

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.12149/2000

(From the judgement and order dated 25/11/1999 in CMA 855/98
of The HIGH COURT OF MADRAS)

N. ATHAPPAN & ANR.

Petitioner (s)

VERSUS

RAHILA SALEEM

Respondent (s)

(With prayer for interim relief and Office Report)

Date : 04/12/2000 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.B. SHAH
HON'BLE MR. JUSTICE S.N. VARIAVA

For Petitioner (s)

Mr.M.B. Rama Subba Raju,Adv.,
Mr.S. Srinivasan,Adv.

For Respondent (s)

Mr.K.K. Mani,Adv.

UPON hearing counsel the Court made the following

O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J.....

Leave granted. Heard the learned counsel for the parties. Considering the facts and circumstances of the case, the impugned orders passed by the High Court as well as by the trial court rejecting the appellants' application for setting aside the ex-parte decree set aside. The impugned ex-parte decree dated 24.6.1997 is, therefore, set aside and the trial court is directed to proceed further with the proceedings after providing an opportunity to the parties to lead evidence and to decide the same on merits. The appellants to pay Rs.5,000/- as costs to respondent. It would be open to the respondent to withdraw Rs.1,50,000/- deposited by the appellants before the trial court after furnishing necessary security before the trial court with an undertaking by the respondent to refund the said amount within four weeks if directed by the trial court.

(Vijay Kumar Sharma)
Court Master

(Om Prakash)
Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7101 OF 2000@@
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(Arising out of SLP (c) No.12149/2000)

N. ATHAPPAN & ANR. ..Appellants

Versus

RAHILA SALEEM ..Respondent

O R D E R@@
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Leave granted.

Heard the learned counsel for the parties.

This appeal is filed against the order dated 25.11.1999 passed by the High Court of Madras rejecting revision application being C.M.A.No.855/1998 for setting aside the ex-parte decree passed on 24.6.1997. That application was rejected by the trial court and against that order appellant preferred the aforesaid revision before the High Court. The High Court rejected the same on the ground that the appellants sought long adjournment in a part-heard matter which was being conducted day-to-day and that plaintiff PW-1 who was examined before two months had expired and, therefore, it would not be proper to set aside the ..2

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ex-parte decree passed in his favour as it was likely to cause hardship to the plaintiff.

At the time of issuing notice, this Court has passed the following order:-

.....L.....I.....T.....T.....T.....J.....

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"Learned counsel for the petitioners states that the petitioners may be given an opportunity to proceed with the suit by setting aside ex-parte decree. He further states that petitioners would not raise any objection that the evidence of deceased PW-1 cannot be relied upon as he was not cross-examined by him. Petitioners waive their right to cross-examine PW-1. He further states that petitioners will deposit Rs.1,50,000/- within 8 weeks before the trial court.

Delay condoned. Issue notice returnable after 8 weeks."

At the time of hearing of this matter, learned counsel for the appellants submitted that if the ex-parte decree is set aside and an opportunity is given to the appellants to lead the necessary evidence, the appellants would not raise any objection that the evidence of the deceased PW-1 cannot be relied upon on the ground that he was not cross-examined by him. The appellants waive their right to cross-examine PW-1. It has also been pointed out that the appellants have ..3

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deposited Rs.1,50,000/- before the trial court. The learned counsel submitted that because of unavoidable circumstances the appellants had sought adjournment during the trial and that if there is any lapse that may be condoned in the interest of justice.

Considering the facts and circumstances of the case, the impugned orders passed by the High Court as well as by the trial court rejecting the appellants' application for setting aside the ex-parte decree are set aside. The impugned ex-parte decree dated 24.6.1997 is, therefore, set aside and the trial court is directed to proceed further with the proceedings after providing an opportunity to the parties to lead evidence and to decide the same on merits. The appeal is allowed to the aforesaid extent. Deposition of deceased PW-1 would be considered as it is and appreciated at the time of deciding the suit. The appellants to pay Rs.5000/- as costs to the respondent.

The learned counsel for the respondent submits that pending hearing and disposal of the suit respondent may be permitted to withdraw the amount of Rs.1,50,000/- deposited by the appellants. Considering the nature of the dispute involved in the matter and ..4

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without prejudice to the rights and contention of the parties it would be open to the respondent to withdraw the said amount after furnishing necessary security before the trial court with an undertaking by the respondent to refund the said amount within four weeks if directed by the trial court.

Ordered accordingly.

.....J
(M.B. Shah)

.....J
(S.N. Variava)