

(2013) 04 MAD CK 0213

In the Madras High Court

Case No : C.R.P. PD. No. 1213 of 2011 and M.P. No. 1 of 2011

Jaya @ Jayalakshmi

APPELLANT

Vs

Padma @ Padmavathi

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

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

Citation : (2013) 04 MAD CK 0213

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : S. Kalyanaraman, for the Appellant;

Final Decision : Allowed

Judgement

M. Venugopal, J.—The Petitioner/Defendant has filed the instant Civil Revision Petition as against the order dated 13.12.2010 in I.A. No. 448 of 2010 in O.S. No. 25 of 2009 passed by the Learned Principal District Judge, Namakkal. The Learned Principal District Judge, Namakkal in I.A. No. 448 of 2010 in O.S. No. 25 of 2009 on 13.12.2010 [filed by the Petitioner/Defendant under Order 9 Rule 13 of the CPC to set aside the exparte decree passed against her on 07.10.2010] has directed the Petitioner/Defendant to pay a costs of Rs. 5,000/-, by means of a conditional order, to the Respondent/Plaintiff on or before 13.12.2010 etc. Further, the Petitioner/Defendant has deposited the costs of Rs. 5,000/- before the trial Court in BR. No. 488/2010 dated 09.12.2010 and resultantly, the Petition has been allowed.

2. According to the Learned Counsel for the Petitioner/Defendant, the trial Court has committed a grievous error in directing the Petitioner/Defendant to pay the heavy costs of Rs. 5,000/- to the Respondent/Plaintiff for allowing I.A. No. 448 of 2010 praying to set aside the exparte decree dated 07.10.2010.

3. The Learned Counsel for the Petitioner/Defendant urges before this Court that the Petitioner/Defendant has not been negligent or careless in proceeding with

the partition suit in O.S. No. 25 of 2009 on the file of the trial Court and there is no justifiable cause on the part of the trial Court to impose a burdensome condition in directing the Petitioner/Defendant to pay an excessive costs of Rs. 5,000/- to the Respondent/Plaintiff.

4. The plea taken on behalf of the Petitioner/Defendant is that the Petitioner/Defendant has sought adjournment of the main suit O.S. No. 25 of 2009 on the file of the trial Court for cross-examination, of course, based on reasonable ground. However, this aspect of the matter has not been viewed in proper perspective by the trial Court, which has resulted in serious miscarriage of justice.

5. Before the trial Court, the Respondent/Plaintiff filed Counter to I.A. No. 448 of 2010 by making a categorical assertion that the Petitioner/Defendant consented for the trial of the main suit and that the Respondent/Plaintiff filed proof affidavit when the suit was posted for trial, to the knowledge of the Petitioner.

6. A Court of Law, while passing the order in an Application filed under Order 9 Rule 13 of CPC praying to set aside the *ex parte* decree passed against a particular Defendant, can pass a conditional order, directing the Petitioner/Defendant to pay costs to the other side. This kind of order directing a particular party to pay costs as a condition precedent for allowing an Application, ordinarily, cannot be found fault with. The only rider is that when a Court of Law directs the party to pay costs as a condition precedent of allowing the Application to set aside the *ex parte* decree, then, the condition should not be an onerous one or harshly an excessive or unreasonable one, in the eye of law.

7. This Court, at this stage, points out the decision in *State of U.P. V. Hindustan Construction Co. Ltd.*, 1996 A I H C 1431 at page 1436, wherein in paragraph 19, it is held thus:

19. Lastly, it was urged that award of cost by the Arbitrator is bad in law since no basis has been indicated on which the costs have been awarded. It is already indicated that it is a bald award without giving reasons. Award of cost has always been considered a matter in the discretion of the authority deciding a dispute. Once the Arbitrators, in exercise of their discretion awarded a sum as cost which we also find not excessive, we hardly find any good reason to interfere in the matter of award of costs.

8. If a party protracts or prolongs the pending litigation, then, a Court of Law can award costs. Also, when a litigant resorts to a dubious method, in such an event also costs can be awarded by a Court of Law. Undoubtedly, imposition of costs is within a Court's discretion and cannot be claimed as a matter of right.

9. The aim of levying costs is that to recompense a litigant for the expenses incurred by him in a litigation to vindicate or defend his rights. Furthermore, if a person circumvents a statutory procedure/remedy, then, he can be required to pay either costs or heavy costs.

10. This Court worth recalls the decision of the Hon'ble Supreme Court in

Maganlal Chaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others, wherein it is observed and held hereunder:

That the petitioner did not suppress deliberately any material fact from the High Court. The amount however, could not be reduced because it was made clear in the Judgment of the High Court that the award of costs was not by way of the case the Court thought that "the award for costs should be on the highest permissible scale" and the amount of costs was quantified at the request of the counsel for the petitioner.

11. Moreover, in the decision Ashok Kumar Mittal Vs. Ram Kumar Gupta and Another, at special page 658, it is laid down as follows:

While levy of a uniform token sum, as costs payable to the Legal Service Authority/Committee by way of a deterrent fine, in regard to non-compliance with procedural requirements, delays in representation of papers, etc. may not be objectionable, levy of huge amounts as costs in selected cases, made payable to the Legal Service Authorities, may invite adverse comments and evoke hostility to legal services in general. Costs being levied and made payable to some non-party charitable organisations should also be avoided.

12. As far as the present case is concerned, the trial Court on 03.12.2010 in I.A. No. 448 of 2010 in the main suit, has directed the Petitioner/Plaintiff to pay a costs of Rs. 5,000/- to the Respondent (Plaintiff) on or before 13.12.2010 etc. The trial Court has allowed I.A. No. 448 of 2010 on 03.12.2010 when costs of Rs. 5,000/- has been deposited into Court in BR. No. 488 of 2010 on 09.12.2010. Ordinarily, this Court will not interfere in regard to the exercise of discretion by the trial Court while levying costs by requiring a certain party to pay the amount specified by it as a condition precedent for allowing an Application either in regard to the setting aside of an order/decreed as the case may be. However, if the payment costs ordered by trial Court is unduly excessive or unreasonable or onerous one, then, this Court can interfere.

13. In the instant case, the trial Court has exercised its discretion in directing the Petitioner/Defendant to pay a costs of Rs. 5,000/- to the Respondent/Plaintiff on or before 13.12.2010 as per order dated 03.12.2010 in I.A. No. 448 of 2010 in O.S. No. 25 of 2009 on the file of trial Court. The said exercise of discretion by the trial Court in imposing costs on the Petitioner/Defendant cannot be found fault with. However, this Court, taking note of the fact that the main suit O.S. No. 25 of 2009 between the parties is one for partition and also this Court bearing in mind another fact that in a partition suit, a Plaintiff is a Defendant and the Defendant is the Plaintiff, is of the considered view that the imposition of costs of Rs. 5,000/- on the Petitioner/Defendant by directing him to pay the same to the Respondent/Plaintiff is slightly on the higher side.

14. Therefore, this Court, without going into the merits of the matter any further, to secure the ends of justice, directs the Revision Petitioner/Defendant to pay a costs of Rs. 4,000/- (Rupees Four thousand only) to the Respondent/Plaintiff,

instead of Rs. 5,000/- directed to be paid by the Petitioner/Defendant mentioned in I.A. No. 448 of 2010 on its file. Accordingly, the Civil Revision Petition is disposed of, leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed. In view of the fact that the Petitioner/Defendant has deposited a sum of Rs. 5,000/- towards costs in BR. No. 488/2010 dated 09.12.2010 on the file of the trial Court in I.A. No. 448 of 2010 in O.S. No. 25 of 2009, this Court grants permission to the Respondent/Plaintiff to withdraw the costs of Rs. 4,000/- [if not already withdrawn], as ordered by this Court in this Revision, by filing necessary payment out application as per Civil Rules of Practice. In regard to the balance sum of Rs. 1,000/- lying to the credit of I.A. No. 448 of 2010 in O.S. No. 25 of 2009 on the file of trial Court, the Petitioner/Defendant is directed to file necessary payment out application as per Civil Rules of Practice and to withdraw the said amount in the manner known to law and in accordance with law.