(2011) 08 MAD CK 0338

Madras High Court

Case No: Civil Miscellaneous Appeal No. 346 of 2008 and M.P. No"s. 1 of 2008 and 1 of 2009

Kanniammal		APPELLANT
	Vs	
S. Jyothi, S. Shaikila, S. Megala and S. Sundari		RESPONDENT

Date of Decision: Aug. 25, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 105

Citation: (2011) 08 MAD CK 0338

Hon'ble Judges: R. Subbiah, J

Bench: Single Bench

Advocate: S. Sadasharam, for the Appellant; R. Gowtham narayanan, for the Respondent

Final Decision: Dismissed

Judgement

R. Subbiah, J.
This appeal arises out of the judgment and decree dated 03.07.2007 passed by the learned VI Additional Judge, 2City Civil Court, Madras, in A.S. No. 342 of 2006, whereby the lower appellate court reversed the judgment and decree passed by the learned IV Assistant Judge, City Civil Court, Madras, in O.S. No. 8622 of 1996 and remanded the matter to the trail court. The Appellant is the Plaintiff and the legal heirs of the deceased Defendant, by name, Selvamani, are the Respondents herein.

2. The circumstances, which led the Appellant/plaintiff to file the present appeal, are as follows:

(a) The Plaintiff filed a suit in O.S. No. 8622 of1996 for specific performance, directing the defendant Selvamani to execute and register a sale deed in respect of the suit property in her favor and also for a permanent injunction against the defendant from alienating the property bearings. No. 37/2, Palmas No. 170/1, Block No. 10 of Puliyur Village, measuring about 1267 sq.ft. It is the case of the Plaintiff that the Defendant Selvamani is

the absolute owner of the suit property and she offered to sell the same for a sale consideration of Rs. one lakh and for the said purpose, they have entered into anagreement of sale on 13.11.1994. On the date of agreement, the Plaintiff paid a sum of Rs. 50,000/-as 3advance and the Defendant also delivered the original documents to the Plaintiff. Subsequently when the plaintiff approached the Defendant during last week of October 1995, the Defendant expressed her inability to execute the sale deed, unless the Plaintiff pays extra consideration more than the amount agreed upon in the agreement of sale. Hence, the Plaintiff issued a legal notice dated 27.03.1996, expressing her readiness and demanded the execution of the sale deed in her favour.Though the said notice was received by the Defendant, she has not sent any reply. Hence, the Plaintiff filed the suit for specific performance as against the defendant Selvamani.

(b) On receipt of summons, the Defendant Selvamani entered appearance and filed the written statement. After framing issues, the Plaintiff was examined as P.W.1. Though the Defendant was present at the time of recording the evidence of P.W.1, the defendant has not cross examined P.W.1 on that date.Subsequently, the Defendant remained absent on several hearings and hence, she was set ex parte.

(c) The trial court passed an ex parte decree on28.06.2001 in favor of the Plaintiff. Therefore, the defendant filed an application under Order 9 Rule 13 CPC to set aside the ex parte decree dated 28.06.2001. The same was allowed by the trial courton payment of costs. But, the Defendant had not paid the costs within the stipulated time, as ordered bythe trial court. Subsequently, she filed an application for extension of time and though extension of time was granted for payment of costs, the costs were not paid. Hence, that application was dismissed. The subsequent application filed by the Defendant to restore the earlier application was also dismissed. In the result, the application filed under Order 9 Rule 13 CPC was dismissed.

(d) It is the further case of the Appellant/plaintiff that as against the dismissal of the said application, the Defendant has not filed any appeal. The Defendant died. After a lapse of four years from the death of the Defendant, her legal heirs filed an appeal in A.S. No. 342 of 2006 before the VI Additional Judge, City Civil Court, Madras, as against the exporter decree dated 28.06.2001 passed in the said suit. The lower appellate court, after hearing the submissions of both sides, allowed the application andset aside the ex parte decree and judgment of the trial court and remanded the matter to the trial court for fresh disposal, in accordance with law, after recording evidence on both sides. Aggrieved over the same, the present appeal has been filed.

3. It is the submission of the Learned Counsel for the appellant/plaintiff that once the application filed under Order 9 Rule 13 CPC was dismissed, the regular first appeal as against the ex parte decree and judgment, is not maintainable. In this regard, the Learned Counsel hasrelied on the judgments reported in Sumera Vs. Madanlal and Others, , AIR2001 (KERALA) 398, Bhanu Kumar Jain Vs. Archana Kumar and Another, and 2(1982) DMC 330.

4. Per contra, it is the submission of the learnedcounsel for the Respondents/the legal heirs of the deceased defendant that the Defendant has two options when the exporter decree was passed, (i) she can either file an application under Order 9 Rule 13 CPC to set aside the exporter decree and judgment or (ii) she can file an appeal as against the ex parte decree and judgment of the trial court. If the Defendant has chosen to file an appeal against the ex parte decree and judgment and the same is dismissed, thereafter, she cannot file an application under Order 9 Rule 13 CPC before the trial court. But if the application under Order 9 Rule 13 Code of Civil Procedureis dismissed, even 6thereafter, the Defendant can file an appeal challenging the correctness of the ex parte decree and judgment. But, while filing such an appeal, the Defendant cannot raise any grounds with regard to the reasoning given by the trial court for dismissing the application under Order 9 Rule 13 Code of Civil Procedure. In the instant case, the Respondents had challenged only the ex parte decree and judgment dated 28.06.2001. By considering the appeal on merits, the lower appellate court, remanded the matter. Therefore, no infirmity could be found in the finding rendered by the trial court.

5. The Learned Counsel for the Respondents further submitted that the ex parte decree was not based on merits and under such circumstances, the ex parte decree and judgment of the trial court have no legs to stand and assuch, no infirmity could be found in setting aside the exporter decree and judgment. In support of the submissions,the Learned Counsel has relied on the judgments reported in Smt. Archana Kumar and Another Vs. Purendu Prakash Mukherjee and Another, and Meenakshisundaram Textiles Vs. Valliammal Textiles Ltd., .

6. This Court has considered the submissions of the Learned Counsel on both sides.

7. In view of the submissions made by the learnedcounsel on either side, the question that arises forconsideration is, when once the application filed by the defendant under Order 9 Rule 13 Code of Civil Procedure., was dismissed,whether the regular first appeal is maintainable as againstthe ex parte judgment and decree of the trial court.

8. As could be seen from the materials on record,originally the ex parte decree was passed on 28.06.2001,while the Defendant was alive and against that, Selvamani filed an application to set aside the ex parte decree,which was allowed on payment of costs, but the cost was notpaid by the Defendant and hence, that application wasdismissed. In the meantime, Selvamani died. After four years from the death of the Defendant, the legal heirs of the Defendant filed a regular first appeal before the lower appellate court, challenging the ex parte decree and judgment dated 28.06.2001. Now, it is the submission of theLearned Counsel for the Appellant that once an application under Order 9 Rule 13 Code of Civil Procedurefiled by a party is dismissed,the appropriate remedy is to file an appeal challenging thesaid dismissal order and not an appeal as against the exporter decree and judgment passed by the trial court. Now let us see the ratio laid down in the judgments relied on by the Learned Counsel for the Appellant in support of his submissions. In Sumera Vs. Madanlal and Others, , it has been held as follows:

2. The following passage is read out to us by Shri Ramji Sharma appearing for Respondent No. 1, from the judgment of their Lordships of the Supreme Courtin the case of Rani Choudhury Vs. Lt.-Col. Suraj Jit Choudhury, frompara 3 of the report: --

By enacting the Explanation, Parliament left it open to the Defendant to apply under Rule 13 of Order 9 for setting aside an ex part decree only if the Defendant had opted not to appeal against the ex parte decree or, in the case where he had preferred an appeal, the appeal had been withdrawn by him. The withdrawal of the appeal was tantamount to effacing it. It obliged the Defendant to decide whether he would prefer an adjudication by the appellate Court on the merits of the decree or have the decree seta side by the trial Court under Rule 13, Order 9. The legislative attempt incorporated in the Explanation was to discourage a two-pronged attack on the decree and to confine the defendant to a single course of action. If he did not withdraw the appeal filed by him, but allowed the appeal to be disposed of on any other ground, he was denied the right to apply under Rule 13 of Order 9. The disposal of the appeal on any ground whatever, apart from its withdrawal, constituted sufficient reason for bringing the ban into operation.

9. In Dr. M.K. Gourikutty and etc. Vs. M.K. Raghavan and Others, , it has been held as follows:

22. Learned Counsel for the Respondents brought to our notice a decision of the Bombay high court reported in Mangilal Rungta Vs. Manganese Ore (India) Ltd., , wherein it is stated that where an application to set aside the ex parte decree is dismissed and that is not challenged in appeal, then the appeal against the decree cannot be put forward. This is what the Division Bench of the Bombay High Court said (at p. 88 of AIR):

Can a grievance about proceeding ex parte be made again in this appeal is the first point. Now order rejecting an application under Order9, Rule 13 is appeasable u/s 104 read with Order 43, Rule 1 (d), CPC Undoubtedly in appeal u/s 96 against the decree this grievance can be made. Section 105, CPC makes this position clear. Crux of the controversy is whether the same question can be allowed to be reopened in a case where other remedy has been availed of, the decision has gone against the defendant and the said decision has become final. In our view, this point must be answered against the Defendant. We recognized public policy of avoiding conflicting decisions on the same point is the reason behind this conclusion. Two High Courts (i) in the case of Badvel Chinna Asethu v. Vettipalli Kesavayya AIR 1920 Mad 962 and (ii) Munassar Bin v. Fatima Begum, AIR 1975 A.P 336 have taken the same view and It has our respectful concurrence.

We agree with the Learned Counsel for the Respondents that as much as the petition under Order 9, Rule 13 was dismissed as not pressed, the question regarding the ex parte nature of the decree cannot be agitated before this Court in the present appeal. Even otherwise we are of view that the position will not improve because as we already stated no medical records are produced by the Defendants to show how the incident

happened in 1971 and now we are in 2001. Nearly 30 years have lapsed. Excepting that the appellant can give oral evidence, no further improvement can be had. Hence, we are not inclined to set aside the ex parte decree.

10. The Hon''ble Supreme Court in Bhanu Kumar Jain Vs. Archana Kumar and Another, , has observed as follows:

23. The question which now arises for consideration is as to whether the First Appeal was maintainable despite the fact that an application under Order 9, Rule 13 of the Code was dismissed.

24. An appeal against an ex-parte decree in terms of Section 96(2) of the Code could be filed on the following grounds:

The materials on record brought on record in the ex-parte proceedings in the suit by the plaintiff would not entail a decree in disfavor, and

(ii) The suit could not have been posted for ex-parte hearing.

25. In an application under Order 9, Rule 13 of the Code, however, apart from questioning the correctness or otherwise of an order posting the case for ex-parte hearing, it is open to the Defendant to contend that he had sufficient and cogent reasons for not being able to attend the hearing of the suit on the relevant date.

26. When an ex-parte decree is passed, the defendant (apart from filing a review petition and suit for setting aside the ex-parte decree on the ground of fraud) has two clear options, one, to file an appeal and another to file an application foresting aside the order in terms of Order 9, Rule 13of the Code. He can take recourse to both the proceedings simultaneously but in the event the appeal is dismissed as a result whereof the ex-parte decree passed by the Trial Court merges with the order passed by the appellate court, having regard to Explanation appended to Order 9, Rule 13 of the Code a petition under Order 9, Rule 13 would not be maintainable. However, the Explanation I appended to said provision does not suggest that the converse is also true.

27. In an appeal filed in terms of Section 96 of the Code having regard to Section 105 thereof, it is also permissible for an Appellant to raise acontention as regard correctness or otherwise of an interlocutory order passed in the suit subject to the conditions laid down therein.

28. It is true that although there may not be as tatutory bar to avail two remedies simultaneously and an appeal as also an application for setting aside the ex-parte decree can be filed; one after the other; on the ground of public policy the right of appeal conferred upon a suit or under a provision of statute can not be taken away if the same is not in derogation or contrary to any other statutory provisions.

29. There is a distinction between "issueestoppel" and "res judicata" [See Thoday v. Thoday 1964 (1) All. ER 341]

30. Res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the octrine issue estoppel is invoked against the party.If such an issue is decided against him, he would be e stopped from raising the same in the latter proceeding. The doctrine of res-judicata creates adifferent kind of estoppel viz Estopper By Accord.

31. In a case of this nature, however, the doctrine of "issue estoppel" as also "cause of action estoppel" may arise. In Thoday (supra) Lord Diplock held:

"....."cause of action estoppel" is that whichprevents a party to an action from asserting ordenying, as against the other party, theexistence of a particular cause of action, thenon-existence or existence of which has beendetermined by a court of competent jurisdiction in previous litigation between the same parties.If the cause of action was determined to exist,i.e., judgment was given on it, it is said to bemerged in the judgment.... If it was determinednot to exist, the unsuccessful Plaintiff can nolonger assert that it does; he is estopped perrem judicatam.

32. The said dicta was followed in Barber v. Staffordshire Country Council, (1996) 2 All ER 748. Acause of action estoppel arises where in two different proceedings identical issues are raised, in whichevent, the latter proceedings between the same parties shall be dealt with similarly as was done in the previous proceedings. In such an event the bar is absolute in relation to all points decided save and except allegation of fraud and collusion. [See c. (a minor) v. Hackney london borough council, (1996) 1 all er 973].

33. It is true that the Madras High Court in Badvel Chinna Asethu (supra) held that two alternative remedies in succession are not permissible stating:

Assuming that it is open to a Defendant in the appeal against the exporter decree to object to the decree on the ground that he had not sufficient opportunity to adduce evidence in a case where he did not choose to avail himself of the special procedure, it does not by any means follow that, where he did actually avail himself of the special procedure and failed, still it would be open to him to have the same question reagitated by appealing against the decree.

34. Oldfield, J. in his concurring judgment stated:

...No case has been cited before us in whichthe question now under consideration, whether aparty against whom a decree has been passed exporter can proceed in succession under Order 9, Rule 13,as well as by taking objection to the orderplacing him ex parte in his appeal against thesubstantive decree has been dealt with. Onprinciple it would appear that he could only do soat the expense of the rules as to res judicata;and there can be no reason why the adjudication onhis application under Order 9, Rule 13, if

there were oneshould not be conclusive against him for thepurpose of any subsequent appeal. In the presentcase it is suggested that the facts that hisapplication under Order 9, Rule 13, was not carriedfurther than the District Munsif"s Court and thathe acquiesced in the District Munsif"sunfavourable order, would make a difference to hisright to appeal against the decree on this ground.The answer to this is that the District Munsif"sorder not having been appealed against, has become final. It seems to me that it would be a matter for great regret if a party could pursue both oftwo alternative remedies in succession and thatthe recognition of a right to do so would be aunique incident in our procedure. I am accordingly relieved to find that such a right has not been recognized by authority...

35. The aforementioned view was reiterated in the subsequent decisions of different High Courts in Marian Begum (supra) M/s. Mangilal Rungta, Calcutta (supra) and Dr. M.K. Gourikutty (supra).

36. However, it appears that in none of the aforementioned cases, the question as regard the rightof the Defendant to assail the judgment and decree onmerit of the suit did not fall for consideration. Aright to question the correctness of the decree in aFirst Appeal is a statutory right. Such a right shallnot be curtailed nor any embargo thereupon shall befixed unless the statute expressly or by necessary implication say so. [See Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, and Chandravathi P.K. and Ors. v. C.K. Saji and Ors. (2004) 3 SCC 734

By relying upon the above judgments, the Learned Counsel for the Appellant submitted that the parties cannot persuade two alternative remedies once application filed under Order 9 Rule 13 was dismissed. The only remedy available for the Defendant is to challenge the dismissal order and not to file the first appeal as against the ex parte decree and judgment of the trial court.

11. But it is the submission of the Learned Counsel for the Respondents that though application under Order 9Rule 13 filed by the Defendant was dismissed, still they can question the correctness of judgment and decree of the trial court by filing the first appeal. In this regard, itwould be appropriate to refer the decisions relied on bythe Learned Counsel for the Respondents. In Smt. Archana Kumar and Another Vs. Purendu Prakash Mukherjee and Another, , it has been held as follows:

21. Thus, we come to the conclusion that the case of Rani Choudhury Vs. Lt.-Col. Suraj Jit Choudhury, does not lay down the law that once an application under Order 9 Rule 13 of the Code isrejected a regular appeal u/s 96(2) of theCode is not maintainable. We with due respect, areconstrained to hold that the Division Bench in the case of Sumera Vs. Madanlal and Others, doesnot lay down the law correctly and as a logicalcorollary the decisions which have followed the saiddecision stand overruled.

22. Accordingly, we hold that even afterdismissal of the application under Order 9 Rule 13 of the Code a regular first appeal u/s 96(2) of the Code is maintainable.

23. Having held that a regular appeal u/s 96(2) of the Code is maintainable against an ex parte decree, we further observe that a proceedingunder Order 9 Rule 13 of the Code and a regularappeal can simultaneously be prosecuted. It would beopen to the affected party to pray for stay offurther proceedings in an appeal till the application under Order 9 Rule 13 of the Code is decided. Itwould be within the discretion of the appellate Courtto pass appropriate order in this regard.

A reading of the above would show that the ratio laid downin Sumera Vs. Madanlal and Others, was overruled, holding that even after dismissal of the application under Order 9 Rule 13Code of Code of Civil Procedure, a regular first appeal u/s 96(2) CPC ismaintainable.

12. In Raziuddin Mohd. Siddiqui and Another Vs. Zaihab Khatoon and Another, , a Full Bench decision, it hasbeen observed as follows:

29. From a reading of the above passage, theratio as has been culled out from Rani Choudhury Vs. Lt.-Col. Suraj Jit Choudhury, in the light of the questionarising for consideration before the Supreme Courtin Rani Choudhury''s case as regards the impact ofexplanation to Rule 13 of Order IX of the Code wasthat if an appeal against an ex parte decree hasbeen disposed of on any ground whatsoever other thanthe ground of the Appellant withdrawing the appeal,no application for setting aside the ex parte decreeunder Order IX, Rule 13 of the Code is maintainable.There is an avowed purpose in bringing amendment byinserting explanation to Order IX, Rule 13 of theCode and the intention of the Legislature isexplained in Rani Chodudhury''s case and reiteratedin P. Kiran Kuamr''s case only to the extent that ifan appeal has been preferred against an ex part decree and the same has been dismissed on any groundother than the withdrawal of the appeal, the samewould cause a bar to the filing of an application under Order IX, Rule 13 of the Code or in continuingwith such an application for setting aside the exporter decree, in case it was still pending as on thedate of the dismissal of the appeal. But, converseis not true and there is no embargo placed by thelegislation, and, on that point, we are in fullagreement with the ratio of the decision of theMadhya Pradesh High Court in Smt. Archana Kumar''scase that even after dismissal of an application under Order IX, Rule 13 of the Code, a regular appeal u/s 96(2) of the Code is maintainable. Accordingly we answer the second question.

13. Yet another decision that has been relied on by the Learned Counsel for the Respondents is reported in Bhanu Kumar Jain Vs. Archana Kumar and Another, ,relied on by the Learned Counsel for the Appellant in support of his submission that once the appeal filedagainst the ex parte decree was dismissed, the ex part decree merges with the order passed by the lower appellate court and thereafter, the Defendant cannot file an application under Order 9 Rule 13 Code of Civil Procedureand the relevant paragraphs are extracted in para (10) in this judgment. The paragraph relied on by the Learned Counsel for the Respondents in the said decision is extracted hereunder:

34. We have, however, no doubt in our mind thatwhen an application under Order 9, Rule 13 of the Code is dismissed, the Defendant can only avail aremedy available thereagainst, viz, to prefer an appeal in terms of Order 43, Rule 1 of the Code. Oncesuch an appeal is dismissed, the Appellant cannotraise the same contention in the First Appeal. If itbe held that such a contention can be raised both in the First Appeal as also in the proceedings arisingfrom an application under Order 9, Rule 13, it maylead to conflict of decisions which is notcontemplated in law.

35. The dichotomy, in our opinion, can beresolved by holding that whereas the Defendant wouldnot be permitted to raise a contention as regards the correctness or otherwise of the order posting thesuit for ex-parte hearing by the Trial Court and/orexistence of a sufficient case for non-appearance of the Defendant before it, it would be open to him toargue in the First Appeal filed by him against Section 96(2) of the Code on the merit of the suit soas to enable him to contend that the materialsbrought on record by the Plaintiffs were notsufficient for passing a decree in his favor or thesuit was otherwise not maintainable. Lack of jurisdiction of the court can also be a possible pleain such an appeal. We, however, agree with Mr. Choudhari that the "Explanation" appended to Order 9Rule 13 of the Code shall receive a strict construction as was held by this Court in RaniChoudhury (supra), P. Kiran Kumar (supra) and Shyam Sundar Sarma Vs. Pannalal Jaiswal and Others, ".

14. The dictum laid down in the said decision gives afitting answer to the issue involved in the appeal that when an application under Order 9 Rule 13 is dismissed, the defendant can only avail a remedy available against the dismissal order, namely, to prefer an appeal under Order 43Rule 1 of CPC Once such an appeal is dismissed, the appellant cannot raise the same contention in the first appeal filed against the ex parte judgment and decree.Therefore, from the above ruling of the judgment, Iconclude the issue as follows:

(1) once the application filed to set aside the exporter decree is dismissed, the Defendant is havingtwo options;

(i) to file an appeal against the ex parte decree and judgment or (ii) to file an application under Order 9 Rule 13 CPC to set aside the ex parte decree.

(2) once if the Defendant directly files an appealwithout filing an application under Order 9 Rule 13 Code of Code of Civil Procedure, the judgment and decree passed in the ex partemerges with the order passed by the appellate court.Thereafter, the Defendant cannot file an application under Order 9 Rule 13 Code of Civil Procedure.

(3) If the Defendant files directly the application under Order 9 Rule 13 and if the application is dismissed, still the Defendant can file an appeal as against the ex parte decree u/s 96(2) of the Code, questioning the correctness of the ex part decree; but in the first appeal, he cannot raise the ground with regard to the reasons assigned by the trial court in dismissing the application under Order9 Rule 13 Code of Civil Procedure.

In the instant case, I find that the legal heirs of the deceased Defendant, after a lapse of four years from the death of the Defendant, challenged the ex parte decree and judgment of the trial court. It is to be noted that in thegrounds of appeal, they have not questioned the correctness of the dismissal order passed by the trial court in the application under Order 9 Rule 13 CPC filed by the defendant. In such a situation, I am of the opinion that the appeal filed by the legal heirs of the Defendant is very well maintainable.

15. Moreover, I find that the ex parte decree was notpassed on merits. The ex parte decree passed by the courtbelow is extracted hereunder:

3. Plaintiff present. Defendant called absent at 11.55 a.m. Plaintiff present. Defendant called absent in spite of repeated adjournments. Plaintiff"s evidence already recorded in the presence of the defendant. Hence this suit is decreed as prayed for with costs.

16. Since there is no discussion in the said decree,the only option available for the appellate court is toremand the matter. In this regard, a reference could beplaced in the decision relied on by the Learned Counsel forthe Respondents in Meenakshisundaram Textiles Vs. Valliammal Textiles Ltd., , wherein therelevant paragraphs are extracted hereunder:

20. It is also relevant to point out that underSection 96(2) of the Code of Civil Procedure, an appeal may lie from an original decree passed exporter. Two remedies are available to an aggrievedperson to question the ex parte decree. One is that he may file an application to set aside the ex part decree as provided under Order IX Rule 13 of Code of Civil Procedure. In such event, the Court which passed the judgment and decree will have to considerthe reasons for setting aside such judgment anddecree, which may be more or less the explanation asto the failure of non-appearance. The other remedy isthat he may prefer an appeal u/s 96(2) andin such event, the appellate Court should necessarilygo into the merits and find out whether the decreecould be set aside or not. In case an appeal is laid,in the absence of reasons in the judgment, the appellate Court has to necessarily remand the case to the trial Court for fresh consideration. For that reason, the judgment should contain the reasons andshould be in conformity with the provisions ofSection 2(9) read with Order XX Rule 4 of the Code of Civil Procedure.

21. From the above discussions, it is manifestlyclear that even a judgment rendered ex parte and adecree is drawn on the basis of that judgment, it is appealable. In case that judgment and decree become final without there being any appeal, the decree isexecutable. In that sense, there is no difference between a judgment and decree and an ex partejudgment and decree. In view of the above, in theevent the Defendant is set ex parte, the Court shouldbe extra careful in such case and it should considerthe pleadings and evidence and arrive at a finding asto whether the Plaintiff has made out a case for adecree. In this context, it may also be mentioned that though a detailed judgment is required in acontested matter, an ex parte judgment should showthe application of the minimum requirement ofconsideration of the pleadings, issues, evidence andthe relief

sought for rendering such judgment.

23. From the above discussion, I find that, in the instantcase, the lower appellate court has correctly set aside theex parte decree and judgment passed by the trial court andremanded the matter since the same was not passed onmerits. Therefore, I do not find any infirmity in the orderpassed by the lower appellate court.

24. Accordingly, the civil miscellaneous appeal fails andis dismissed. No costs. Consequently, connected M. Ps.areclosed. The trial court is directed to take up the matterand dispose the same in accordance with law, after recording evidence of both sides.