

(1993) 08 MAD CK 0048

In the Madras High Court

Case No : Application No. 3653 of 1992, C.S. No. 1543 of 1988

Forgetech Pvt. Ltd.

APPELLANT

Vs

Ms. Sayee Industries

RESPONDENT

Date of Decision : 24-08-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 144

Citation : (1993) 08 MAD CK 0048

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Advocate : R. Alagar for Mr. V. Sitharanjandas, for the Appellant; S.B.S. Raman for Mr. N. Veeramani, for the Respondent

Judgement

Govardhan, J.—This application is filed under O. 14, R. 8 O.S. Rules read with S. 144 Code of Civil Procedure, for a direction to the respondent plaintiff herein to redeposit the sum of Rs. 1,85,000/- with interest at 16% per annum from 14.2.1990 till date or deposit. The applicant/defendant in his affidavit states as follows:- The applicant is the defendant. The plaintiff had filed the suit for recovery of Rs. 1,84,152.44 from the defendant as labour charges, Along with the suit the respondent/plaintiff filed Application No. 6509 of 1988 for interim injunction restraining the applicant from interfering with the possession of the plaintiff and filed an application for appointment of an Advocate-Commissioner to take delivery of the materials of the applicant from the factory of the plaintiff. The application for interim injunction and the application filed by the applicant herein were disposed of by common order dated 23.3.1989 by which the applicant was directed to furnish a bank guarantee Rs. 1,85,000/- and on such bank guarantee, the respondent was directed to deliver the materials. The respondent/plaintiff has filed an application for modification of the order. The said application was dismissed. The appeal preferred by the respondent was also dismissed. Since the respondent did not deliver the materials, the applicant has filed an application for a direction and it was ordered on 28.4.1989, and thereafter the materials were delivered. On receipt of the suit summons with the

plaint on 31.5.1989, the applicant came to know the suit claim. The defendant is liable to pay only Rs. 4561.49, credit payments rejected, the goods were not given effect to, Bills were there, in respect of some transactions, but not in respect of any transaction with the plaintiff and the defendant. There were also signed vouchers for receipt of the amount received by the respondent. All these things have to be instructed to the counsel for the defendant. He could not give instructions in time. Therefore on 7.2.1990 a decree was passed in favour of the plaintiff as prayed for. The applicant has, therefore filed Application No. 4983 of 1990 for setting aside the ex parte decree. It was allowed on condition of payment of Rs. 1750/- as costs. The cost was paid and the suit was restored to file. The written statement has been filed. In the written statement, the defendant has stated that only a sum of Rs. 4134.52 is due and the plaintiff is liable to pay the defendant Rs. 80,707.60 and it has to be adjusted. The defendant was directed to furnish bank guarantee for Rs. 1,85,000/- in pursuance of the order dated 23.3.1989. The defendant furnished bank guarantee. Before the defendant could have moved the application for setting aside the ex parte decree, the respondent/plaintiff invoked the Bank guarantee and realised Rs. 1,85,000/- on 14.2.1990. The plaintiff is not entitled for the same. Therefore a direction has to be given to the respondent/plaintiff to redeposit the sum of Rs. 1,85,000/- with interest at 16% per annum from 14.2.1990 till date of deposit.

2. The respondent/plaintiff in his counter has stated that the suit claim is based on the job work done by the respondent/plaintiff for which payments have not been made. Pursuant to the orders passed in Application No. 65509 of 1982 and Application No. 1542 of 1989 the applicant furnished bank guarantee for Rs. 1,85,000/- and was permitted to lift materials lying with the respondent plaintiff. The applicant did not choose to file written statement and it ended in a decree on 7.2.1990. The Bank guarantee was invoked and the amount was realised on 14.2.1990. The decree has been set aside by order dated 18.3.1992. The defence appears to be one of set off and counter claim. The counter claim is sham and fictitious. It is an exercise in speculation. The plaintiff has got a decree on 2.4.1991 in yet another suit O.S. No. 4412 of 1990 on the file of City Civil Court, Madras for Rs. 18,073.62 and costs of Rs. 2,274/- and there is no merit in this application.

3. The point for consideration is whether the applicant/defendant is entitled to an order directing the respondent/plaintiff to deposit a sum of Rs. 1,85,000/- with interest at 16% p.a. from 14.2.1990 till date of deposit?

4. The point:- The suit is one for recovery of Rs. 1,84,152.44 towards some job work done by the plaintiff for the defendant for which payments were said to have been made by the plaintiff. When the suit came up for enquiry in the undefended board on 7.2.1990, the suit ended in a decree on account of the failure of the defendant to file written statement. Subsequently, the defendants have received the suit summons and have come to know of the suit claim.

According to the defendant he is liable to pay Rs. 4000/- and odd to the plaintiff and he had to give instructions to his counsel for the same and that was the reason for his not filing the written statement in time. In the meanwhile, when the applicant/defendant filed an application for an order of appointment of a Commissioner for taking delivery of the materials from the factory of the plaintiff, it was ordered with directions to the defendant to furnish bank guarantee for Rs. 1,85,000/-. The plaintiff had invoked the bank guarantee after the decree and has realised Rs. 1,85,000/-. At the same time the defendant had also filed an application to set aside the decree and it was allowed with costs. The invoking of the bank guarantee in pursuance of an ex parte decree is now sought to be set at right by the defendant in the suit contending that once the ex parte decree is set aside, the plaintiff should be ordered to redeposit the sum which he had realised by invoking the bank guarantee. The plaintiff has invoked S. 144 CPC for his prayer. The Supreme Court in Binayak Swain Vs. Ramesh Chandra Panigrahi and Another, has held as follows:-

The principle of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the Court by its erroneous action had displaced them from.

The learned counsel for the respondent would argue that there is no erroneous decree passed by this court to invoke S. 144 C.P.C. It is no doubt true that the decree, which has been set aside when the applicant has invoked provision of O. 9, R. 13, C.P.C. In order to be entitled to restitution, the order or the decree need not be varied or reversed in an appeal or revision by a superior court. Such restitution would be available even where the order of the decree is valid in any other proceedings like review or under O. 9, R. 13, C.P.C. The words "varies or reversed" in S. 144 C.P.C. have been used having regard to the effect or result of the proceedings set out. Therefore, the term "reversal" cannot be interpreted to exclude setting aside of a decree or order in a proceeding like the present one under O. 9, R. 13, C.P.C.

5. Further granting of restitution under S. 144, C.P.C. is not discretionary. The principle of this Section is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the decree earlier passed to make restitution to the other party of what he has lost. It arises automatically on the reversal or modification of the earlier decree and necessarily carries with it the right to restitution or all that has been done under the earlier decree and therefore the Court in making restitution is bound to restore the parties so far as they can be restored to the same position they were in at the time when the Court by its earlier action had displaced them from it. Therefore

the applicant is entitled to an order of restitution of Rs. 1,85,000/- by a direction to the respondent/plaintiff to deposit the same cannot be disputed. The question is whether such redeposit should be with interest. Invoking of the Bank guarantee was only in pursuance of the ex parte decree passed against the applicant herein. If the applicant herein had been diligent enough to file the written statement in time and avoided ex parte decree being passed against him, the question of invoking Bank Guarantee would not have arisen at all. Therefore invoking of the bank Guarantee being the result of the laches on the part of the applicant/defendant to file written statement in time, the applicant cannot seek the respondent to redeposit the amount with interest. Further, the plaintiff cannot be said to have been benefited on account of the invoking of the bank guarantee, in which case at least there may be some justification for directing the respondent/plaintiff to redeposit the amount with interest on the ground that he had some benefits out of the said amount. In that view of the matter, I am of the opinion that the applicant is not entitled to a direction to the respondent to pay interest also. Therefore, I hold on the point that the applicant is entitled to an order by which, the respondent/plaintiff is to be directed to redeposit the sum of Rs. 1,85,000/- in the bank on which he had drawn the money within ten days from the date of pronouncement of this order. In the result, the application is allowed in part, the respondent/plaintiff is directed to redeposit a sum of Rs. 1,85,000/- alone within ten days from the date of this order. No costs.