
(1972) 07 MAD CK 0045
In the Madras High Court
Case No : O.S. Appeal No. 18 of 1972

H.J. Dorairaj

APPELLANT

Vs

Viswanatha Rupa and Co. and Others

RESPONDENT

Date of Decision : 18-07-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 151, 152
Merchant Shipping Rules — Order 40 Rule 1(2)
Original Side Rules — Order 14 Rule 8

Citation : AIR 1973 Mad 135 : (1972) ILR (Mad) 215 : (1973) 86 LW 10 :
(1973) 1 MLJ 394

Hon'ble Judges : Palaniswamy, J;Ismail, J

Bench : Division Bench

Judgement

Ismail, J.—This appeal is directed against the order of Maharajan, J., dismissing Appln. No 1200 of 1970 in C. S. No. 135 of 1967. Though the decision in the appeal does not turn upon the facts of this case, it is desirable to set out the facts for the purpose of understanding as to how this appeal arises. The appellant herein was the first defendant in C. V. 135 of 1967. A Greek ship "s. s. Stamatis", which was caught in the cyclone of November, 1966, ran aground opposite to the Marina at Madras. The appellant herein agreed to purchase the ship from Messrs. Diana Maritime Corporation, the owners thereof for Rupees seven lakhs and deposited a sum of Rs. 50,750/- towards the sale price. Being unable to pay the balance of the sale price, he entered into negotiations with the owners of the ship, who agreed to reduce the sale price to Rupees 3,30,000/-, as well as to adjust the deposit made by him towards the agreed sale price. He had hardly two days left for payment of the balance and therefore, he entered into a hurried agreement with the plaintiffs in the suit, whereby the plaintiffs undertook to pay the sum of Rs. 2,80,000/- to the owners of the ship on behalf of the appellant on condition that the appellant paid them a remuneration equal to 75 per cent of the amount of investment and agreed to repay the entire amount within six months time. It was also agreed between the plaintiff and the

appellant that if any necessity arose, the plaintiffs should extend the time for payment by three months. The appellant also agreed on 10-7-1967 to give security by pledging the ship to the plaintiffs and executing in favor of the second plaintiff an irrevocable power of attorney for the purpose of enabling the plaintiffs to arrange for the work of breaking up the ship and dismantling the parts thereof and to recoup themselves out of the sale proceeds. One of the clauses in the agreement provided that the plaintiffs should be put in possession of the ship. Subsequently, the plaintiffs instituted the suit C. S. 135 of 1967 on the file of this court (1) for a declaration that the "s. s. Stamatis" was under a valid pledge to the plaintiffs and that the plaintiffs were entitled to sell the ship or part or parts thereof and recoup themselves the amount of advance and other amounts including the remuneration due to them under the contract dated 10-7-1967, (2) for a mandatory injunction restraining the appellant or his agents from making contracts to sell, or selling and delivering the said ship or any part or parts thereof, including the fixtures, fittings, loose materials inside the ship or dealing with the same in any manner except with the concurrence of the plaintiffs and on the terms that the price shall be paid directly into the hands of the plaintiffs, (3) for a preliminary decree against the appellant for rendition of accounts in respect of moneys received from defendants 2 and 3 or from any other parties on any transactions relating to the ship, either by way of sale price or advance and for such amounts as may be found due to the plaintiffs on taking such accounts, (4) for the costs of suit and (5) for such other relief's. In this suit, five persons were originally arrayed as defendants, including the appellant herein as the first defendant. The second defendant was impleaded because the plaintiffs came to know from a notice issued by him that the appellant had entered into a contract with the second defendant for supply of re-reliable materials as per an agreement allegedly executed on 5-7-1967. The third defendant was impleaded because it was brought to the notice of the plaintiffs that the appellant had received an advance of Rs. 30,000/- from him against the supply of non-ferrous metals which the appellant had promised to deliver to the third defendant. The Collector of Customs was impleaded as the fourth defendant because he might have a prior right for duty. The fifth defendant is the Commissioner of Police, Madras, and he was impleaded as the receiver of the wrecked ship under a notification issued by the Government of India under the Merchants Shipping Act, 1958.

2. The appellant in his answer raised several contentions, one of them being that the terms of the contract requiring him to pay 75 per cent by way of remuneration had been inserted in the contract without his own volition and under coercion. On 6-10-1967, that is to say, long before the filing of the answers by the defendants, in pursuance of Applns. Nos. 2096 of 1967 and 2157 of 1967 made by the plaintiffs, Ramamurti, J., passed an order whereby he appointed the appellant and Sri R. Padmanabhan, Advocate, as Joint Receivers of the wrecked ship. It was the appellant who invited the Court in the interests of himself and the plaintiffs and in the interests of purchasers to appoint the

receivers for the purpose of complying with all the formalities of the Customs department and doing whatever might be necessary for them to selling and deliver parts of the wrecked ship. The Joint Receivers were directed to file monthly statements of accounts and reports about their doings. On 21-3-1968 the learned Judge passed an order removing the appellant and his Co-Receiver from Joint Receivership and appointed Sri Krishna Rao, Advocate, and the second plaintiff as Joint Receivers. Subsequently, the learned Judge, by order dated 27-4-1968, appointed Sri T. N. C. Srinivasavaradacharya, and Shri K. Sarvabhauman, as Joint Commissioners giving detailed directions to them to invite offers for the sale of the component parts of the ship. It was at this stage a Bombay firm by name Messrs. Viswanatha Rupa and Co., appeared on the scene through their counsel and made an offer, the terms of which were contained in Ex. R-13. One pre-condition that Rupa insisted upon before his offer was accepted was that the claims of the plaintiffs, the second defendant, the third defendant and the Customs department against the appellant should be provided for out of the moneys to be advanced by Rupa and that Messrs. Viswanatha Rupa and Co., be permitted to dismantle the ship without any let or hindrance without the company getting involved in any litigation. The offer of Viswanatha Rupa and Co., was discussed in open court and then in the Chambers of the learned Judge at a number of hearings. Ultimately the parties were able to come to some agreement as per Ex. R-1 (a) dated 12-7-1968. This agreement was superseded by a fresh and final agreement as per Ex. R-1 dated 19-7-1968, which was executed by Viswanatha Rupa and the appellant.

3. This final agreement was produced into Court by both the parties and the court was celled upon to enforce the terms of that agreement. On an oral application made by Rupa, Rupa was impleaded as the seventh defendant. As per this agreement, Rupa was to dismantle, break and remove the components of the ship "s. s. Stamatis" at the price quoted in the agreement and pay for the parts so removed on the basis of actual weights at the rates quoted. Rupa also deposited Rs. 5,70,000/- into Court, of which a sum of Rs. 36,000/- was to be paid to the appellant subject to the orders of the court. The appellant actually applied for and received Rs. 31,000/-. In pursuance of the said agreement, a sum of Rs. 3,90,000/- was paid to the plaintiffs in the suit in full quit of their claim against the appellant. Likewise, the amounts due to the second defendant and the third defendant by the appellant were also paid out of the sum deposited by Rupa. Further, a sum of Rs. 1,70,000/- out of the amount deposited by Rupa was earmarked for any payment that the appellant might have to make by way of customs duty to the fourth defendant. The payment to the plaintiffs was made on 30-7-1968 in full quit. Notwithstanding this full settlement of the claim of the plaintiffs in the suit, no order was passed terminating the suit itself. But fresh disputes began to crop up between the appellant and the seventh defendant as to the meaning and construction to be put on the several clauses of the agreement Ex. R-1. The court went into those disputes and passed orders from time to time adjudicating upon those disputes. Ultimately, the judgment was

passed on 14-2-1969 which disposed of not only the suit C.S. 135 of 1967 but also a connected suit C. S. 124 of 1968, which had been withdrawn from the City Civil Court to this Court. As per this judgment, the appellant was directed to pay Rs. 15,000/- by way of costs to Viswanatha Rupa and Co. The learned Judge further directed that Rupa would be entitled to the value of ferrous and non-ferrous materials used or found in all the miscellaneous items and that the parties would be at liberty to apply for further directions for the fixation of the amount and payment thereof. The connected suit was dismissed by the learned Judge. It is thereafter the present application, Appln. No. 1200 of 1970, along with other applications, was filed by the appellant before this court. Application No. 1200 of 1970, which has given rise to this appeal, purports to have been preferred under Order XIV, Rule 8 of the Original Side Rules and Sections 144 and 151, C. P. Code. The prayer in this application is-

"Why the suit be not restored to the position as on 15-10-1967 and why the first defendant-applicant's position be not restored as on 5-10-1967."

4. The basis of the claim in this application was that the orders passed by the learned Judge (Ramamurti, J.), subsequent to 5-10-1967 were void and without jurisdiction. An elaborate affidavit is filed in support of the application by the appellant setting down the contention regarding the orders being void and illegal and therefore nullity. These applications were heard by Maharajan, J., and they were dismissed by the learned Judge by his order dated 8-7-1970. It is the correctness of this order that is challenged in the present appeal.

5. We have already pointed out the provisions of law under which the application has been filed. Mr. Padmanabhan, learned Counsel for the appellant, rested the application only on Section 151, Civil Procedure Code. The argument of the learned counsel for the appellant is that the orders passed by Ramamurti, J., subsequent to 6-10-1967 are outside the scope of the suit and are without jurisdiction and therefore nullities and can be ignored by the appellant. According to the learned counsel, as soon as the plaintiffs in the suit were paid in full quit, the suit should have come to an end and therefore there was nothing to be tried in the suit and, consequently, all the orders passed by the learned Judge are irregular and without jurisdiction. The question for consideration before us is not whether the order passed by Ramamurti, J., were right or wrong, or without jurisdiction or merely irregular. The only question for consideration is whether Appln. No. 1200 of 1970 purported to have been filed u/s 151, CPC was competent or not. Before Maharajan, J., the appellant split up the orders passed by Ramamurti, J., into two periods, namely, the proceedings between 6-10-1967 and 30-7-1968 and the orders passed by the learned Judge subsequent to 30-7-1968. Even though the affidavit filed in support of the application characterizes those orders as without jurisdiction, the learned Judge has pointed out that the orders passed between 6-10-1967 and 30-7-1968 are attacked not on the ground that the court had no jurisdiction, but on the ground that the court, disregarding the provisions of the Merchants Shipping Act and Order 40,

Rule 1(2), CPC illegally appointed the Joint Receivers. Similarly, with regard to the orders passed subsequent to 30-7-1968, the learned Judge has pointed out that the objection of the appellant is not that the court has no jurisdiction to pass the orders it did, but that the orders passed by it are beyond the scope of the suit in which they were passed. In the light of these arguments, the learned Judge came to the conclusion that the proper remedy of the appellant was not to file the present application u/s 151, Civil Procedure Code, but he ought to have followed one of the three known methods of rectifying the orders passed by competent courts, either by way of appeal, or by way of review, or by resort to Section 152, Civil Procedure Code, when clerical or arithmetical mistakes in judgments need to be rectified and that not one of these remedies having been followed, the application u/s 151, CPC was not competent. We may mention at this stage that though the prayer in Application No. 1200 of 1970 is in that peculiar form, which we have extracted already, the grievance of the appellant is only against the orders passed by the learned Judge subsequent to 5-10-1967. It is represented to us that the appellant preferred appeals against those orders and since the party was called upon to pay court-fee on ad valorem basis, the appeals had not been subsequently represented. The fact that the appellant himself has chosen the remedy by way of appeal would itself be a circumstances enabling the court to dismiss the present application filed u/s 151, C. P. Code. It is well settled that the inherent jurisdiction of the court u/s 151 of the Civil Procedure Code, cannot be resorted to when the aggrieved party has got a specific remedy available under law. In this case, each one of the orders of Ramamurti, J., which is complained against can be appealed against and, as a matter of fact, as we pointed out already, the appellant did attempt to avail himself of the remedy of preferring an appeal. In view of this, Maharajan, J., was fully justified in coming to the conclusion that the application u/s 151, CPC was not competent.

6. Though before Maharajan, J. argument was not advanced on the basis that the orders passed by Ramamurti, J., were without jurisdiction and therefore nullities, before us, Mr. Padmanabhan strongly contended that the orders passed by the learned Judge were without jurisdiction and therefore nullities and therefore they need not be set aside and they could be ignored. In support of this contention, the learned counsel invited our attention to a few decisions, that of the Calcutta High Court in *Galabsao v. Chowdhury Madholal* (1905) 2 CLJ 384, that of the same High Court in *Kunja Mohan Chakravarty and Another Vs. Manindra Chandra Roy Chaudhury and Another*, and that of the Privy Council in AIR 1949 264 (Privy Council) . The few passage which the learned counsel read to us from these judgments deal with the effect of an order passed by a court which lacked total jurisdiction in passing it. It is unnecessary to refer to these passages in full in view of the fact that the entire position has been succinctly set out by the Supreme Court in *Kiran Singh and Others Vs. Chaman Paswan and Others*, to the following effect:

"It is a fundamental principle well established that a decree passed by a court

without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

However, the question for consideration is that even assuming that the orders passed by Ramamurti, J., were without jurisdiction, and therefore nullities, whether the appellant is entitled to file the present application u/s 151, CPC for the relief's referred to above after the suit has been actually disposed of. We asked Mr. Padmanabhan to cite to us any authority where the inherent jurisdiction of the court u/s 151, CPC has been invoked and exercised to grant such a relief on the ground that the order passed by the Court was without jurisdiction and therefore a nullity. Apart from referring to the passages in the judgments referred to above, Mr. Padmanabhan could not cite any authority and he frankly admitted that he could not find any authority for the position, except asserting that once an order or a decree passed by a Court is without jurisdiction, anybody can approach the court and invoke the inherent jurisdiction of the court to rectify the mistake and that it is the bounden duty of the court to do so. We are unable to accept this argument in such wide terms as put forward by the learned counsel. Any proceeding before a court has to be regulated by the procedure prescribed in that behalf and even if a particular order or a decree is said to be a nullity, for obtaining relief based upon that position, the procedure prescribed by law will have to be followed. The present is not a collateral proceeding in which the validity or the competency of the orders passed by the learned Judge can be considered and the appellant can call upon the court to ignore the same. This is a direct proceeding taken by the appellant u/s 151, CPC to challenge those orders and to restore the suit to the position it occupied prior to 6-10-1967 and to restore the position which he occupied as on that date. We are clearly of the opinion that such an application cannot be made u/s 151, Civil Procedure Code. The appellant's remedy therefore was to file an appeal against the orders concerned, or to approach the learned Judge himself for review of those orders, if a case for review can be made out by him.

7. Under these circumstances, we are in entire agreement with the conclusion of the learned Judge, Maharajan, J., and therefore dismiss the appeal with the costs of the contesting respondents.

Appeal dismissed.