

CASE NO.:
Appeal (civil) 8505 of 2001

PETITIONER:
Scotts Engineering, Bangalore

RESPONDENT:
Rajesh P. Surana & Ors

DATE OF JUDGMENT: 26/02/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO.8505 OF 2001
WITH
C.A.No.8506 of 2001 and C.A.No.8507 of 2001.

H.K. SEMA, J

1. This appeal is preferred by defendant No.6 against the judgment and order dated 25.4.2001 passed by the High Court of Madras in O.S.A.Nos.131 of 1998 and 55 of 1999.

2. We have heard the parties.

3. The facts are cumbersome. We may, however, briefly refer to few facts for the purpose of disposal of this appeal.

4. A ship vessel M.V. Sagar owned by respondent No.1 was swept and washed ashore and grounded offshore near Madras Fishing Harbour as a result of several cyclonic storms. All efforts of respondent No.2 herein to refloat the vessel failed, it was abandoned and became a wreck. Since the crew and Master of the vessel were not paid their wages, they filed an admiralty suit in the Madras High Court being C.S.No.57 of 1995. The Court ordered the arrest of the vessel. Respondent No.2 through their agent respondent nos. 3 and 6 entered into a negotiation with the appellant for sale of the ship and finally entered into a Memorandum of Agreement counter-signed by defendant No.5 who was the owner's representative under which the appellant was required to pay a sum of Rs.75 lacs forthwith and balance consideration amount of Rs.1.50 crores was to be paid by 28.4.1995. On 18.4.1995 the appellant paid a sum of Rs.75 lacs and, therefore, he filed an application no.2136 of 1995 arising out of C.S.No.57 of 1995 seeking leave to intervene in the matter as he had already purchased the vessel and also made the payment. The prayer was allowed. After the crew and Master of the said vessel were paid their wages, the suit was dismissed on satisfaction and the order of arrest was vacated. However, before the appellant could perform his part of the contract and pay the balance consideration amount of Rs.1.50 crores in terms of Memorandum of Agreement dated 17.4.1995 it appears another suit was instituted in the High Court being O.A.No.491 of 1995. The High Court has restrained the owner and its agent from alienating or encumbering the said vessel in any manner to a third party. Therefore, the appellant was unable to perform his part of contract and could not pay the remaining consideration amount of Rs.1.50 crores to the owner.

5. In the interregnum, many orders were passed and it has come to this Court several times, with which we are not really concerned.

6. Suffice it to say that the real controversy relates to the decree dated 8.6.1998 passed by the Single Judge of the Madras High Court in C.S.No.1151 of 1995. In the said suit the appellant-defendant No.6 was not arrayed as a party. However, on being application filed by the appellant, he was added as defendant No.6. It is not disputed that the decree was passed after impleading the appellant-defendant No.6 as a party respondent. The operative portion of the decree reads as under:-

"In the result, the plaintiff is given a decree for a sum of Rupees Ninety Five lakhs with 24% per annum from 04.07.1995 till payment and also the proportionate costs and the decree is granted against the defendants 1 to 5."

7. The Division Bench of the High Court having noticed in paragraph 8 of the judgment that the 6th defendant became a party to the suit instituted by the plaintiff on his own initiative and even after he was added as a party, the plaintiff did not claim any relief against the 6th defendant. The High Court also noticed the suit as originally framed only against defendants 1 to 5 who were the owners of the vessel, the local agent of the owner, the managing Director of the company which owned the vessel and has its registered office at Bangladesh. The High Court also noticed that the prayer made by the plaintiff in the suit was for a joint and several decree against defendants 1 to 5 for the payment of Rs.122 lakhs which the plaintiff claimed to be due to him. Having recorded such a finding the High Court reversed the decree passed by the Single Judge.

8. It is in these circumstances contended by Dr.Rajeev Dhawan, learned senior counsel for the appellant that there was no privity of contract within the plaintiff and defendant no.6 and the decree was not against defendant no.6 \026 appellant herein. He further submitted that the Court cannot go behind the decree and the Division Bench was in error in reversing the findings of the learned Single Judge.

9. We are of the view that the contention of Dr. Dhawan has substance. The suit filed by the plaintiff originally was against defendants 1 to 5. The appellant became a party to the suit instituted by the plaintiff-respondent herein on his own initiative. Even after the appellant was arrayed as defendant no.6 the plaintiff did not care to amend the plaint except making the appellant as defendant no.6. No relief was claimed against defendant no.6. In fact the relief prayed for in the suit was against defendants 1 to 5 jointly and severally. The learned Single Judge passed the decree against defendants 1 to 5. These are all undisputed facts.

10. Mr.A.T.M. Sampath learned counsel appearing for the plaintiff-respondents referred to the orders passed by this Court dated 13.9.1996 and 2.12.1996 where this Court, amongst others, directed the appellant to deposit the security. The aforesaid orders passed by this Court were interim orders with regard to security deposit sought to be imposed on the appellant so as to make him a surety for the suit amount. The suit was finally decreed. We are not concerned with the interim directions passed by this Court.

11. For the reasons aforestated we are of the view that the Division Bench was not justified in holding that the sum of

Rs.1 crore should be paid over to the plaintiff to the extent to which the decree has remained unsatisfied. This appeal is, accordingly, allowed. The order of the High Court is set aside. The Decree of Single Judge is restored. No costs.

C.A.No.8506 of 2001 and C.A.No.8507 of 2001.

12. In view of the order passed in C.A.No.8505 of 2001, these appeals filed by the plaintiff, are devoid of merits and are, accordingly, dismissed. No costs.

JUDIS