
(2008) 07 MAD CK 0039

In the Madras High Court

Case No : C.R.P (NPD) No. 23 of 2006 and C.M.P. No. 156 of 2006

Singer India Limited

APPELLANT

Vs

Christ Church

RESPONDENT

Date of Decision : 14-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2008) 3 LW 1138 : (2008) 8 MLJ 727

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : R. Madanagopal, for the Appellant; N.D. Bahety, for the Respondent

Judgement

S. Tamilvanan, J.—This Revision has been preferred by the petitioner herein against the order, dated 10.03.2004 passed in I.A. No. 23689

of 2003 in O.S. No. 1497 of 1996 on the file of the VI Additional Judge, City Civil Court, Chennai.

2. It is an admitted fact that the respondent herein had filed a suit against the petitioner / defendant, seeking delivery of possession of the schedule

mentioned property of the plaint and also for damages at the rate of Rs. 1,00,000/- per month for use and occupation of the premises.

3. The trial court, by its Judgment, dated 16.11.2000 decreed the suit with regard to delivery of possession and also permitted the respondent /

plaintiff to seek the relief of mesne profits / damages, under Order XX Rule 12 of the Code of Civil Procedure. Aggrieved by which, the appeal in

A.S. No. 42 of 2002 has been preferred and the same is pending, admittedly before the Division Bench of this Court.

4. As per the order, dated 04.12.2003, passed in C.M.P. No. 16554 of 2003 in the said appeal, the Division Bench of this Court permitted the

trial court to conduct enquiry under Order XX Rule 12 CPC and complete the same within a period of three weeks from the date of receipt of the

order. With regard to other aspects, there was an order of stay, as per order, dated 02.04.2002 made in C.M.P. No. 3355 of 2002, the stay was

also made absolute. The trial court has not discussed anything about the Engineer's Report marked as Ex.R.1 in the impugned order.

5. By the impugned order, dated 10.03.2004, the trial court allowed the petition filed under Order XX Rule 12, whereby fixed the mesne profits at

Rs. 1,00,000/- (Rupees one lakh only) per month, as claimed by the respondent herein. Aggrieved by which, the petitioner / defendant has

preferred this Civil Revision.

6. According to Mr. R.Madanagopal, learned Counsel appearing for the revision petitioner, the Court below has fixed the mesne profits at Rs.

1,00,000/- without applying the well established principles of law and that the order passed by the court below fixing Rs. 1,00,000/- per month is

unjustifiable. He has further contended that the building is aged about 150 years and it has no water facility and drainage and according to him, no

evidence has been produced by the respondent herein for fixing the mesne profits at Rs. 1,00,000/- (Rupees one lakh only) per month, however,

the court below has fixed the same at Rs. 1,00,000/- and therefore, the order is liable to be set aside and further as per the direction of the

Division Bench of this Court made in C.M.P. No. 16554 of 2003, the trial court has violated the direction by the impugned order. Hence, in the

absence of being an appealable order, the petitioner is entitled to maintain the Civil Revision Petition.

7. Mr. Bahety, learned Counsel appearing for the respondent / plaintiff submitted that the Civil Revision Petition itself is not maintainable, since the

petitioner herein has filed this revision before the decree being drafted by the court below. It is not in dispute that the court below can grant a

decree only after payment of necessary court-fee and the petitioner / plaintiffs would pay the court- fee, only after the quantum of mesne profits is

decided by the court below. Hence, according to the learned Counsel for the respondent, such final decree is appealable under Order XX Rule 12

CPC and therefore, this revision preferred by the petitioner is not legally maintainable.

8. It is a settled proposition of law that if it is an appealable decree, revision is not maintainable. If there is no appeal provision, the remedy available

for the aggrieved party is only preferring revision, u/s 115 CPC. In support of his contention, the learned Counsel appearing for the petitioner

submitted the following decisions:

1. Satrughna v. Sridhari AIR 1996 Ori 203

2. Mahd. Hussain Khan v. Rasoolbux AIR 1948 Sind 124

3. Collector of Etawah Vs. Bindraban,

4. Gnanaprakasa Mudaliar and Others Vs. B. Anandathanadavan and Others, 12½ Full Bench Decision of this Court.

5. Chinna Marudachalam and Another Vs. Chinnaiya Gounder @ Renganna Gounder, .

9. Learned Counsel appearing for the respondent also cited the aforesaid Full Bench decision of this Court and other decisions referred to, in

support of his contention.

10. As per the decision, Satrughna v. Sridhari reported in AIR 1996 Ori 203, where an application under Order 20 Rule 12 for determination of

future mesne profits is filed, until mesne profits is determined and final decree is passed on such determination, the order does not amount to a

decree within the meaning of Section 2(2) CPC, finally and conclusively determining rights of the parties and as such is not appealable. Under

Order 43 CPC, also, no appeal lies against such order, before final decree being passed.

11. The Division Bench Decisions in Mahd. Hussain Khan v. Rasoolbux reported in AIR 1948 Sind 124 and Collector of Etawah Vs. Bindraban,

, has held that under Order XX Rule 12 CPC, for mesne profits to be ascertained and passing final decree, the petitioner or plaintiff has to pay

necessary court-fee. Only on such payment of court-fee, being made a regular decree can come into existence.

12. As per Order XX Rule 12 of the Code of Civil Procedure, where a suit is for the recovery of possession of immovable property and for future

rent or mesne profits, the Court may pass a decree (a) for possession of the property; and (b) for determining the rent or mesne profits, directing

to conduct an enquiry.

13. In the instant case, it is not in dispute that this Court has granted stay in C.M.P. No. 3355 of 2003 in A.S. No. 42 of 2002 and the stay was

also made absolute in the appeal. It has been admitted by both sides, that the revision petitioner has vacated and handed over the vacant

possession of the property on 30.11.2004. According to the respondent herein, the petitioner has paid only Rs. 10,000/- per month towards the

contractual rent and the same has been given credit. As per the calculation of the respondent, based on the impugned order, the balance amount of

mesne profits payable is Rs. 79,20,000/- (Rupees Seventy Nine lakhs twenty thousand only) and the respondent has also paid Rs. 4,92,750/-

under S.R. No. 7104 of 2006, dated 10.02.2006, subsequent to the filing of this revision and thereafter the decree has to be drafted. According to

the learned Counsel for the respondent, it is an appealable decree, after the decree is drafted and therefore, the revision filed by the petitioner is

not maintainable.

14. In the light of the decisions referred to above, this Court is of the view that the decree passed deciding mesne profits under Order XX Rule 12

is an appealable decree. As per Section 2(2) CPC, "decree" means the formal expression of an adjudication which, so far as regards the Court

expressing it, conclusively determining the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either

preliminary or final. In the light of the decisions referred to above, as per Section 2(2) CPC, until mesne profits is determined and final decree is

passed, on such determination, the order, so passed does not amount to a decree and therefore, under Order 43 CPC, no appeal shall lie against

such an order, without a decree being passed. In such circumstances, if there is any material irregularity or illegality in the order, revision is

maintainable, as it is not an appealable order.

15. u/s 115 of the Code of Civil Procedure, the High Court may call for the records of any case, which has been decided by any Court

subordinate to the High Court, to which no appeal lies thereto, and if such subordinate Court appears (a) to have exercised jurisdiction not vested

in it by law, or (b) to have failed to exercise jurisdiction so vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material

irregularity and decided the same. As the impugned order passed by the Court

below is not a decree as per Section 2(2) of the Code of Civil

Procedure, the impugned order cannot be construed as an appealable decree and therefore, if there is any material irregularity or illegality, the Civil

Revision Petition filed by the aggrieved party would be maintainable.

16. In the instant case, learned Counsel appearing for the revision petitioner would contend that the Court below has exceeded its jurisdiction,

against the direction of the Division Bench and arbitrarily decided the mesne profits, without any evidence to fix it at Rs. 1,00,000/- per month, as

claimed by the petitioner from the contractual rent of Rs. 10,000/- and therefore, the impugned order is illegal and the revision preferred by the

petitioner, u/s 115 CPC is legally sustainable.

17. As the appeal is pending before the Division Bench, this Court expressed its view that this matter may also be posted before the Division

Bench to be decided along with the appeal. However, the learned Counsel appearing for the respondent submitted that if the matter is sent to the

Bench dealing with the appeal, even in respect of deciding the maintainability of this revision, it may cause further delay, due to pendency of old

cases. Learned Counsel appearing for the respondent further submitted that subsequent to the impugned order, the respondent has paid a huge

amount towards court fee, in order to get the decree being drafted. In the aforesaid circumstances, the petitioner could have paid necessary court

fee and preferred appeal against the decree being passed.

18. Learned Counsel appearing for the revision petitioner submitted that the court below has arbitrarily fixed the fair rent at Rs. 1,00,000/- per

month, even though, the contractual rate of rent was only Rs. 10,000/- without any basis and that the court below has exceeded the direction given

by this Court in the aforesaid Civil Miscellaneous Petition and therefore, the revision is legally maintainable and there is no necessity for the revision

petitioner to pay any additional court fee on the basis of the subsequent payment of court fee made by the respondent herein.

19. In the light of the decisions, as discussed earlier, this Court is of the view that the order passed by the court below under Order XX Rule 12 is

not an appealable decree, as per Section 2(2) of the CPC and u/s 115 CPC, if no appeal lies against the order passed by the subordinate court

and such order appears to have exercised by the said court, without jurisdiction

or failed to exercise the jurisdiction so vested and acted in exercise of jurisdiction illegally or with material irregularity, in order to meet the ends of justice, this Court can call for the records relating to the impugned order and pass suitable orders.

20. As contended by the learned Counsel for the revision petitioner, the Division Bench of this Court, by order, dated 02.04.2002 made in

C.M.P. No. 3355 of 2002, has granted interim stay against the operation of the decree passed in the suit and permitted the court below to

conduct enquiry under Order XX Rule 12 CPC and complete the same within the time limit fixed therein. Further, I could see that the trial court

has fixed fair rent at Rs. 1,00,000/- per month, though the earlier contractual rent was only Rs. 10,000/- without sufficient supporting evidence and

therefore, I am of the view that there is material irregularity in the impugned order passed, hence, the revision preferred by the revision petitioner /

tenant is legally sustainable.

21. On the facts and circumstances, I find it proper and reasonable to set aside the impugned order and remit back the matter to the court below

to dispose the same, according to law, after providing reasonable opportunity to both the parties for adducing further evidence, both oral and

documentary and decide the same on merits within a period of three months from the date of receipt of the copy of this order.

22. It is made clear that if any such order, being passed by the court below, on the facts and circumstances, the revision petitioner / tenant could

seek the relief only from the Division Bench where the appeal is pending, not by way of filing any revision petition, in order to drag on the matter.

The respondent / land lord is also at liberty to get back the court fee paid towards the drafting of the decree before the court below and pay the

same after fresh order being passed by the court below, in order to draft the decree, after determining mesne profits.

23. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected civil miscellaneous petition is closed.