER

1. Anim adverting upon the judgment and decree dated 30.9.2009 in C.M.A. No.4 of 2008 passed by the learned Sub Judge, Chidambaram in confirming the order dated 20.6.2008 in I.A. No.42 of 2008 in O.S. No.25 of 2003 passed by the

learned District Munsif-cum-Judicial Magistrate, Port Novo, the Revision petitioners/defendants 1 to 3 have focussed the present civil revision petition.

2. The First Appellate Court, viz. learned Sub Judge, Chidambaram, while passing the judgment in C.M.A. No.4 of 2008 on 30.9.2009, has among other things, observed that no endeavour was made on the side of the Appellants (revision petitioners/defendants) to cross-examine the witness P.W.1/Balaiya and further cross-examination of P.W.1 was not done and added further not a single appellant had appeared before the Court to conduct the proceeding in O.S. No.25 of 2003 and they had deliberately protracted the matter and came to a resultant conclusion that the order passed by the trial Court in I.A. No.42 of 2008 in dismissing the petition was a proper one and could not be interfered with and dismissed the Appeal without costs.

3. The Learned counsel for the Revision petitioners/Defendants submits that both the trial Court as well as the first Appellate Court had committed an error of jurisdiction, in refusing to set aside the Ex parte Decree against the petitioners and in fact, the petitioners had shown sufficient cause for allowing I.A. No.42 of 2003 in O.S. No.25 of 2003 on the file of the trial Court. However, these vital aspects of the matter were not adverted to by the Courts below in a real and proper perspective, which resulted in serious miscarriage of justice.

4. The Learned counsel for the petitioners/defendants projects the argument that the respondent/plaintiff (P.W.1) was already cross-examined in part on behalf of the petitioners/defendants and atleast both the Courts below ought to have allowed the I.A. No.42 of 2003 on terms, to compensate the respondent/plaintiff for any damages suffered by him.

5. In response, the Learned counsel for the respondent/plaintiff contends that the petitioners/defendants were protracting and delaying the proceedings in the main suit by not coming forward to cross-examine the respondent/plaintiff (P.W.1) on 11.1.2008, 21.1.2008 and 24.1.2008 respectively and in fact, the petitioners had not appeared before the trial Court at the time of calling of the case and only after adequate opportunity being provided to the petitioners/defendants, they were set Ex parte and ultimately an Ex parte Decree came to be passed on 14.6.2004.

6. It comes to be known that the Revision petitioner/first defendant filed I.A. No.197 of 2004 under Order 9 Rule 13 of the Civil Procedure Code before the Trial Court praying to set aside the Ex parte Decree and the same was dismissed by the trial Court inter-alia observing that without any reason, the petitioners(defendants) had remained absent and presently, with a view to protract the proceedings of the suit, had filed the present application. A Final Decree application under Order 26 Rule 13 of the Civil Procedure Code was filed for passing of a final decree, based on the Ex parte Decree passed in the main suit on 14.6.2004. Immediately, the First Revision petitioner/First Defendant filed C.M.A. No.18 of 2005 before the Learned Subordinate Judge, Chidambaram being aggrieved against the order in I.A. No.197 of 2004. However, C.M.A. No.18 of 2005 was allowed by the Learned Subordinate Judge, Chidambaram setting aside the Ex parte decree. Therefore, the main suit in O.S. No.25 of 2003 was taken on file and proceeded further.

7. It is not in dispute that I.A. No.75 of 2007 was filed by the respondent/plaintiff to implead the party. The said I.A. got dismissed on 11.1.2008. Later, the suit was posted to 21.1.2008. It was adjourned to 24.1.2008. Since P.W.1 was not cross examined, the case was adjourned to 31.1.2008 with an observation that no further adjournment would be granted on that day. On 31.1.2008, the trial Court passed the following judgment:-

"P.W.1 present. Defendant called absent. No representation. Defendant set exparte. Evidence of P.W.1 on record. Perused. Claim proved. Preliminary decree passed as prayed for with cost."

8. At this stage, this Court amply points out that even in Ex-parte Order passed by the trial Court, the outline of process of reasoning should be there, in short, the said

JUDGMENT / ORDER

ought to be a reasoned one. An unreasoned judgment/unreasoned order may be just, but may not appear to be so to the person affected. Per contra, a reasoned Ex-parte Judgment/Ex-parte Order would certainly have the appearance of justice.

In RAMESH CHAND ARDAWATTYA v. ANIL PAJWANI (A.I.R. 2003 S.C. 2508 at 2509 & 2510) , the Hon'ble Supreme Court has laid down as follows:-

"Even if the suit proceeds ex-parte and in the absence of a written statement, unless the applicability of O.8, R.10 of the CPC is attracted and the Court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the Court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the Court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which may in law be found entitled. In a case which has proceeded ex-parte the Court is not bound to frame issues under O.14 and deliver the judgment on every issue as required by O.20 R.5. Yet the Trial Court would scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the 'points for determination' and proceed to construct the ex-parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the Court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence."

9. In the decision reported in the case of DEONANDAN v. JANKI SINGH (1916 (44) CAL. 573), it is held that 'the fundamental principle of law is that the plaintiff when he comes to Court must prove his case and he must prove it to the satisfaction of the Court. His burden is not lightened because the defendant is absent. On the other hand, the responsibility increases'.

10. In the decision reported in the case of CHULAM HUSSAIN v. SINGER SEWING MACHINE COMPANY (A.I.R. 1926 OUDH 192), it is held that 'even though the defendant is set ex-parte, the duty is still there on the part of the plaintiffs to prove prima facie in support of their claim. The documents ought to have been scrutinized carefully so as to see whether the right claimed is well founded.'

11. In law, an Ex-parte Decree is as good as any other decree is valid and binding upon the inter se parties, unless it is set aside in the manner known to law.

12. At the outset, this Court expresses the dissatisfaction in the manner in which the Ex parte judgment was passed by the trial Court on 31.1.2008 as referred to supra. Furthermore, even if the Court below is to pass an Ex parte order/Ex parte Decree. It has to apply its mind dispassionately and also independently and to pass a judgment/order by ascribing the outline of process of reasoning by dealing with the merits of the matter. The case of the parties as it stands to be dealt with based on the available oral and documentary evidence on record and then only Ex parte order/Ex parte Decree is to be passed in any given case/suit.

13. But on a reading of the four line judgment passed above by the trial Court on 31.1.2008 clearly shows that the trial Court had not applied its mind and also not expressed its outline of process of reasoning. Only when the outline of process of reasoning was given by the trial Court, it would enable the appellate Court to test the benefit of the order/judgment delivered by the trial Court and also it would enable the appellate Court to come to a conclusion based on the oral and documentary evidence on record, coupled with the impugned judgment passed by the trial Court. On that ground alone, the ex parte decree dated 14.6.2004 passed by the trial Court, in the considered opinion of the Court, is liable to be set aside.

14. That apart, in the instant case on hand, the appellants/petitioners had allowed the trial Court for two times to pass an Ex parte decree. It appears, they were not diligent in prosecuting the matter, but on one occasion, in C.M.A. No.18 of 2005, the order passed by the trial Court in I.A. No.197 of 2004 was set aside. For the second time also, the petitioners allowed the trial Court to pass a decree owing to their non appearance and also not taking endeavors to cross-examine P.W.1 through counsel. Though the said action of the appellant/petitioner was not appreciated, since this Court had already come to the conclusion that the four line judgment passed by the trial Court in O.S. No.25 of 2003 dated 31.1.2008 was not in conformity with the established procedure of law, this Court comes to an irresistible conclusion that equally, the first appellate Court, in C.M.A. No. 4 of 2008 in its judgment on 30.9.2009 was not correct in upholding the order dated 20.6.2008 in I.A. No.42 of 2008 in O.S. No.25 of 2003 passed by the trial Court, which is ex facie an arbitrary, capricious and illegal one. Passing such kind of Ex-parte Judgment/Ex parte Decree by the trial Court or even by the first Appellate

Court should be put an end to, in the considered opinion of this Court. Consequently, the Civil Revision Petition succeeds

15. In the result, the Civil Revision Petition is allowed. The judgment and Decree dated 30.9.2009 in C.M.A. No.4 of 2008 on the file of the Sub Judge, Chidambaram and the order dated 20.6.2008 passed in I.A. No.42 of 2008 and the decretal order rendered in O.S. No.25 of 2003 are set aside by this Court to prevent an aberration of justice. However, the petitioners are directed to pay a sum of Rs.500/- (Rupees Five Hundred only) as costs to the credit of trial Court in O.S. No.25 of 2003 within a period of one month from the date of receipt of a copy of this order.

16. The trial Court is directed to take up the main suit to its file and further the petitioners/defendants are directed to cross-examine P.W.1 etc. It is open to the respective sides to let in further oral and documentary evidence for examining the witnesses etc. In any event, the trial Court is directed to dispose of the main suit in O.S. No.25 of 2003 dispassionately, uninfluenced with any of the observations made by this Court in this revision, within a period of four months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed

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