IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.3063 OF 2015
(Arising out of SLP(C)No.20788 of 2012)

DR.DILIP KUMAR SHARMA .....APPELLANT

VERSUS

ANKAM NAGESWARA RAO & ORS. .....RESPONDENTS

O R D E R

Leave granted.

Respondent No.1-plaintiff filed Original Suit No.21/2006 for specific performance of agreement to sell dated 19.04.2006. The aforesaid agreement was in respect of 4 acres 22 cents of land, situated in the revenue estate of Rajahmundry, East Godavari District, Andhra Pradesh. Since the aforesaid agreement was executed by the mother of the appellant, she was the sole defendant impleaded in the aforementioned Original Suit No.21/2006. The mother of the appellant denied the execution of the agreement to sell, and contested the suit filed by respondent No.1-plaintiff.

Unfortunately, the sole defendant died on 24.10.2010 while travelling on a train to Rajahmundry, to contest the aforementioned suit. In order to implead the legal representatives of the deceased sole defendant, the Principal District Judge, Godavari, Rajahmundry (hereinafter referred to as 'the trial court') ordered service of summons on the legal representatives namely, on her husband (who was employed at Allahabad) and her two

sons (one of whom had a permanent address at Delhi, and the second was studying at Ludhiana). It is not a matter of dispute, that the

summons issued on the legal representatives (of the deceased sole defendant) came to be served in September, 2011. Since the legal representatives of the deceased sole defendant did not enter appearance on 29.09.2011, they were proceeded against ex-parte. In the absence of the legal representatives (of the deceased sole defendant), evidence was produced on behalf of respondent No.1-plaintiff on 14.10.2011. On the following date of hearing, namely, on 19.10.2011, the suit for specific performance was decreed ex-parte.

Within five days of the passing of the ex-parte decree, the appellant along with his two sons filed I.A.No.2775/2011, before the trial court under Order 9 Rule 13 of the CPC, seeking setting aside of the ex-parte decree dated 19.10.2011. The above-mentioned I.A. was dismissed by the trial court, vide order dated 21.12.2011. The factual position, that weighed with the trial court in not accepting the prayer made in the abovementioned I.A. (for setting aside the ex-part decree), is apparent from the factual position depicted by the trial court in paragraph 7 of its order dated 21.12.2011. The same is being extracted hereunder:

> "Admittedly, the suit summons were served on the defendants at Delhi as admitted in the affidavit in para 4 directing them to appear before this court on 29.9.2011 either personally or through their advocate. When once the summons are served, the duty of the petitioners is to appear before the court either personally or through their advocate. But for the reasons mentioned in the affidavit, they could not appear before the court personally, they did not disclose the reason for their non-appearance through agent i.e., advocate. Even accepting the contention of the petitioners without conceding that the petitioners 2 and 3 could not get leave, nothing prevented the petitioner No.4 to appear before the court on the date of adjournment. For the reasons

> best known to them all the petitioners simply avoided to appear before the court on the dates of adjournment. But invented a story that they could not get leave from their employer. No piece of evidence was brought to the notice of the court that the petitioners 2 and 3 applied for leave and their leave was rejected by their employer. In the

absence of any such material, the reasons assigned by them for their absence on the date of adjournment is unbelievable."

The appellant along with his two sons challenged the order dated 21.12.2011 passed by the trial court, through Civil Miscellaneus Appeal No.141 of 2012 before the High Court of Judicature of Andhra Pradesh, at Hyderabad (hereinafter referred to as 'the High Court'). The same came to be dismissed by the High Court on 06.03.2012.

Through the preset appeal, the appellant has assailed the orders passed by the trial court dated 21.12.2011 and the order of the High Court dated 06.03.2012.

We have heard learned counsel for the rival parties.

There is no doubt about the fact that the appellant before this Court, as well as, his two sons were served in their capacity as legal representatives of their wife/mother (i.e. the deceased sole defendant in O.S.No.21/2006). Despite service, they did not enter appearance in September, 2011 and were accordingly proceeded against ex-parte. The entire evidence was led by respondent No.1-plaintiff on just one day, namely, on 14.10.2011. Thereafter, the Suit came to be decreed on 19.10.2011. It is accordingly apparent, that within one month of the receipt of summons on the legal representatives of the deceased sole defendant, the position changed in its entirety, inasmuch, the

pending suit where no evidence had been led by respondent No.1-plaintiff, by the time the legal heirs of the sole defendant were served, came to be concluded. At the relevant time, the husband of the deceased was working at Allahabad (in the State of Uttar Pradesh, in north India), one of her sons was employed in Delhi (also in north India), whereas, the second son was studying at Ludhiana (in the State of Punjab, in north-west India) The

places where the legal representatives of the deceased sole defendant were stationed, were at a great distance from the jurisdictional court adjudicating upon O.S.No.21/2006. The jurisdictional Court is situated in the State of Andhra Pradesh (in south India). Each one of the legal representatives was located more than 1000 kms (at least) from the jurisdictional Court. Travel to the jurisdictional Court was therefore likely to be, not only time consuming, but also a matter of substantial expense. The fact, that the defendant and one son of the deceased were employed, and another son was studying, needed to have also been taken into consideration, as they could have undertaken a journey to the jurisdictional Court, only when their employment/education schedule permitted them to do so.

Immediately on coming to know about the fact that the suit had been decreed ex-parte, they moved an application for setting aside the ex-parte decree dated 19.10.2011 i.e. within five days of the suit being decreed i.e., on 24.10.2011. It seems, that the trial court i.e the Principal District Judge, Godavari, Rajahmundry, did not take into consideration the time gap between the impleadment of the legal representatives of the deceased sole

defendant (in September, 2011), and the disposal of the suit (on 19.10.2011). The trial court also did not take into consideration the fact, that the legal representatives of the deceased sole defendant had moved an application for setting aside the ex-parte decree, within five days of the same having been passed.

We have extracted paragraph 7 of the order passed by the Principal District Judge, Godavari, Rajahmundry, which reveals that much emphasis has been given to the fact that even though one of the sons of the deceased defendant, who was studying at Ludhiana, could have entered appearance, yet he chose not to appear before

the trial court. The Principal District Judge did not take into consideration the fact, that the above noted son was a student at Ludhiana, which is in the State of Punjab (in north-west India), and is at a great distance from the State of Andhra Pradesh. He also had an educational schedule, which he could not breach. Had all these factors been taken into consideration, the trial court would have certainly accepted the I.A. filed by the legal representatives of the deceased sole defendant, and would have set aside the ex-parte decree passed on 19.10.2011.

For the reasons recorded hereinabove, we are satisfied that the ex-parte decree dated 19.10.2011 deserves to be set aside. The same is accordingly hereby set aside.

Even though we have arrived at the aforesaid conclusion on the merits of the controversy, we are of the view, that the respondent has been put to great hardship and inconvenience, on account of non-appearance of the appellant, as also, his two sons before the Principal District Judge, Godavari, Rajahmundry.

Respondent No.1-plaintiff, therefore, deserves to be compensated, by awarding him costs. We accordingly hereby while allowing the instant appeal, award Rs.1 lakh as cost to respondent No.1-plaintiff. The aforesaid costs shall be paid by the appellant as also his two sons jointly. They are directed to enter appearance before the trial court on 21.04.2015, on which date the appellant and his two sons shall deposit the cost of Rs.1 lakh, with the Principal District Judge, Godavari, Rajahmundry. The suit will be proceeded with only if the aforesaid amount is paid by the appellant, and his sons. In case of non-compliance, the instant civil appeal shall be deemed to have been dismissed.

The appeal is allowed in the above terms.

In view of the order passed by us, learned counsel for the appellant states that the pending appeal before the High Court shall be withdrawn by him. Liberty is granted for withdrawal of the pending appeal before the High Court.

.....J.
(JAGDISH SINGH KHEHAR)

.....J.
(S.A.BOBDE)

NEW DELHI;
MARCH 17, 2015.

ITEM NO.4 COURT NO.4 SECTION XIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 20788/2012

(Arising out of impugned final judgment and order dated 06/03/2012 in CMA No. 141/2012 passed by the High Court Of A.P. at Hyderabad)

DILIP KUMAR SHARMA Petitioner(s)

VERSUS

ANKAM NAGESWARA RAO & ORS. Respondent(s)

(With appln.(s) for bring on record subsequent event and interim relief and office report)
(For final disposal)

Date : 17/03/2015 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s) Mr.B.Adinarayana Rao, Sr.Adv.
Mr.M.Srinivas R.Rao, Adv.
Mr.Arun Devdas, Adv.
Mrs. Sudha Gupta, Adv.

For Respondent(s) Mr.Chavabadri Nath Babu, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

Mr.K.Parameshwar, Adv.
Mr. P. Vinay Kumar, Adv.

Upon hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(SATISH KUMAR YADAV)
COURT MASTER

(RENU DIWAN)
COURT MASTER

(Signed order is placed on the file)