

(2016) 08 MAD CK 0062

In the Madras High Court

Case No : Suo Moto Contempt Petition No. 1702 of 2016 in S.A. No. 544 of 2015

Saroja (Died)

Date of Decision : 16-08-2016

Acts Referred:

Citation : (2016) 3 MadWN(Civil) 588

Hon'ble Judges : K. Ravichandra Baabu, J.

Bench : Single Bench

Advocate : Anand Venkatesan, Advocate, for the Contemnor No. 2 and 3; P. Valliappan, Amicus Curiae, for the Appearing Party

Final Decision : Disposed Off

Judgement

K. Ravichandra Baabu, J.—The Second Appeal has been filed challenging the Judgment and Decree of the Sub-Court, Ponneri in A.S. No.9 of 2008, dated 15.12.2008 reversing the Judgment and Decree of the District Munsif Court, Ponneri in O.S. No. 307 of 2000, dated 20.11.2007.

2. When the matter was listed before this Court on 10.6.2016 under the caption "Notice of Motion", the learned Counsel for the Respondent submitted that filing of the above Second Appeal is abuse of process of this Court as the very same Appellants (Contemnors) have also filed another Second Appeal arising out of the very same Judgment and Decree of the Lower Appellate Court, in S.A.S.R. No. 17855 of 2013 with a delay of 997 days and that an Application seeking to condone such delay came to be dismissed on 4.3.2014, after hearing both sides be further contended that even after the dismissal of the said Application, the Appellants have proceeded to pursue the present Second Appeal with different set of copies of the Judgment and Decree of the Courts below, in suppression of the earlier Order, dated 4.3.2014 passed by this Court.

3. Considering the above said submission and on being satisfied that the present Second Appeal though filed earlier, has been pursued even after the disposal of the other proceedings arising out of the very same Judgment and Decree of the Lower Appellate Court, this Court initiated this suo moto Contempt proceedings

and issued Notice to the Appellants. On receipt of Notice, the Second & Third Contemnors appeared before this Court in person.

4. This Court appointed Mr. P. Valliappan, Advocate as Amicus Curiae to assist this Court in this suo moto Contempt proceedings.

5. Mr. Anand Venkatesan, learned Counsel appearing for the Contemnors submitted that the present Second Appeal was filed before this Court much earlier in the month of April 2010 whereas the Order passed by this Court on 4.3.2014 in dismissing the Condone Delay Petition is in respect of the Appeal filed subsequently. He further contended that the Appellants, in fact were not aware of the filing of two Appeals arising out of the very same Judgment and Decree and without their knowledge the mistake was committed by one R. Rajan, an Advocate to whom they entrusted the papers to file the Second Appeal. He also submitted that the said R. Rajan passed away on 19.5.2016. Therefore, the learned Counsel contended that these Contemnors have not filed two Second Appeals knowingly or deliberately by abusing the process of this Court.

6. The Second Contemnor filed an Affidavit wherein, apart from seeking an unconditional apology for the negligence of the Appellants or default, he has explained the circumstances under which both the Appeals were filed before this Court as follows:

"2. I submit that one Mr. R. Rajan, Advocate was conducting the case on our behalf both before the Trial Court and the Appellate Court at Ponneri. I was personally following up with the case right through on behalf of my mother and sister also. After the dismissal of the Appeal, the said Mr. R. Rajan informed me that he will take steps to obtain the certified copy of the Judgment and Decree and make arrangements to file the Second Appeal in the High Court.

3. I submit that I handed over to him a Vakalat duly signed by myself, my mother and my sister authorizing him to take steps to file the Second Appeal. I submit that the said Mr. R. Rajan, Advocate did not take any effective steps to file the Second Appeal and ultimately during the month of June, 2010, I met him personally at which point of time he handed over the Xerox copy of the judgment passed in A.S. No. 9 of 2008. He did not inform me about the filing of any Second Appeal, and he told me that no Second Appeal has been filed by him.

4. I submit that I thereafter approached another Counsel who also did not take any steps to file the Second Appeal till December, 2011. In the meantime, my mother Saroja died during February, 2011. With great difficulty, I engaged Mr. M. Krishnakumar, Advocate during September, 2012 and he advised me to get the certified copy of the Judgment and Decree. After obtaining the necessary papers, I engaged the said Counsel to appear on our behalf by giving him Vakalat signed by me and my sister.

5. I submit that another Appeal was filed with a delay of 997 days. The delay Petition was numbered as M.P. No. 2 of 2013 in S.A. SR No. 17855 of 2013. This

Court by an Order, dated 4.3.2014 was pleased to dismiss the Delay Petition filed by us and consequently the Judgment and Decree made in A.S. No. 9 of 2008 dated 15.12.2008 became final. I was under the impression that the entire proceedings have come to an end.

6. I submit that while so, I was informed about the suo moto Contempt initiated by this Court and I along with my sister appeared in person on 1.8.2016 before this Court. I was furnished with the papers in the above Contempt Petition by the Amicus Curiae appointed by this Court. To my shock and surprise, I found that one Mr. T. Jayaramaraj, Advocate has filed S.A. No.544 of 2015 before this Court on behalf of my mother, myself and my sister, against the Judgment and Decree in A.S. No.9 of 2008 and notice was also ordered in the Second Appeal. On receipt of the notice, the Respondent Mr. S. Balakrishnan had appeared through his Counsel and informed the Court about the dismissal of the Condone Delay Petition by this Court on 4.3.2014. Pursuant to the same, this Court has initiated suo moto Contempt proceedings against us.

7. I hereby tender unconditional apology in the event this Court finds any negligence or default on my part. I have the highest regard and respect to the majesty of this Hon"ble Court and I have never disobeyed or will abuse the process of Court."

7. Mr. T. Jayaramaraj the learned Counsel for the Appellants also filed an Affidavit by himself wherein he explained as to how the present Second Appeal which came to be filed earlier was pursued later, even after the disposal of the other proceedings, as follows:

"2. I submit that one Mr. R. Rajan, then Government Pleader of Tiruvallur District Court filed Joint Vakalat along with me for filing Second Appeal before this Court. The said Mr. R. Rajan had conducted the trial before the District Munsif Court at Ponneri and the Subordinate Judge's Court at Ponneri. The Second Appeal was filed on 19.4.2010 in S.R. No.37564 of 2010 and subsequently, the registry returned the Second Appeal papers for want of necessary printed copies, etc. The returned papers were handed over to Mr. R. Rajan. On 10.3.2015 the said Mr. R. Rajan, Advocate handed over the returned Second Appeal papers along with the condone delay in representation Affidavit and the Petition to me and the same was represented before this Court. This Court allowed the Petition to condone the delay in representation on condition that a sum of Rs. 1,000/- must be paid as costs. The said cost of Rs. 1,000/- was paid and the proof of payment was filed before this Court on 23.4.2015 in S.R. No.2877 of 2015. Thereafter, the Second Appeal was numbered as S.A. No.544 of 2015. The Second Appeal came up for orders as to admission and this Court ordered Notice of Motion. Immediately, Notice was taken and Private Notice also was sent to the Respondent in the Second Appeal.

3. I further submit that the Respondent in the Second Appeal filed an Application to reject the Second Appeal, stating that the Appellants therein had already filed

a Second Appeal in S.A.SR. No. 17855 of 2013 against the same Judgment and Decree with delay and the same was dismissed by this Court. I informed the same to the then Government Pleader Mr. R. Rajan. Subsequently, the said Mr. R. Rajan, Advocate died on 19.5.2016.

4. I submit that I had never seen the Appellants in the Second Appeal and it was Mr. R. Rajan, Advocate, who handled the case. I was only a Counsel on record in the Joint Vakalat filed along with Mr. R. Rajan, Advocate. When the case is came up before this Court, I have represented about the handling of the case of Mr. R. Rajan, Advocate and hence this Court issued suo moto Contempt Notice to the Appellants therein. After receiving the suo moto Contempt Notice, the Appellants appeared before this Court and they have stated that they were not aware of the facts. Only then, I came to know that the said Mr. R. Rajan, Advocate had not informed anything about this Second Appeal to the Appellants.

5. I submit that I was only helping Mr. R. Rajan, Advocate and as stated above, I do not know the Appellants directly. I entirely believed Mr. R. Rajan, Advocate and I never questioned him about the papers handed over to me, as I knew him for more than 10 years and he was also a Government Pleader in Tiruvallur District Court."

8. The learned Counsel for the Respondents in the Second Appeal is not disputing to the averments contained in the above Affidavits filed one by the parties and the other by the Counsel for the parties. Hence, the reasons set out therein are taken as self-explanatory and establishing the ignorance of the Appellants over the act of mischief played by the said Rajan.

9. Mr. P. Valliappan, learned Amicus Curiae, appointed by this Court, has submitted that in order to prevent such abuse of process either knowingly or unknowingly, a mechanism has to be derived by way of installing necessary software in the Computer at the Filing Section of the Registry. He has also filed a Memo, dated 12.8.2016 indicating as to how the mechanism has to be worked out in order to prevent such abuse of process if any. In Paras 4 & 5, the learned Amicus Curiae has submitted as follows:

"4. Under these circumstances, it is respectfully submitted that appropriate screening of the cases at the entry level would prevent such abuse of process. Since most of the filing procedure has been computerized, it would be possible to install a software (like the one used by the filing Section of the Hon"ble Supreme Court), through which any abuse in filing of Second Appeals, First Appeals, Civil Miscellaneous Appeals, Civil Miscellaneous Second Appeals or Civil Revision Petitions (if a litigant challenges the very same Order/Judgment and Decree, repeatedly), could be prevented, as an objection could be raised at the initial stage and question of maintainability could be considered.

5. It is respectfully submitted that this court may also direct the office to evolve a procedure akin to verification of caveat and insist the concerned section to corroborate by using the aforesaid software, as to whether the same Order/

Judgment and Decree order had been challenged earlier, by the same party. If such a mechanism is successfully implemented, it will definitely prevent abuse of process of Court. At this juncture, it is pertinent to mention that, what happened in the present case can occur in other cases too. Unless a foolproof system is evolved to prevent such attempts, abuse of process of Court cannot be prevented".

10. A perusal of the above said facts and circumstances and the reasons set out by the parties and their Counsel in their respective Affidavits would indicate that the entire mischief of filing two Second Appeals before this Court against the same Judgment and Decree of the Lower Appellate Court, has been played by the deceased Advocate viz., R. Rajan, who is no more. It appears that the parties viz., Contemnors/Appellants entrusted the matter to said R. Rajan to file the Second Appeal and he played the mischief by filing two Second Appeals without the knowledge of these Appellants. A perusal of the facts and circumstances as disclosed in the Affidavit filed by the parties and the learned Counsel for the Appellants would also indicate that neither the Appellants nor the present Counsel on record viz., Mr. Jayaramaraj were aware of the factum of filing the subsequent Second Appeal with delay and its disposal. Admittedly, Counsel for the Appellants in both the Appeals is not one and the same. Therefore, I find that the mischief has been done by the said Rajan without the knowledge of the contemnors as well as the present Counsel on record. Therefore, I find that the present Contemnors cannot be found guilty as they have entrusted the entire papers to the Counsel for filing Appeal and the said Counsel alone has to be blamed for such mischief. Even though they are not guilty of Contempt of Court. Their negligence in not tracking the matter then and there cannot be ignored. Had there been proper tracking with their Counsel, this mischief would have not taken place. Hence, for their negligence, they are liable to pay cost to other side which the learned Counsel for the Respondents in Second Appeal graciously refused and requested this Court to allow the Appellants to pay to "Chief Justice Relief Fund". This Court today by separate judgment dismissed the Second Appeal with Cost of Rs. 20,000 payable to the "Chief Justice Relief Fund".

11. Therefore, the present Contempt Petition is closed.

12. It is seen that the mischief as played in this case can be prevented if proper-mechanism is adopted by the Registry by installing an appropriate software in the Computer at the Filing Section through which the Registry can find out as to whether any earlier proceedings arising out of the same Judgment and Decree or Order of the Lower Court, is pending or disposed of. If such mechanism is adopted, I am of the view that such abuse, either knowingly or unknowingly to the parties, can be prevented at the threshold instead of allowing the same to culminate into hearing by the Court itself and decide later.

13. Accordingly, the Registry is directed to place this Order and the Judgment delivered in S.A. No.544 of 2015 before My Lord, the Honourable chief Justice for his perusal and decision on this aspect.