

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3126 of 2015

ORDER:

The unsuccessful defendants had preferred this revision under Section 115 of the Code of Civil Procedure, 1908 assailing the order dated 07.07.2015 of the learned Senior Civil Judge at Avanigadda of Krishna District passed in I.A.no.7 of 2015 in O.S.no.100 of 2012 filed under Sections 148 and 151 of the Code.

2. I have heard the submissions of the learned counsel for the parties. I have perused the material record. The parties shall hereinafter be referred to as the petitioners/defendants and respondent/plaintiff for convenience and clarity.

3. The introductory facts, in brief, are as follows:

The plaintiff brought the suit against the defendants for recovery of a sum of Rs.7,10,500/- with interest and costs basing on a cheque dated 15.03.2012 issued by the 2nd defendant in favour of the plaintiff. PW1 in her cross-examination had admitted that she is ready to receive a sum of Rs.5,00,000/- towards full satisfaction of the suit amount if it is paid within three months from the date of her cross-examination and that in case, the defendants fail to pay the same within the said period, she will proceed with the execution of the decree for the suit amount with costs. Taking into consideration the said evidence, the trial Court had decreed the suit in favour of the plaintiff for a sum of Rs.5,00,000/- payable by the defendants within three months from 22.09.2014, subject, however, to a further term that on failure of the defendants to pay the said amount within the said three months, the plaintiff would be at liberty to execute the decree for the suit amount of Rs.6,15,760/- and recover the same with interest and costs. The defendants did not pay the amount of Rs.5,00,000/- within the time stipulated in the decree of the trial Court. Therefore, they had filed the petition for extension of time. The said petition was resisted by the plaintiff. On merits, by the order

impugned, the trial Court had dismissed the petition of the defendants. Therefore, the defendants are before this court.

4. In the above stated backdrop of facts, the case of the defendants and the submissions made on their behalf, in brief, are as follows:

The defendants have not obtained the certified copies of the judgment and decree. As such, they were under the impression that the due amount of Rs.5,00,000/- has to be paid to the plaintiff within three months from the date of the decree and judgment, but, not from the date of cross-examination, i.e., 22.09.2014. *Per se*, the defendants were not aware of the decree granted for the admitted amount and the time of three months from 22.09.2014 within which the said admitted amount is payable. The defendants had obtained a Demand Draft bearing no.27104212 dated 19.01.2015 for a sum of Rs.5,00,000/- from Union Bank of India, Labbipet, Vijayawada in the name of the plaintiff. A copy of the said DD was filed before the trial Court along with memo dated 19.01.2015. Before filing it into the court, the learned counsel for the defendants offered to serve notice on the learned counsel for the plaintiff; however, he had refused to receive the notice on the said memo on behalf of the plaintiff. The said fact is also endorsed on the memo dated 19.01.2015. The said memo was returned with an office objection in regard to the maintainability of the memo. In the facts and circumstances stated, the defendants could not pay the admitted amount under the decree within three months from 22.09.2014. The defendants are under the impression that they could pay the admitted amount of Rs.5,00,000/- within three months from 15.10.2014, that is, the date of the decree and judgment. Since 15th and 16th of January are public holidays, the counsel had advised the defendants to obtain a DD; and, accordingly, a DD was obtained for the admitted amount on 19.01.2015. When the DD was offered to be given, the same was refused to be taken. As per the terms of the decree, the admitted amount has to be paid on or before 22.12.2014. A delay of 27 days had occasioned in payment of the said amount for the reasons stated. Therefore, the petition is filed for extension of time and to direct the plaintiff to receive the above said DD dated 19.01.2015 for a sum of Rs.5,00,000/- towards full satisfaction.

5. On the contrary, the case of the plaintiff and the submissions made on behalf of the plaintiff, in brief, are as follows:

The defendants are having knowledge of the fact that they should pay the admitted amount of Rs.5,00,000/- within three months from 22.09.2014 i.e., within 23.12.2014. On the proposal of compromise made during her cross examination before the trial Court, the plaintiff had admitted and stated that the plaintiff is ready to receive Rs.5,00,000/- subject to the conditions that the same shall be paid within three months from that day and that on the failure of the defendants to so pay, the defendants would be liable to pay the entire suit amount with costs. Then, the defendants reported no evidence on 22.09.2014 and hence, the suit was decreed accordingly as per the terms of compromise. They have given a clear undertaking affidavit to the trial Court. They are aware that the amount of Rs.5,00,000/- is to be paid within three months from the said date. Having given an undertaking affidavit, they cannot resile from the said undertaking affidavit given to the Court. The defendants are not entitled to alter the terms of the compromise and seek alteration of the terms of the decree and seek extension of time for payment of the admitted amount. The decree is a conditional decree. In view of the undertaking affidavit given undertaking to pay the admitted amount of Rs.5,00,000/- within three months and the eventual decree that was granted by the court below, the defendants are not entitled to any relief. The petition may be dismissed.

6. As already noted, the trial Court having heard the learned counsel for both the sides had dismissed the petition on merits. Hence, the defendants have filed this revision.

7. I have given earnest consideration to the facts and the submissions.

8. The plaintiff having filed a suit for recovery of money in a sum of Rs.6,15,760/- with interest and costs had admitted in her cross-examination the proposal of the defendants to accept Rs.5,00,000/- towards full satisfaction of the suit claim and had stated that she is ready to receive a sum

of Rs.5,00,000/- towards full satisfaction of the suit amount, if paid within three months from the date of her cross-examination. She had further stated that on failure of the defendants to so pay the said amount within the said period, she would proceed to execute the decree for the suit amount with costs. Pursuant thereto, as per the submissions made before this Court, the defendants had reported no evidence on their side and had filed an undertaking affidavit undertaking to pay the admitted amount of Rs.5,00,000/- to the plaintiff within three months time from that day. Accordingly, the suit is decreed by the trial Court. The operative portion of the judgment of the trial Court reads as under:

“In the result, the suit is decreed for Rs.5,00,000/- only and to be paid within three months from 22.9.2014 by the defendants, failing which the plaintiff is at liberty to execute the decree for the suit amount of Rs.6,15,760/- with costs and interest @ 6% p.a from the date of failure of the defendants till the date of realization.”

[reproduced verbatim]

The operative portion of the decree of the trial Court reads as under:

- i) That the defendants do pay to the plaintiff a sum of Rs.5,00,000/- only and to be paid within three months from 22.9.2014;**
- ii) That the plaintiff at liberty to execute the decree for the suit amount of Rs.6,15,760/- with costs and interest at the rate of 6% p.a from the date of failure of the defendants till the date of realization; and**
- iii) That the defendants also do pay to the plaintiff a sum of Rs.36,780/- towards costs of this suit.**

[reproduced verbatim]

Thus, as per the judgment and decree, the defendants are obliged to pay Rs.5,00,000/- to the plaintiff within three months from 22.9.2014 towards full satisfaction of the decree. Nevertheless, on failure of the defendants to so pay the said sum within the said date, the plaintiff is at liberty to execute the decree for the entire amount of Rs.6,15,760/- and recover the said sum with interest at 6% per annum from 23.12 2014 till the date of payment or realization and also costs. Admittedly, the defendants did not pay Rs.5,00,000/- within the time stipulated in the decree, i.e., within three months from 22.09.2014. Therefore, they are seeking extension of time. In support of

their request for extension of time, their submissions are as under: “They did not obtain the certified copies of the decree and the judgment and that therefore, they are not aware of the time stipulated in the decree to the effect that the said sum has to be paid within three months from 22.09.2014. They were under the impression that they could pay the admitted amount of Rs.5,00,000/- within three months from the date of the decree, i.e., 15.10.2014. Since 15th and 16th of January are public holidays, the counsel had advised the defendants to obtain a DD; and accordingly, a DD was obtained in the name of the plaintiff for the admitted amount on 19.01.2015. When the DD was offered to be given to the learned counsel for the plaintiff, the same was refused to be taken. As per the terms of the decree, the admitted amount has to be paid on or before 22.12.2014. A delay of 27 days had occasioned in payment of the said amount for the reasons stated. Therefore, the petition is filed for extension of time and to direct the plaintiff to receive the above said DD dated 19.01.2015 for a sum of Rs.5,00,000/- towards full satisfaction.” On the contrary the case of the plaintiff is that the defendants having given a proposal for compromise and having reported no evidence on their side and having filed an undertaking affidavit before the trial Court are aware of the fact that the admitted amount is to be paid within three months from 22.09.2014 and that they cannot now seek alteration of the terms of compromise or the decree, which has become final and binding and that in any view of the matter they did not make out valid and sufficient grounds for granting extension of time. It is also submitted on her behalf that the plaintiff had agreed for the proposal of the defendants to receive the admitted amount and to forego a part of the suit claim only with the hope that if she agrees for the compromise, some substantial amount out of the suit claim would at least be immediately realized and that with that hope only she had admitted to receive the admitted amount towards full satisfaction, if paid within the time of three months agreed to between the parties before the trial Court, and that having regard to the facts and circumstances and the undertaking affidavit of the defendants the trial Court had accordingly passed a conditional decree and that, therefore, any alteration of the term or condition in the decree would result in irreparable loss and hardship to the plaintiff.

9. In view of the facts and submissions, the questions that arise for consideration are – “whether the defendants are entitled under law to seek extension of time? And, if so, whether they had made out valid and sufficient grounds for granting extension of time?”

10. The facts necessary for consideration and the contentions of the parties are already stated supra, in detail.

11. Before proceeding further, it is advantageous to refer to Sections 148 and 151 of the Code, which read as under:

“ 148. Enlargement of time:- Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this code, the Court may, in its discretion, from time to time, enlarge such period [not exceeding thirty days in total], even though the period originally fixed or granted may have expired.

151. Saving of inherent powers of Court:- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.”

Dealing with the aspect in regard to the power of the Court, it is necessary to refer to the decision in **Chijnamarkathian @ Muthu Gounder v. Ayyavoo @**

Periana Gounder^[1], wherein the Supreme Court had held as under:

“If a court in exercise of the jurisdiction can grant time to do a thing, in the absence of a specific provision to the contrary curtailing, denying or withholding such jurisdiction, the jurisdiction to grant time would inhere in its ambit the jurisdiction to extend time initially fixed by it.

The principle of equity is that when some circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken, the court retains to itself the jurisdiction re-examine the alteration or modification of circumstances which may necessitate extension of time. If the Court by its own act denies itself the jurisdiction to do so, it would be denying to itself the jurisdiction which in the absence of a negative provision, it undoubtedly enjoys.

Conditional orders by itself may result in taking away the jurisdiction conferred on the court for just decision of the case. Such orders are in terrorem, so that dilatory litigants might put themselves in order and avoid delay, but they do not completely estop a court from taking note of events and circumstances which happen within the time fixed. Such orders merely create something like a guarantee or sanction for obedience of the court's order but would not take away the court's jurisdiction to act according to the mandate of the statute or on relevant equitable consideration if the statute does not deny such consideration.

The ratio in **D.V.Paul v. Manisha Lalwani**^[2] is called in aid in support of the submission that the power to fix the time for doing of an act must carry with it the power to extend such period, depending upon whether the party in default makes out a case to the satisfaction of the court, which has fixed the time; and, there is nothing in Section 148 or any other provision of the Code to suggest that such a power of extension of time cannot be exercised. The facts of the case show that an application seeking extension of time for deposit of Rs.10,000/- by the appellant in terms of the judgment and decree dated 4.5.2006 was filed and the said application was dismissed by the trial Court and that the said order of dismissal passed by the trial Court was confirmed by the High Court at Jabalpur and that before the Supreme Court, an argument was advanced that the power to extend time cannot be exercised where the act in question is stipulated in a conditional decree. While meeting the said contention, the Supreme Court had held as follows:

“The argument that the power to extend time cannot be exercised where the act in question is stipulated in a conditional decree has not impressed us. We see no reason to draw a distinction depending on whether the prayer for extension is in regard to a conditional order or a conditional decree. The heart of the matter is that where the Court has the power to fix time and that power is not regulated by any statutory limits, it has in appropriate cases the power to extend the time fixed by it. It is common ground that neither CPC nor the provisions of the M.P. Accommodation Control Act place any limitation on the power of the court in cases like the one in hand.

From the ratios in the decisions supra, it appears that the power to extend

time can be exercised even though the act in question is stipulated in a conditional decree. Be that as it may.

12. Be it noted that while considering the request for extension of time for performance of an act stipulated in a conditional decree on the grounds of equity and while exercising the equitable jurisdiction the Court should not forget the opposite party altogether. The discretion has to be exercised within the reasonable bounds known to law. The concept of a liberal approach cannot be equated with doing injustice to the other party. The court cannot condone the delay and grant extension of time in a case where the Court concludes that there is no justification for the delay. When the delay is directly a result of negligence or default or inaction of a party, such delay cannot be condoned on mere asking of that party and no extension of time can be granted in such a case. Reverting to the facts of the case, the only contention of the defendants is that they are not aware of the stipulation in the decree and judgment as they have not obtained the certified copies of the decree and judgment and that they are under the impression that they could pay the admitted amount of Rs.5,00,000/- within three months from the date of the decree. In fact, the admission of PW1 in her cross-examination done by the learned counsel for the defendants would reveal that she had stated that she is ready to receive Rs.5,00,000/- towards full satisfaction of the suit claim if paid within three months. The fact that the conditional decree was passed by the trial Court only after the proposal for compromise made during the cross examination of PW1 was accepted and also only after the defendants' reporting no evidence on their side and on their filing an undertaking affidavit, is not in dispute. A plain perusal of the decree and the judgment of the trial Court would reveal that a condition was stipulated therein that on failure of the defendants to pay the admitted amount within the time stipulated therein, the plaintiff would be entitled to recover the entire suit amount with subsequent interest and costs. The defendants having reported no evidence on their side and having got filed an undertaking affidavit before the trial Court cannot be heard to say that they are not aware of their obligation to pay the admitted amount of Rs.5,00,000/- within three months from 22.09.2014. In

fact, the defendants had filed an undertaking affidavit undertaking to pay the admitted amount of Rs.5,00,000/- within the said time, i.e., 22.09.2014 before the trial court, is not in dispute. It is not their case that the time for payment of the admitted amount that was stipulated in the decree is contrary to the agreed terms of compromise. The conditional decree in question has become final and is binding on the parties. The defendants' failure to obtain certified copies of the decree and judgment of the trial Court and their impressions and assumptions in the matter contrary to the terms of the compromise and the terms of the conditional decree cannot be accepted as valid grounds for granting extension of time. For the laches of the defendants, the plaintiff cannot be penalized. So, their contention in the affidavit filed in support of the instant petition that they are not aware of the stipulation in the decree and the judgment as they have not obtained the certified copies of the decree and judgment and that they were under the impression that they could pay the admitted amount of Rs.5,00,000/- within three months from the date of the decree and judgment cannot be countenanced.

13. Having regard to the facts of the case, this Court is of the considered view that the defendants could not make out valid and sufficient grounds for granting extension of time as sought for by them in their application. Viewed thus, this Court finds that the order impugned in this revision does not brook interference by this Court.

14. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

01st June, 2016
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[\[1\]](#) (1982) 1 Supreme Court Cases 159

[\[2\]](#) (2010) 8 Supreme Court Cases 546