

(2016) 04 MAD CK 0111

In the Madras High Court

Case No : C.M.A. SR. No. 30678 of 2016(CMA.SR. No. 30678 of 2016, Review Application No.54 of 2016 in C.R.P. No. 4169 of 2015, I.A. No. 14346 of 2015 in O.S.No.4922 of 2010)

S. Umapathy

APPELLANT

Vs

V. Ezhilarasi

RESPONDENT

Date of Decision : 29-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100A, 104, 107
Constitution of India, 1950 — Article 227

Citation : (2016) 4 CTC 662 : (2016) 3 MadWN(Civil) 321

Hon'ble Judges : Mr. Sanjay Kishan Kaul, C.J. and Mr. M.M. Sundresh, J.

Bench : Division Bench

Advocate : Mr. S. Divakar, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—The appellant filed a suit in O.S. No. 4922 of 2010 seeking the relief of permanent injunction. An application in I.A.No. 14346 of 2015 was filed by the defendants seeking to receive the additional documents on their behalf. The said application was dismissed by the trial Court. On revision, the learned single Judge was pleased to set aside the order passed by the trial Court and thus allowed the application filed with a direction to dispose of the suit within a period of three months from the date of receipt of a copy of the order so passed. The appellant filed a review in review application No. 54 of 2016 inter alia contending that there is an error on the face of the record. By a speaking order, the review application was dismissed. Challenging the said order, an appeal is sought to be filed by the appellant in C.M.A. SR. No. 30678 of 2016 under Section 100A, 104 r/w 107 of the CPC. The papers were returned by the Registry with the following query:

1. "As the Rev.Appln. has been dismissed, CMA will not lie in this Hon'ble Court. Hence, it may be stated how the CMA is maintainable in this Hon'ble Court.

2. Provision of law not correctly given.

3. Prayer needs revision and,

4. Preamble Portion is not mentioned in the grounds.

2. The learned counsel for the appellant has represented the papers with the endorsement as under:-

1. "The correction in the provision of law in which the appeal is filed takes away the hand written query raised by the registry.

2. The orders passed by the learned single judge in CRP. 4169/15 and review petition 54/16 do not amount to decrees under the amended letters patent, is therefore, not affected by Section 104(1) CPC. It follows that the right derived from clause 15 of the letters patent is not also affected by any other provision of the Civil Procedure Code which restricts the right of appeal. Hence the appeal filed in the corrected Provision of law is maintainable.

Andhra High Court Sattemma v. Vishnu murthy on 5 August 1963 Equivalent citations: AIR 1964 AP 162 Bench: P.C. Reddy, G. Nair, Narasimhan, AIR 1962 SC 256 (Copies filed).

3. Provision of law corrected and clean copies of the corrected memorandum of grounds appeal is filed.

4. Prayer revised.

5. The content starting from the end of the cause title till the beginning of the grounds is the preamble.

6. The clean copies called for the pages are the ones taken from the copy of papers served to me by the respondent in CRP 2744/11. The copies of it are filed in the index of this appeal as of its existence to prove their being in the case which is legible to see. If insisted by this Hon"ble Court to file clean copies the same will be duly presented by seeking a leave.

The queries raised by the registry are accordingly answered in the affirmative.

As said that the trial of the case before the court below proceeds with the irregularity crept by the orders challenged in the appeal, it is requested to the registry that on considering the above and by setting aside strict compliance to list the case at the earliest to be heard by the court."

3. Not satisfied with the explanation given, as the doubt could not be cleared, the Registry has posted the matter for maintainability before this Court.

4. Learned counsel appearing for the appellant submitted that there is no bar under Section 100-A of the Civil Procedure Code since there is no judgment or decree involved. Similarly, as per Section 104, an appeal would lie against the order passed. Section 104 has to be read in conjuncture with Section 107, which

speaks about the power of the Appellate Court. In any case, sufficient power is available under Clause 15 of the Letters Patent. To buttress his submission, reliance has been made on a Full Bench decision of the Andhra Pradesh High Court in *Sattemma v. Vishnu Murthy* (AIR 1964 AP 162), which, in turn, has taken note of a decision of the Hon"ble Supreme Court in *Union of India v. Mohindra Supply Company* (AIR 1962 SC 256 : 1962 SC (3) 497).

5. The revision was filed by seeking to invoke the power of superintendence available to the High Court over an inferior Court under Article 227 of the Constitution of India. Thus, no intra-Court appeal against the said decision passed in the revision is available before the Bench. When such is the position, certainly, an appeal would not lie against the order passed in the review application in the revision petition. Furthermore, it is trite that an appeal against the order made in a review application, even in a case when it is otherwise maintainable, cannot be entertained without challenging the main order when a subsequent order merely confirms the earlier order. Useful reference can be had to the decision of the Supreme Court in *D.S.R. Steel v. State of Rajasthan*, ((2012) 6 SCC 782). Therefore, even on that account, the appeal is not maintainable. The reliance made on the provisions of the Civil Procedure Code does not merit acceptance as they do not apply to the facts of the case.

Section 100-A of the Civil Procedure Code merely places an embargo on further appeal. Similarly, Section 104 deals with the availability of appeal against certain orders. Section 107 of the Code prescribes the availability of the power to the appellate Court while hearing the appeals. Thus, these provisions do not have any application to the case on hand, which involves dismissal of a review application in a revision petition.

6. The learned counsel made a submission that if a Civil Miscellaneous Appeal is not maintainable then a Letters Patent Appeal would lie. This submission also cannot be countenanced as Clause 15 of the Letters Patent once again does not deal with an order made in exercise of the revisional jurisdiction under the power of superintendence available to the High Court. The decisions relied upon by the learned counsel for appellant do not have any application, as we are not concerned with Order 47, Rule 7 and Clause 15 of the Letters Patent in this case.

7. Thus, we uphold the objections raised by the Registry. Consequently, the Civil Miscellaneous Appeal as filed is declared as not maintainable.