
(1995) 08 MAD CK 0012
In the Madras High Court
Case No : O.S.A. No. 173 of 1995

K.K. Arunachalam

APPELLANT

Vs

K. Nallusamy

RESPONDENT

Date of Decision : 01-08-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152

Citation : (1995) 08 MAD CK 0012

Hon'ble Judges : Srinivasan, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : K.V. Venkatapathi, for the Appellant; A. Chidambaram, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—The respondent herein filed C.S. No. 1420 of 1994 on the file of this Court for a declaration that he has become the owner

of the negatives of the picture titled "Pattu Vadhiyar", (Tamil colour-35 mm.) as per the letter of arrangement dated 10-1-1992 entered into

between the plaintiff and the first defendant and for consequential mandatory injunction against the third defendant laboratory. The respondent filed

an application in O.A. No. 7049 of 1994 in which he prayed for permission to deal with the negatives of the picture "Pattu Vadhiyar". The Court

passed an order on 22-12-1994 holding that the respondents shall be entitled to have the editing, dubbing and re-recording rights of the picture

titled "Pattu Vadhiyar" at the third respondent laboratory and that the respondent was directed to return the-prints of the picture in "Pattu

Vadhiyar" to the third defendant immediately after the dubbing and re-recording was over. That order remained undisturbed. The respondent filed

O.A. No. 975 of 1994 for appointment of a Receiver to take over the production of the picture lying with the third defendant laboratory and to

complete the same and release it for realising the dues of the respondent. In that application no counter affidavit was filed by the appellant herein

who is the first defendant in the suit. That application was disposed of on 2-3-1995 by the following order:

Heard the applicant as well as the respondents. The applicant has been authorised to complete the picture and as per the direction of this Court, he

has also completed the picture. Unless the picture is released no amount can be realised and the interest of the financier as well as the laboratory

cannot be safeguarded.

In the above circumstances, the applicant is appointed as Receiver to release the picture ""Pattu Vadhiyar"" after paying the amount due to the

laboratory as well as to the second respondent. The collection as well as the amount received by the Receiver from the distributors is to be

deposited into court in the account of this suit.

2. It appears that the appellant herein mentioned to the learned judge after the order was passed and the matter was directed to be posted for

being mentioned in the list. It was posted on 8-3-1994, 22- 3-1995 and then it was adjourned to 10-4-1995, to be posted under the caption

"being mentioned. It was not disposed before the Summer holidays. During the Summer vacation when the respondent was about to release the

picture, the appellant filed an application in A. No. 2761 of 1995 for restraining the respondent from releasing the picture. The application was

posted before the Vacation Court which passed an order on 16-5-1995 directing the matter to be posted before the learned Judge who passed

the order on 2-3-1995. At the same time, the Vacation Court passed an order restraining the respondent from releasing the picture as also the

audio and video cassette as pending further orders.

3. After the reopening of the Court, the matter was heard and a detailed order has been passed by the learned judge on 21-7-1995. The learned

judge has found that the contention of the appellant that the order dated 2-3-1995 was passed without hearing his counsel is unfounded and that

the said order was passed only after hearing both parties. In fact, in the order dated 2-3-1995 it is mentioned.

Heard the applicant as well as the respondent.

Learned Judge has also pointed out that in the counter affidavit filed by the appellant in the Court on 22-3-1995 there was no representation that

the order passed on 2-3-1995 was passed without hearing him. Learned judge has taken note of the fact that the affidavit bears the date 20-2-

1995 as if it was prepared on that date, but it was filed in the Court on 22-3-1995 only by which time the order of appointment of Receiver has

already been made and that the appellant could well have taken the plea that his Counsel was not heard before the order was passed. The reasons

given by the learned judge for up holding the order dated 2-3-1995 was that it was passed after hearing both Counsel and are acceptable and we

do not find any justification whatever to interfere with the same.

4. We must also at this stage point out that the alleged practice of posting the matters for being mentioned is not justified by any provision of law.

Once the court passes an order, if a party is aggrieved by any part of it, it is for the party to file an application for review or any other application

under any provision of law. The party cannot prescribe the procedure of its own and have the matter mentioned in court orally and bring it before

the Court once again for fresh consideration. The proper procedure in all cases where a party is aggrieved by an order is to file an application

before the Court for proper relief. We can understand if it is a small arithmetical or clerical error say, a word has been omitted or wrong calculation

has been made, it may be mentioned and the rectification may be made. Even for that purpose Section 152 of the CPC prescribes a procedure

and that should be followed even in such cases. We are unable to appreciate how after an order is passed it could be reversed by bringing it for

being mentioned" and get the whole matter reconsidered. In this case, the procedure adopted by the party for bringing up the matter for being-

mentioned on the ground that his Counsel was not heard is not in accordance with law. Learned single judge ought not to have directed the matter

to be posted for being mentioned. He ought to have directed the plaintiff to file an appropriate application for the relief which he wants at the hands

of the learned judge.

5. As regards the merits of the case, we do not find any justification whatever to accept the contention of Learned Counsel for the plaintiff. We

have already noticed the fact that as early as on 22-12-94 the party was permitted to complete the picture and the picture was also completed.

Naturally, it follows that the plaintiffs interest should be protected and at the same time, the defendants' interest should also be protected. Hence,

the learned judge passed an order appointing the applicant as Receiver and a direction was also given for depositing of the amount to safeguard the interest of the defendants.

6. However, in order to protect the interest of the defendants we add a further direction that the plaintiff as the Receiver shall file statements of

accounts once in three months into Court, after giving copies to the Counsel for the appellant. We have also noticed that there is no appeal against

the order dated 2-3-1995 as such. That order has become final. The present appeal is only against the order dated 21-7-1995 which is in fact one

of dismissal of A. No. 2761 of 1995. No doubt, in the decretal order passed, it is stated that the order dated 2-3-1995 is reiterated, but it does

not mean that the said order could be challenged in this appeal itself. The appellant ought to have filed a separate appeal against the order dated 2-

3-1995. But, on that ground we have not refused to hear the appeal. We have heard the appeal on merits and passed the order as above. In these

circumstances, the appeal is dismissed with a direction to the respondent to file statements of accounts once in three months into court after

furnishing a copy to the Counsel for the defendants in addition to the directions already given by the learned single judge on 2-3-1995.