

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1545 OF 2019
[Arising out of S.L.P.(C) No.36394 of 2014]

A. Murugesan

...Appellant

Versus

Smt. Jamuna Rani

...Respondent

J U D G M E N T

R. SUBHASH REDDY, J.

1. Leave granted.

2. This civil appeal is preferred by the defendant, in Original Suit No. 92/1997 on the file of Sub-Judge, Chidambaram, aggrieved by the order dated 17.04.2014, passed by the High Court of Judicature at Madras, dismissing the Civil Revision Petition (NPD) No. 1202 of 2014. By virtue of the aforesaid order, the High Court has confirmed the order of the Trial Court, dismissing the application filed by the petitioner, under Order IX Rule 13 of CPC.

3. The respondent-plaintiff has filed the aforesaid suit for specific performance of the Agreement dated 11.10.1995. It is a case of the respondent-plaintiff that out of total consideration of Rs.3,00,000/- (Rupees Three

Lakhs), he has already paid Rs.2,25,000/-(Rupees Two Lakh Twenty-Five Thousand) and in spite of his readiness to pay the balance amount, the appellant-defendant is not ready to execute the sale deed by receiving the balance consideration amount. During the trial, the aforesaid suit was listed for hearing on 16.03.2009. On the aforesaid date, on the ground that there was no representation on behalf of the appellant, the appellant was put ex-parte, and ex-parte decree was passed, decreeing the suit.

4. The appellant-defendant has filed the application under Order IX Rule 13 of CPC, for setting aside the ex-parte decree in I.A. No. 117/2009. In the aforesaid application, the case of the appellant was that on 16.03.2009, there was a boycott of all the courts on the call of Bar Association, as such, all the advocates boycotted the courts in the District of Cuddalore including Chidambaram District. He has also pleaded that as he was suffering from viral fever, he also did not attend the court. It is a case of the appellant that in spite of showing sufficient cause for not attending the court on 16.03.2009, the Trial Court has erroneously rejected the application filed under Order IX Rule 13 of CPC.

5. The Trial Court, while considering the application

filed by the appellant herein, under Order IX Rule 13 of CPC, has considered the past events in the suit stating that the appellant is trying to protract the litigation dismissed the application by order dated 30.06.2009. Aggrieved by the said order, the appellant-defendant has filed Civil Miscellaneous Appeal No. 15/2009 before the Additional District Court/Fast Track Court No.1, Chidambaram. Same was dismissed by order dated 13.07.2010. The matter was further carried by way of Civil Revision Petition No. 1202 of 2014 before the High Court, which also ended in dismissal by order dated 17.04.2014.

6. We have heard the learned counsel for the appellant as well as the learned counsel for the respondent and perused the relevant material on record.

7. Mainly it is contended by learned counsel appearing for the appellant that on 16.03.2009, there was a total boycott of courts by the advocates in the District of Cuddalore including Chidambaram District, therefore, his counsel could not appear before the Court when the matter was called. Further, it is submitted that even the appellant was suffering from viral fever, as such, he also could not appear on the said date. It is pleaded that though there was sufficient cause shown, the Trial Court, erroneously by considering the past events anterior to

16.03.2009, has dismissed the application. It is contended that the appellate and the revisional courts also committed same error in rejecting the plea of the appellant by looking at the past events. It is mainly contended that when the application is filed under Order IX Rule 13 of CPC, the relevant consideration should have been confined to whether the appellant herein has shown any sufficient cause or not for not appearing in the matter when it was called on 16.03.2009. It is submitted that the reasons assigned in the impugned orders for rejection of the application is irrelevant. In support of his argument, learned counsel for the appellant has placed reliance on the judgment of this Court in the case of G.P. Srivastava vs. R.K. Raizada and Others reported in 2000(3) SCC 54.

8. On the other hand, it is contended by the learned counsel for the respondent that suit was filed by the respondent for specific performance of the contract.

9. It is submitted that out of total consideration of Rs.3,00,000/- (Rupees Three Lakhs), he has already paid Rs.2,25,000/- (Rupees Two Lakh Twenty-Five Thousand) and deposited the balance amount of Rs.75,000/- (Rupees Seventy-Five Thousand) in the court. It is contended by the learned counsel for the respondent that though the

suit was of the year 1997, the appellant-defendant tried his best to prolong the litigation on one pretext or the other. It is submitted that in view of the concurrent findings recorded by the courts below, no case is made out to interfere with the same.

10. We have considered the submissions of the learned counsel appearing on both the sides and perused the order of the Trial Court, rejecting the application filed by the appellant under Order IX Rule 13 of CPC and further orders passed in Civil Miscellaneous Appeal as well as in Civil Revision Petition.

11. From a perusal of the order of the Trial Court, it is clear that the Trial Court has taken into consideration the past conduct of the appellant-defendant in the suit, instead of confining the consideration as to whether the appellant has shown sufficient cause or not for not appearing in the matter on 16.03.2009. It is fairly well settled that when an application is filed for setting aside ex-parte decree under Order IX Rule 13 of CPC, the only aspect which is required to be considered is whether any sufficient cause is shown for absence in the matter when the matter was called. Without recording the specific finding, on the plea of the appellant that there was sufficient cause, the Trial Court has committed error in

rejecting the application under Order IX Rule 13 of CPC. Even the appellate and the revisional court have not considered the matter in proper perspective and rejected the claim of the appellant. The judgment in a case of G.P. Srivastava (supra) supports the case of the appellant. In the aforesaid judgment, the very issue was fallen for consideration before this Court. The relevant paragraph no.7 reads as under:

"7. Under Order IX Rule 13 CPC an ex parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any "sufficient cause" from appearing when the suit was called on for hearing. Unless "sufficient cause" is shown for non-appearance of the defendant in the case on the date of hearing, the Court has no power to aside an ex parte decree. The words "was prevented by any sufficient cause from appearing" must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Sufficient cause for the purpose of Order IX rule 13 has to be construed as an elastic expression for which no hard and fast guidelines can be prescribed. The courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The "sufficient cause" for non-appearance refers to the date on which the absence was made a ground for proceeding ex parte and cannot be stretched to rely upon other circumstances anterior in time. If "sufficient cause" is made out for non-appearance of the defendant on the date fixed for hearing when ex parte proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the court immediately and within the statutory time

specified, the discretion is normally exercised in his favour, provided the absence was not mala fide or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the lis decided on merits.

12. The aforesaid view taken by this Court in the judgment referred above supports the case of the appellant. It is further brought to our notice that on the aforesaid date, i.e., 16.03.2009, on which date the suit was listed for trial, in view of the boycott of the courts by the advocates, all other cases were adjourned and only this case was proceeded and ex-parte decree was passed.

13. As the suit is for a substantive relief, i.e., for grant of decree of specific performance, and further we are satisfied that the appellant has shown sufficient cause for not appearing in the matter when the matter was called on 16.03.2009, we are of the view that it is a fit case to allow the application filed by the appellant, by setting aside the impugned orders. All the courts below committed error in rejecting the application on the grounds which are not relevant to consider the application filed under Order IX Rule 13 of CPC.

14. We are conscious of the fact that all the three courts have held against the appellant, but if we allow the impugned orders to stand, it will result in miscarriage of justice.

15. For the aforesaid reasons, the impugned orders are set aside, consequently I.A. No.117/2009 filed in O.S. No.92 of 1997 on the file of Sub-Judge, Chidambaram, stands allowed.

16. As the suit is of the year 1997, we direct the Trial Court to dispose of the same as expeditiously as possible preferably within a period of six months from today. Both the parties shall co-operate for proceeding with the trial and for expeditious disposal in the suit.

17. It is also made clear that we have not expressed any opinion on the merits of the matter. It is open for the Trial Court to decide the issues for consideration independently, uninfluenced by any of the observations made in the impugned order or the order passed by this Court.

18. This appeal is, accordingly, allowed, with directions as indicated above. No order as to costs.

..... J.
[R. Banumathi]

..... J.
[R. Subhash Reddy]

New Delhi;
February 07, 2019