



O.S.A.Nos.254 & 255 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

O.S.A.Nos. 254 & 255 of 2022

O.S.A.No.254 of 2022

Azizul Karim

..Appellant

Vs

1.P.S.Kirubakaran
2.P.S.Anandan

.. Respondents

O.S.A.No.255 of 2022

1.Azizul Karim
2.Syed Ahmed Ammal
3.Rahman

.. Appellants

Vs

1.P.S.Kirubakaran
2.P.S.Anandan

.. Respondents

Prayer in O.S.A.No.254 of 2022: Appeal filed under Order XXXVI
Rule 1 of Original Side Rules read with Clause 15 of Letters
Patent against the order dated 07.09.2022 made in A.No.3333 of
2022 in C.S.No.212 of 2017.



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Prayer in O.S.A.No.255 of 2022: Appeal filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of Letters Patent against the order dated 07.09.2022 made in A.No.3331 of 2022 in C.S.No.212 of 2017.

For Appellant(s) : Mr.R.Natarajan

For Respondents : Mr.M.Nandhakumar

COMMON JUDGMENT

(Delivered by *PARESH UPADHYAY.,J*)

1. Challenge in these appeals is made to the common order dated 07.09.2022 recorded on Application Nos.3331 and 3333 of 2022 in C.S.No.212 of 2017. These appeals are by the original plaintiff of C.S.No.212 of 2017 and the contesting respondent in the Application Nos.3331 and 3333 of 2022. The relevant part of the impugned order reads as under:-

"That the suits in O.S.No.4150 of 2020 and O.S.No.1385 of 2019 on the file of the XIX Assistant City Civil Court Chennai be and is hereby withdrawn from the file of the said court and the same suits are hereby transferred to this Hon'ble Court, to be tried along with C.S.No.212 of 2017."



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2. These appeals were firstly listed for hearing on 22.09.2022. Learned advocate for the appellant was heard at length. On conclusion of the hearing, when the Court was not inclined to interfere in the order under challenge, learned Advocate for the appellant requested for adjournment to seek instruction from the appellant, as to whether the appellant intends to withdraw this appeal or he wishes to invite order on merits. For this limited purpose, the matter was adjourned for one day i.e. 23.09.2022.

3. On 23.09.2022, learned advocate for the appellant did not remain present, though the matter was called out more than once. The grievance on behalf of the contesting respondent was also noted in the order. The matter was adjourned to 26.09.2022.

4. On 26.09.2022 also, learned advocate for the appellant did not remain present. It was adjourned to 27.09.2022.

5. On 27.09.2022, the following order was passed:-

“Challenge in these appeals is made to common order dated 07.09.2022 recorded on Application Nos.3331 and 3333 of 2022 in C.S.No.212 of 2017.

2. The appellant is the plaintiff of C.S.No.212



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of 2017. The defendants therein filed applications before learned single Judge inter alia pointing out that two suits being O.S. No.4150 of 2020 and O.S. No.1385 of 2019 on the file of XIX Assistant City Civil Court, Chennai, be transferred to the file of the High Court to be tried along with C.S.No.212 of 2017. Those applications came to be allowed by learned Single Judge which is challenged by the plaintiff of C.S.No.212 of 2017 and the respondents of A.No.3331 of 2022 in these two appeals.

3. We have considered the reasons recorded by learned single Judge, as to why these three suits need to be heard together and further, why they need to be heard by this Court, instead of City Civil Court.

4. After hearing learned Advocate for the Appellant, on 22.09.2022, when the Court was not inclined to interfere in the impugned order, request was made on behalf of the appellant for adjournment next day, so that it can be informed to the Court as to whether the appellant intends to withdraw the appeals or invites order on merits. As requested on behalf of the appellant, the matter was again listed on 23.09.2022.

5. On 23.09.2022, the following order was



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passed:-

"1. Challenge in these appeals is made to the order dated 07.09.2022 recorded on Application Nos.3331 and 3333 of 2022 in C.S.No.212 of 2017. This appeal is by the original plaintiff of C.S.No.212 of 2017 and the contesting respondent in the Application Nos.3331 and 3333 of 2022.

2. Learned single Judge has passed the following order:-

"That the suits in O.S.No.4150 of 2020 and O.S.No.1385 of 2019 on the file of the XIX Assistant City Civil Court Chennai be and is hereby withdrawn from the file of the said court and the same suits are hereby transferred to this Hon'ble Court, to be tried along with C.S.No.212 of 2017."

3. This appeal was listed for hearing yesterday (22.09.2022). Learned advocate for the appellant was heard at length. On conclusion of the hearing, when the Court was not inclined to interfere in the order under challenge, learned Advocate for the appellant requested for adjournment to seek instruction from the appellant, as to whether the appellant intends to withdraw this appeal or he wishes to invite order on merits. For this limited purpose, the matter was adjourned, for being listed today.

4. Today, the matter is listed at



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Serial No.2. Learned Advocate for the appellant was not present in the first call. In the interest of justice, the matter was passed over. In the second call also, learned Advocate for the appellant is not present. Instead of dismissing the matter for default, in the interest of justice, the matter is adjourned to 26.09.2022.

5. At this stage, learned advocate for the respondent has submitted that, the pendency of this appeal is being taken advantage of by the appellant before the trial Court. For this reason, it is clarified that, in the event the appellant refers to the pendency of this appeal, the concerned Court shall take note of this order and the appellant shall not be permitted to take advantage of the pendency of this appeal.

6. List on 26.09.2022."

6. On 26.09.2022 the following order was passed:-

"1. When the matter is taken up for hearing in the first call, learned Advocate for the appellant requested for pass over.

2. The Bench is not sitting in the second half.

3. List on 27.09.2022."

7. In view of above, these appeals are listed



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today at Serial No.1 in the list. The appellant or his counsel is not present in any of the calls, though the matter was called out twice in the first half today and again in the second half.

8. We find that, not only on merits the appellant is not entitled to any relief as claimed in the appeals, we further find that prima facie there is abuse of process of law by him. This prima facie observation is recorded, not only on the basis of the proceedings before this Court in these appeals in last three days, but also on the basis of the additional material put to the notice of this Court on behalf of the contesting respondents, wherein the details are given as to how the appellant is in habit of instituting vexatious proceedings, both civil and criminal. Attention of the Court is also invited to the decision of this Court recorded on W.P.No.2517 of 2021 dated 17.08.2021.

9. An attempt was made to secure the presence of the learned Advocate for the appellant, through whom these appeals have been filed, on the contact number given on the paper book. Learned advocate for the respondent has stated that, on such an attempt having been made by him, the said number has ultimately turned out to be the contact number / mobile number of the appellant, and learned



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Advocate for the respondent has further stated that, the 'true caller' indicates the name of the appellant along with his introduction as an 'advocate'.

10. **On conjoint consideration of the material on record, we find prima facie that the appellant can not be let off, by simply ordering dismissal of these appeals. The nuisance created and continued by him needs to be checked. For this reason, it may be required to request learned Advocate General to look into the matter, as required under the provisions of The Vexatious Litigation (Prevention) Act, 1949. Since this course is being explored, one more opportunity needs to be granted to the appellant to appear before this Court either in person or through his advocate, if he desires. In the interest of justice, list on 30.09.2022.**

11. **Since the appellant, who is plaintiff of C.S.No.212 of 2017 needs to be given sufficient opportunity, with a view to secure the presence of the plaintiff / his counsel, Registry is directed to notify C.S.No.212 of 2017, for the above limited purpose before this Bench, on 30.09.2022.**

12. List on 30.09.2022.”



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6. Today, Mr.R.Natarajan, learned Advocate for the appellant had requested for withdrawal of these appeals, however we have declined to accede to the said request, for the reasons which are recorded in detail in the above quoted order dated 27.09.2022. At that time, learned Advocate for the plaintiff was not present before the Court, inspite of his name also being reflected in the list in view of para 11 of the above quoted order. The matter was called out thrice in the first half today. In none of the three calls, Mr.D.Prasanna, learned Advocate for the plaintiff in C.S.No.212 of 2017 was present before this Court. In the second half, the composition of the Bench was different, however since today is the last working day before the Pooja holidays, this Bench has assembled again at 2.15 p.m and at that time Mr.D.Prasanna, learned Advocate for the plaintiff has appeared before this Court, pleading his ignorance about the proceedings. Certain queries are put to him and he is asked to respond as to why the course reflected in paragraph 10 of the above quoted order be not taken recourse to. To this he has replied that, on the basis of the material on record, the Court may pass appropriate order.

7. Learned Advocate for the contesting respondents has referred to the voluminous material on record as contained in the



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paper book (which runs to 274 pages) including FIRs and orders of this Court, which has bearing on the course to be adopted by this Court. On the basis of the said material, we find prima facie as noted in the order dated 27.09.2022 that, the appellant / plaintiff viz., Azizul Karim is in habit of filing vexatious litigation in various courts of the State, which warrants invoking the provisions of The Vexatious Litigation (Prevention) Act, 1949. The said Act provides for appropriate order by the learned Advocate-General of the State.

8. Keeping the above provision of law in view, we deem it appropriate to allow the respondents of these appeals to make appropriate application to the learned Advocate-General of the State of Tamil Nadu with relevant material, including the copy of this order, to pass appropriate order qua the appellant of these appeals, under the Vexatious Litigation (Prevention) Act, 1949. We request the learned Advocate-General that, after due consideration of the material that may be placed before him, appropriate order be passed by him. We note that, on the basis of the material produced before this Court, prima facie we find that appropriate order needs to be passed against the present appellant, invoking provisions of the Vexatious Litigation (Prevention) Act, 1949, however we clarify that, these observations are prima facie in nature and in the event



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learned Advocate-General arrives at the satisfaction that such an order need not be passed, our observations will not bind him, leaving it open to the respondents of these appeals to take recourse to the remedy available to them under the law.

9. These appeals are dismissed with above observations. No costs. The papers of C.S.No.212 of 2017 be placed before the appropriate Court on the date fixed by that Court.

(P.U., J.) (D.B.C., J.)
30.09.2022

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To

The Sub Assistant Registrar,
Original Side, High Court, Madras.



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PARESH UPADHYAY, J.
and
D.BHARATHA CHAKRAVARTHY.,J
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