

(2007) 11 MAD CK 0184

In the Madras High Court

Case No : Civil Revision Petition (NPD) No"s. 996 and 997 of 2004

Fareeda Textiles

APPELLANT

Vs

Sha Jewantharaj Asshok Kumar rep. Mandate holder, Ashok
Kumar Lunia

RESPONDENT

Date of Decision : 23-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148

Citation : (2008) 4 BC 411 : (2008) 3 CTC 416

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : K. Lavan, for the Appellant; No appearance, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—Heard the learned Counsel for the petitioner/defendant in both the revision petitions.

2. The petitioner in both these revisions is the defendant in O.S. No. 493/2003 on the file of VII Assistant Judge, City Civil Court, Chennai. The respondent herein is the plaintiff in the suit.

3. The respondent herein has laid a suit for recovery of Rs. 1,51,636.86 with future interest from the revision petitioner/defendant in regard to the supply of textile goods. The suit was posted for filing written statement on 14.10.2003 and no written statement was filed.

4. It is represented by the learned Counsel for the revision petitioner that the case was not there in the cause list of the Court prepared and pasted

in Court Hall of the trial Court and subsequently at the instance of respondent/plaintiff's counsel the bundle was taken up for hearing and at that

point of time there was no representation on the side of the revision petitioner/

defendant and the Trial Court was forced to pass orders setting the defendant as exparte on 14.10.2003 for non-filing of written statement and the matter was posted for evidence on 28.10.2003. The revision petitioner filed I.A. No. 19257/2003 for setting aside the order dated 14.10.2003 setting him exparte. It transpires that the respondent/plaintiff filed I.A. No. 1964/2003 for attachment of immovable properties before judgment. The revision petitioner/defendant was also set exparte in that application for his failure to file counter and a direction was given to furnish security for the suit claim on or before 28.10.2003.

5. The revision petitioner also filed I.A. No. 19256/2003 to set aside that order also. In the affidavit in I.A. No. 19256/2003 it is specifically

averred by the deponent Mr. K. Lavan, learned Counsel for the petitioner that the aforesaid I.A. was posted on 14.10.2003 for filing counter

finally and that the above suit was not entered in the cause list prepared and posted for hearing on 14.10.2003 and therefore he was under the

impression that after the Court calling work was over the matter could be brought to the notice of the Court and later he came back at 12.00

o'clock to the lower Court and during the interregnum the said application was taken up and called and since there was no representation on the

side of the defendant and also because of the fact that counter was not filed the revision petitioner/defendant was set exparte.

6. It is significant to make a mentioning that in I.A. No. 19257/2003 the learned Counsel for the revision petitioner Mr. K. Lavan who has sworn

the affidavit has reiterated the averments made by him in the affidavit filed in I.A. No. 19256/2003 and therefore the same is not repeated.

7. The Managing partner of the revision petitioner/defendant in the suit has also filed an affidavit before the Trial Court in both the I.As., referred to

above mentioning the fact that the suit was not entered in the cause list prepared and posted for hearing on 14.10.2003. Suffice to point out that

the additional affidavit filed by the Managing partner of the revision petitioner/defendant only points out that he was told that his presence was not

required on 14.10.2003 and that under the bonafide impression that his counsel will look after his case and file the written statement and therefore

neither his absence nor his counsel's absence on 14.10.2003 was neither wilful nor wanton but due to the aforesaid reasons.

8. A common counter was filed by respondent/plaintiff in I.A. Nos. 19256/2003 and 19257/2003 stating that the revision petitioner/defendant has

invited the adverse orders passed on 14.10.2003 by the trial Court on its own negligence and the plea that written statement was ready and the

matter did not appear in the cause list are after thought etc;

9. The learned VII Assistant Judge, City Civil Court in his order in I.A. Nos. 19256/2003 and 19257/2003 dated 30.3.2004 has interalia

observed that ""while exercising the power to receive written statement beyond the stipulated period the Courts should be very careful in exercising

their judicial discretion. If the Courts are allowed to exercise such a power liberally or without any basis, then it will be against the intention and the

object of the legislature in bringing out the amendment and further the judicial discretion of the Courts has to be exercised sparingly on valid

grounds and only if the Courts are satisfied that the defendant could not file the written statement for the reasons beyond his control and such

defence is absolutely necessary to decide the issue and that the discretion should not be used with a view to give an opportunity to the defendant to

defend his case though he was not able to satisfy the Court regarding the reasons for the delay and in the instant case the revision

petitioner/defendant has not shown sufficient reasons not only for his failure to file written statement within 90 days but also within the extended

time granted by this Court and similarly, no sufficient cause was shown for non-filing of counter in I.A. No. 1964/2003 till 14.10.2003 and

resultantly, dismissed the two applications.

10. The averment that the case was omitted in the cause list prepared and pasted in the Court Hall was not specifically adverted to by the Court

below in its common order dated 30.3.2004 passed in I.A. Nos. 19256/2003 and 19257/2003.

11. In Ponnammal Vs. Subburaman and Another, it is observed as follows:

Code of Civil Procedure, 1908, Order 8, Rules 1, 5(2), 9 and 10 (as amended by Central Act 96 of 1999 and 22 of 2002), Section 148 - Time

limit fixed for filing written statement - Written statement to be presented within 30 days from the date of service of summons - Power given to

Court to permit filing of written statement within 90 days from date of service of summons for reasons to be recorded on petition filed by

Defendant - Defendant loses his right to file written statement after 90 days and Court empowered to deliver judgment in suit - Provision of Order

8 is not mandatory - No amendment has been introduced by Legislature to provisions of Order 8, Rule 9 or Rule 10 - Rule 9 of Order 8 gives

power to Court to call upon Defendant at any time to file written statement or additional written statement - Court can give only 30 days time for

submission of written statement from date of Order - No specific time limit contemplated within which Order has to be passed - Court can before

delivering judgment call upon Defendant to file written statement or additional written statement by giving 30 days time - Courts have power to

permit Defendant to file written statement or additional written statement even in cases posted for judgment i.e. before pronouncing judgment on

basis that Defendant did not file written statement - Court has to exercise its powers to receive additional statement to render justice and on

satisfaction that valid and acceptable grounds have been made out by Defendant for not filing written statement within stipulated time - Such power

is applicable to Section 148 of CPC or to later part of Order 9, Rule 9 or part of Rule 10 - Receiving written statement beyond stipulated period

is only exception - Normally written statement should be filed within time stipulated - Court should exercise its powers to receive written statement

beyond specified period very carefully - Liberal exercise of such power would defeat the object of Legislature in bringing about the amendment to

CPC - Defendant has to establish that he could not file written statement for reasons beyond his control and written statement is necessary to

decide controversy in suit - Court should not exercise its discretion only to give opportunity to Defendant to defend where he is not able to satisfy

Court by adducing reasons for delay - On facts, refusal to exercise its discretion cannot be found fault with and Court declined to interfere with

Order under Revisional Jurisdiction.

12. In 2006 (1) TNLJ (SC) 66 Shaikh Salim Haji Abdul Khayumsab v. Kumar and Ors. it is held that "the Order 8 Rule 1 C.P.C., provision does

not deal with the power of the Court and also does not specifically take away the power of Court to take written statement on record though filed

beyond the time as provided for and further that the said provision is procedural and it is not a part of substantive law and the object is to expedite

hearing and not to scuttle the same.

13. Applying the principles as laid down in the aforesaid decision of the Hon''ble Supreme Court and also bearing in mind of the fact that the suit

O.S. No. 493/2003 was not entered in the cause list of the VII Assistant Court prepared for the hearing on 14.10.2003 and also satisfied with the

reasons ascribed in the affidavits filed by both the learned Counsel for the revision petitioner/defendant and Mohammed Rafee, Managing partner

of the revision petitioner/defendant for their non-appearance before trial Court, this Court is of the considered view that the revisions need to be

allowed in furtherance of substantial cause of justice, for the simple reason that the Courts are there to deliver substantial justice to parties and not

to adopt a pedantic approach, when substantial justice and technical considerations are pitted against each other and cause of substantial justice

deserves to be preferred and that judiciary is respected not on account of its power to legalise injustice on technical grounds because it is capable

of removing injustice and is expected to do so.

14. In that view of the matter the Civil Revision Petitions are allowed. The orders dated 30.4.2004 passed in I.A. Nos. 19256/2003 and

19257/2003 in O.S. No. 493/2003 by the learned VII Assistant Judge, City Civil Court, Chennai are hereby set aside. No costs.

15. Since the suit is of the year 2003, the learned VII Assistant Judge, City Civil Court, Chennai is directed to dispose of the suit - O.S. No.

493/2003 within three weeks from the date of receipt of the copy of this order.