

BEFORE THE XVII ADDITIONAL CITY CIVIL COURT, CHENNAI.

Present : Tmt.V.Thenmozhe, B.Sc., M.L.,
XVII Additional Judge

This Monday, the 2nd day of July, 2018

C.M.A.No.1/2018

K.S.Muralidharan

... Appellant

Vs.

1. M/s.Gokul Builders & Estates Chennai Ltd.,
Rep. by its Managing Director,
No.26, C.V.Raman Road, Alwarpet,
Chennai – 600 004.
2. M/s.Ceebros Property Development,
Rep. by its Managing Director,
No.19/1, 3rd Cross Road, R.A.Puram,
Chennai – 600 028.
3. The Member Secretary,
CMDA, Thalamuthu Natarajan Building,
Gandhi Irwin Road, Egmore,
Chennai – 600 008.
4. The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai – 600 003.
5. Mrs.Uma Sethuram,
W/o.G.Sethuram,
9, Murugappa Mudali Street,
Triplicane, Chennai – 600 005.

This Civil Miscellaneous Appeal has been filed against the Fair and Decretal Order of the learned IV Assistant Judge, City Civil Court, Chennai passed in I.A.No.4994/2016 in O.S.No.4747/2000 on 06.04.2017.

between

K.S.Muralidharan

... Petitioner/Plaintiff

Vs.

1. M/s.Gokul Builders & Estates Chennai Ltd.,
Rep. by its Managing Director,
No.26, C.V.Raman Road, Alwarpet,
Chennai – 600 004.

2. M/s.Ceebros Property Development,
Rep. by its Managing Director,
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Rippon Building, Chennai – 600 003.

5. Mrs.Uma Sethuram,
W/o.G.Sethuram,
9, Murugappa Mudali Street,
Triplicane, Chennai – 600 005.

... Respondents/Defendants

This Civil Miscellaneous Appeal coming on 27.06.2018 before me for final hearing in the presence of M/s.R.Subramanian, G.Indira, S.Nandhini Devi & R.Mahesh counsel for the Appellant and of M/s.S.Jayakumar, G.Sridhar, P.Velmurugan counsel for the 1st respondent and of M/s.P.B.Ramanujam & P.B.Balaji counsel for the 2nd respondent and of M/s.P.Mahadevan, S.Raveendran counsel for the 5th respondent and Respondents 3 & 4 being called absent and set exparte and upon hearing the arguments from appellant and 2nd respondent side and upon having gone through the material documents on record and upon having stood over for consideration till this day, this court delivered the following:

JUDGMENT

This appeal has been preferred by the appellant against the Fair and Decretal Order passed by the learned IV Assistant Judge, City Civil Court, Chennai in I.A.No.4994/2016 in O.S.No.4747/2000 on 6.4.2017.

2. I.A.No.4994/2016 has filed under Order 9, Rule 9 of CPC to restore the suit in original position which is dismissed on 17.9.2002.

3. The findings of the Trial Court are as follows:-

The trial court has dismissed the petition by reasoning that the suit is of the year 2000 and reopening the same would cause unnecessary hardship to the respondent authorities. Aggrieved against the same, the petitioner/plaintiff have preferred this CMA on the following grounds:-

GROUND OF APPEAL

1) The fair and decretal orders of the trial court are opposed to law, perverse and unsustainable.

2) The trial court ought to have seen that the Hon'ble Apex Court and the Hon'ble High Court had repeatedly held that a liberal approach has to be made while dealing

with applications for condonation of delay and setting aside exparte order with a view to render substantial justice.

3) The trial court ought to have seen that the Hon'ble High Court has accepted the reasons stated in the affidavit filed in support of the above application and condoned the delay.

4) The trial court ought to have seen that the Hon'ble High Court has accepted the reasons stated in the affidavit filed in support of the above application.

5) The reasoning of the trial court that the appellant has not stated whether the threat still continues since the apprehension of the appellant is one of a continuing course of action is perverse.

6) The trial court ought to have seen that under Order IX Rule 9(1), where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action.

7) In any event the order of the trial court is liable to be set aside.

4. Points arise for consideration in this appeal are as follows:-

Whether the Fair and decretal Order of the trial court in I.A.No.4994/2016 in O.S.No.4747/2000 dated 6.4.2017 is liable to be set aside on the grounds raised by the appellant?

5. For the sake of convenience in this Civil Miscellaneous Appeal, the parties are herein after referred as ranked in the petition.

6. Point:-

Suit in O.S.No.4747/2000 has been filed for permanent injunction restraining the respondents from getting any sanction or approval except under due process of law. The suit is dismissed for default. The application to condone the delay in filing set aside application was dismissed by the trial court. The plaintiff has preferred CRP before the

Honourable High Court as against the order of dismissal and the Honourable High Court has allowed the said CRP and thereby condoned the delay of payment of costs. Subsequently Order 9, Rule 9 application was taken into consideration by the trial court and the trial court has dismissed the said application on 6.4.2017. As against the said Order the present CMA has been filed.

7. The learned counsel appearing for the plaintiff would submit that the order passed by the trial court is a non speaking one and the trial court has no authority to go into the merits while deciding Order 9, Rule 9 Application. The learned counsel would further submit that the fact that the suit has been instituted in the year 2000, is not a ground for rejection of Order 9, Rule 9 application.

8. On the other hand the learned counsel appearing for the respondents would submit that the application was rightly dismissed by the trial court and if at all any cause of action survives the plaintiff can very well file a fresh suit.

9. Perusal of records reveals that the trial court has dismissed the application stating that the plaintiff has not stated in the application as to whether the cause of action is continued even as on today and if the plan has already been sanctioned the plaintiff can maintain a fresh suit. The trial court has observed in the order that the suit is of the year 2000 and reopening the same would cause unnecessary hardship to the respondent authorities.

10. The provisions under Order 9, Rule 9 CPC empowers the court to restore the suit, which was dismissed for default, if sufficient cause has been shown for non appearance of the plaintiff on their particular day. The trial court cannot go into the merits of the suit in the Order 9, Rule 9 application. Whether the cause of action for the suit still survives or not is the issue to be decided in the trial and on the said basis an application under Order 9, Rule 9 cannot be dismissed. As argued by the learned

counsel for the plaintiff, the case was pending before the Honourable High Court in the CRP. Therefore, just because of the suit is of the year 2000, the trial court ought not to have dismissed the restoration application. The trial court has not observed anything in its order as to whether the respondents have produced any documents before the trial court as to the fact that the suit has become infructuous. The Honourable High Court has already accepted the reasons stated by the plaintiff for his absence. Therefore, this court is of the view that the order of the trial court is erroneous and the same is liable to be set aside. This court is of the view that the plaintiff has to be given an opportunity to contest the suit on merits.

In the result, this Civil Miscellaneous Appeal is allowed and the Fair and Decretal order of the IV Assistant Judge, City Civil Court, Chennai in I.A.No.4994/2016 in O.S.No.4747/2000 dt.6.4.2017 is set aside. The IA 4994/16 is allowed on condition that the Appellant/Plaintiff shall pay the cost of Rs.500/- each to the R1, R2 & R5 on or before 13.07.2018, failing which the I.A.4994/16 shall stand dismissed. Call on 14.07.2018.

This Judgment has been dictated by me to the Steno-typist, transcribed and typed by her in the computer, corrected and pronounced by me in the open court, on this 2nd day of July, 2018.

XVII Additional Judge,
City Civil Court, Chennai – 01.

Annexure :- NIL.

XVII Additional Judge,
City Civil Court, Chennai – 01.