

CMA No. 2460 of 2015

Dayanandhini v. K. Mala

2019 SCC OnLine Mad 19869

In the High Court of Madras  
(BEFORE M. GOVINDARAJ, J.)

Dayanandhini ... Appellant;

*Versus*

K. Mala ... Respondent.

CMA No. 2460 of 2015 and M.P. No. 1 of 2015

Decided on February 14, 2019

Advocates who appeared in this case :

For Appellant: Mr. Muralikumar for M/s. McGAN Law Firm

For Respondent: Mr. V. Athikesaran

Prayer: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 (d) of Civil Procedure Code against the order dated 12.10.2015 passed in I.A. No. 115 of 2013 in O.S. No. 9904 of 2010 on the file of the XVII Additional Judge, City Civil Court, Chennai.

The Judgment of the Court was delivered by

M. GOVINDARAJ, J.:— Aggrieved over the order dated 12.10.2015 passed in I.A. No. 115 of 2013 in O.S. No. 9904 of 2010 by the learned XVII Additional Judge, City Civil Court, Chennai, the appellant is before this Court.

2. The appellant is the second defendant in the suit filed by the respondent for partition in C.S. No. 1145 of 2008. Originally, the suit was instituted on the Original Side of this Court. Due to amendment of the rules, the pecuniary jurisdiction was conferred on the City Civil Court and accordingly, C.S. No. 1145 of 2008 was transferred to the City Civil Court, Chennai. Since the appellant/second defendant did not appear before the City Civil Court, she was set *exparte* on 28.02.2011. Thereafter, the suit was dismissed on 23.06.2011 for non-appearance of the respondent/plaintiff. Thereafter, the respondent/plaintiff has filed an application to restore the suit, after getting an order to dispense with the service of notice to the appellant/second defendant. The suit was restored and *exparte* decree came to be passed on 17.08.2012. When the appellant/second defendant came to know of the *exparte* decree, she filed a petition to set aside the *exparte* decree from the date of her knowledge in I.A. No. 115 of 2013. The said application was dismissed by the Trial Court on 12.10.2015 on the ground that sufficient cause was not shown for not filing the application from the date of decree and that no notice is required to the parties by the transferee Court, after the suit is transferred from one Court to some other Court. Challenging the same, the appellant is before this Court.

3. From the perusal of the materials, it is seen that the transfer of the Civil Suit viz., C.S. No. 1145 of 2008 from the file of this Court to the City Civil Court, Chennai, was not made known to the parties. Neither the appellant/second defendant nor the respondent/plaintiff were aware of such transfer. At the first instance, the appellant/second defendant was set *exparte* and thereafter, the suit was dismissed for default for non appearance of the respondent/plaintiff on 23.06.2011.

4. The sum and substance of the above fact is that both the parties were not having any knowledge about the transfer of the Civil Suit from this Court to the City Civil

Court, Chennai, details of renumbering and the hearing of the Civil Suit before the City Civil Court, Chennai. Thereafter, at the first instance, the appellant/second defendant was set *ex parte* and later, the suit was dismissed for default. Unfortunately, notice to the appellant/second defendant was also dispensed with, as she was set *ex parte*. At this juncture, it has to be decided as to whether notice to the parties by the transferee Court is necessary on transfer of Suits from one Court to some other Court, peculiarly, when the transfer is happened because of the change in pecuniary jurisdiction.

5. This Court, in a similar circumstance, in *ELLAPURAM PANCHAYAT UNION v. SRI BHAVANIAMMAL DEVASTHANAM* [1994 LW 256] has held as under:

*"9. It would be a very salutary practice if even in cases of appeals transferred from one Sub Court to another owing to exigencies of workload, a notice to that effect should be given to the parties informing them that the appeal which was pending before one Court has since been transferred to another Court. No provision to this effect either under the C.P.C., or under the Civil Rules of Practice and Circular Orders has been brought to the notice of the Court by the counsel on either side. Since a party to a litigation before any Court should know where it is pending and when it is likely to be taken up, it is essential that parties must be informed by the transferee Court in order to enable them to appear before the transferee court and contest the proceedings so transferred by engaging other counsel and taking necessary steps in that regard. In the absence of any provision to that effect either under the C.P.C., or under the Civil Rules of Practice and Circular Orders, every effect should be made by Courts to put the litigants on notice of the transfer of pending litigation, be it the trial Court or the appellate Court as the case may be. It is very necessary and desirable - nay, even imperative till such time as provision in this regard is made either under the C.P.C., or under the Civil Rules of Practice and Circular Orders that there should be an inflexible adherence to this requirement regarding notices; as otherwise, Courts cannot adjudicate upon the rival claims of the litigants before it after giving an effective and adequate hearing to both sides, which is the bedrock of our system of administration of justice."*

6. On a perusal of the above judgment, it is seen that the learned Judge has clearly explained the requirement of service of notice, even though there is no provision under the Civil Procedure Code or Civil Rules of Practice to issue such a notice.

7. The case on hand is a classic example that neither the applicant/second defendant nor the respondent/plaintiff were aware of the transfer of the suit and the consequential renumbering of the suit on transfer and also, to which Court it was allotted. Over and above this, the hearing date was also not informed by the transferee Court. In many cases, even the counsel on record were not aware of the development of their case on transfer and renumbering of the suits. Unless they follow it scrupulously, they may not be aware of the date of hearing. When such is the situation even for the counsel on record, the situation of the litigants would be very pitiable.

8. As held by this Court in *ELLAPURAM PANCHAYAT UNION's case* (cited *supra*) even though there is no statutory provision, it is advisable to issue notice to the litigants on transfer of the suit from one Court to other Court, either on account of pecuniary jurisdiction or territorial jurisdiction or even due to work load and thereafter to take up the case for further proceedings.

9. Secondly, the point raised by the appellant/second defendant is that she had clearly explained the reasons as to why she was not aware of the date of hearing on such transfer. She filed the application within thirty days from the date of her knowledge. It is quite obvious that in the absence of any notice or information by the counsel, particularly to both sides, they may not be aware of the date of hearing. In such a situation, they could file the application only from the date of knowledge of the decree. It is not new to this Court to entertain applications from the date of knowledge

of the decree.

10. In a judgment of this Court in *INTERNATIONAL COTTON TRADERS v. P. NARAYANASWAMI* [AIR 1979 MADRAS 36] it is held that when summons or notices are not duly served, it is open to the parties to file an application from the date of knowledge of the decree.

*"Under Art.123 that starting points of limitation are two. One is the date of the decree and the other is the date of the knowledge of the decree. With reference to the second, the condition to be satisfied is that no summons or notice should have been duly served. Thus, a person applying for setting aside an ex parte decree can claim that the period of limitation should commence from his knowledge of the decree only in a case where the summons or notice was not duly served. In other cases, limitation commences from the date of the decree itself."*

11. The Hon'ble Supreme Court in *N. BALAKRISHNAN v. M. KRISHNAMURTHY* [(1998) 7 SCC 123] has categorically held as follows:

*"The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time - limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."*

12. The Hon'ble Supreme Court has time and again reiterated that the complete justice shall be done on merits rather than dismissing the cases on technicalities. The approach of the Trial Judge is one on technicalities. Such type of orders/judgments shall not be encouraged. When the parties were not put on notice, they are entitled to file application from the date of knowledge of such orders. Therefore, I have no hesitation to set aside the order passed by the Trial Court and restore the suit on file.

13. In the result, the Civil Miscellaneous Appeal is allowed and the order dated 12.10.2015 passed in I.A. No. 115 of 2013 in O.S. No. 9904 of 2010 by the learned XVII Additional Judge, City Civil Court, Chennai is set aside. No costs. Consequently, connected miscellaneous petition is closed.

14. At this juncture, it is represented by the learned counsel appearing for both sides that they have arrived at a compromise. Therefore, let the matter be posted on 26.02.2019 for recording the compromise memo, before the XVII Additional Judge, City Civil Court, Chennai.

15. Registry is directed to circulate the judgment of this Court in *ELLAPURAM PANCHAYAT UNION v. SRI BHAVANIAMMAL DEVASTHANAM* [1994 LW 256] to all the Civil Courts with instruction to issue notice to the parties on transfer of the suit, on account of constitution of new Courts bifurcation of jurisdiction, transfer of cases due to change in pecuniary jurisdiction or territorial jurisdiction or even transfer due to work load, wherever it is necessary.

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