

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD).No.2375 of 2013

Nirmala Bai

.. Petitioner

..Vs..

P.L.Narasinga Rao

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the order of the learned XVII Assistant City Civil Court, Chennai dated 28.09.2012 in I.A.No.4463 of 2012 in I.A.No.4244 of 2003 in O.S.No.6462 of 1999.

For Petitioner : Mr.Balan Haridas

For Respondent : Mr.S.Krishnasamy

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The point involved in this revision is whether the Court becomes *functus officio*, once the conditional order passed by the Court for restoration of the suit which was dismissed for default has not been

complied with.

2. The instant Civil Revision Petition has been filed challenging the order dated 28.09.2012 passed by the learned XVIIth Additional Judge, City Civil Court, Chennai in I.A.No.4463 of 2012 in I.A.No.4244 of 2003 in O.S.No.6462 of 1999.

Brief facts leading to the filing of the instant revision:

3. The petitioner is the plaintiff and the respondent is the defendant in the suit O.S.No.6462 of 1999. The petitioner filed a suit O.S.No.6462 of 1999 against the respondent for return of documents. The petitioner's chief examination was over on 03.01.2003 in the suit and the matter was adjourned to 20.01.2003 for her cross examination. According to the petitioner, she was present in the Court on 20.01.2003, but the respondent failed to cross examine the petitioner on that date and the case was adjourned to 27.01.2003 for her cross examination. Further according to the petitioner, on 27.01.2003 she was present in the morning, when the matter was called and she was absent, when the matter was called once again in the afternoon. Thereafter, the Court has dismissed the suit for default, due to the non-appearance of the

petitioner. The petitioner filed I.A.No.4244 of 2003 in O.S.No.6462 of 1999 seeking to restore the suit O.S.No.6462 of 1999 which was dismissed for default on 27.01.2003. A counter was also filed by the respondent in I.A.No.4244 of 2003. The Trial Court by its order dated 23.12.2003 in I.A.No.4244 of 2003 in O.S.No.6462 of 1999 restored the suit O.S.No.6462 of 1999 on condition that the petitioner pays a sum of Rs.1,000/- as cost to the respondent on or before 29.12.2003. The conditional order was not complied with by the petitioner. Instead, the petitioner filed a revision CRP (PD) No.818 of 2004, before this Court against the order dated 23.12.2003 passed in I.A.No.4244 of 2003 in O.S.No.6462 of 1999. This Court by its order dated 21.06.2004 in CRP (PD) No.818 of 2004, dismissed the revision filed by the petitioner. Thereafter, the petitioner has filed an Appeal A.S.No.626 of 2006 against the dismissal of the suit O.S.No.6462 of 1999 before the IVth Additional Judge, City Civil Court, Chennai. The said Appeal A.S.No.626 of 2006 also came to be dismissed only on the ground of maintainability. Thereafter, the petitioner filed I.A.No.4463 of 2012 in I.A.No.4244 of 2003 in O.S.No.6462 of 1999 under Section 148 of Code of Civil Procedure read with Section 151 of Code of Civil Procedure seeking extension of time to pay the costs of Rs.1,000/-,

as directed by the Trial Court in its order dated 23.12.2003 in I.A.No.4244 of 2003 in O.S.No.6462 of 1999. The counter was also filed by the respondent in I.A.No.4463 of 2012 in I.A.No.4244 of 2003 in O.S.No.6462 of 1999. The Trial Court dismissed the application on the ground that extension of 30 days alone can be granted to the petitioner under Section 148 of Code of Civil Procedure and Section 151 of Code of Civil Procedure is not applicable. This Application I.A.No.4463 of 2012 in I.A.No.4244 of 2003 in O.S.No.6462 of 1999 came to be dismissed by the Trial Court on 28.09.2012.

3. Aggrieved by the order dated 28.09.2012 in I.A.No.4463 of 2012 in I.A.No.4244 of 2003 in O.S.No.6462 of 1999, the instant revision has been filed.

Submissions of the learned counsels:

4. The learned counsel for the petitioner submits that the Trial Court ought to have entertained the application filed under Section 148 of Code of Civil Procedure read with Section 151 of Code of Civil Procedure, in view of the settled law as laid down by the Division Bench

of this Court in the case of **Gowri Ammal vs. Murugan and others** reported in **2006(3) CTC 418**. He referred to the following paragraphs in the said Judgment which reads as follows:

“5. However, the learned single Judge, who referred the matter to this Division Bench, found that subsequent to the Judgments rendered by Justice **N.V.Balasubramanian** and Justice **R.Banumathi**, the Supreme Court in **Salem Advocate Bar Association, T.N. v. Union of India, 2005 (6) SCC 344** rendered the judgment, reiterating the principles laid down by it earlier in **Mahanth Ram Das v. Ganga Das, AIR 1961 SC 882**, that though maximum time of thirty days was prescribed in Section 148 of the Code, considering the object of the Code, namely, to promote justice, the Court can invoke both Sections 148 and 151, CPC., to condone the delay, if the circumstances so warrant.

....

9. At the outset, it shall be stated that the submission made by the learned counsel for the respondents that the moment the application has been dismissed for non-compliance of the conditional order, the Court has become *functus officio* and, as

such, it cannot entertain a Petition for extension of time under Sections 148 and 151, C.P.C., is liable to be rejected, on the sole reason that there is a categorical observation by the Supreme Court, which is a ratio decidendi, that in these matters, the Court can invoke both Sections 148 and 151, C.P.C., to entertain such a Petition for extension of time, even though the period has already been expired.

10. Section 148, C.P.C. Reads as follows:

“ 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.”

11. The above Section is clear that even after expiry of the period already granted, the Court has jurisdiction to extend the period subsequently, by exercising the power under Section 148, C.P.C., even if an application has been filed subsequent to the expiry of the original period fixed.

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13. The above observation would make clear the view of the Supreme Court that Section 148,

C.P.C. confers ample discretionary powers regarding enlargement of time and Section 151, C.P.C. also provides the inherent powers conferred on Courts, to make any order that is necessary for ends of justice.

14. What is important, at this juncture, is, in such matters, either Section 148 or Section 151, C.P.C. should not be read in isolation. On the contrary, both the Sections should be read together, when the result could be easily arrived at in the circumstances of the case.

.....
16. The above decision would make it clear that the Court cannot be made helpless or powerless where the upper limit fixed under Section 148 cannot take away the power of the Court under Section 151 to pass orders, as may be necessary, for the ends of justice or to prevent abuse of process of Court. The rigid operation, as contained in Section 148, without considering Section 151, as laid down by the Supreme Court, would lead to absurdity. Therefore, both the Sections have to be read together, in order to find out, whether the Petition for extension of time can be entertained or not.

17. The duty of the Court of Law is to administer justice, sometimes loosening the rigors of

the procedural law. It is the substantive justice, which should be administered and not the procedural justice. Procedure is meant to facilitate the way for the administration of real justice and not to defeat it.

18. In the light of the principles laid down by the Supreme Court in *Salem Advocate Bar Association, T.N. v. Union of India, 2005 (6) SCC 344*, Sections 148 and 151, C.P.C. allow extension of time, even if the original period fixed has expired. Similarly, Section 149 also is equally liberal in this respect.

19. So, a conjoint reading of Sections 148, 149 and 151, C.P.C. would make it clear that the Court has power to extend time beyond the stipulated period, when sufficient cause exists or events pointed out to the Court for non-compliance of the order are beyond the control of the party, as the object of the Code is not to promote failure of justice.

20. The decision rendered by the Supreme Court on this point, which is a *ratio decidendi*, is a law on the land, binding on all Courts in India, under Article 141 of the Constitution of India. Where the Supreme Court has stated that the law laid down in a

particular case is the applicable law, it cannot be contended that the decision rendered by the Supreme Court has not considered the point, regarding *functus officio*. It is not only a matter of discipline for the High Courts in India, but it is the mandate of the Constitution, as provided under Article 141, that the law declared by the Supreme Court shall be respected by all the Courts and the counsel as well as the parties, within the territory of India.

21. In view of the above conclusions, we are in total agreement with the view expressed by the learned single Judge, that the decisions rendered by the other learned single Judges in (i) ***D.Raju v. N.Ramalingam***, 2001 (3) LW 254; (ii) ***Angammal v. Ramasamy***, 2003 (3) MLJ 770; and (iii) ***K.Rangasamy Gounder***, 2005 (3) MLJ 331, are not good laws.”

Relying upon the above said Judgment, the learned counsel for the petitioner submitted that the Court cannot be made helpless or powerless where the upper limit fixed under Section 148 cannot take away the power of the Court under Section 151 to pass orders, as may be necessary, for the ends of justice or to prevent abuse of process of

Court.

5. According to the learned counsel for the petitioner, even though the said Judgment was brought to the notice of the Trial Court, the Trial Court has misapplied the said Judgment and erroneously held that the facts contained in the said Judgment are entirely different to the facts of the present case and has erroneously applied the decision of this Court reported in 2003 (3) MLJ 770.

6. The learned counsel for the petitioner also submitted that the petitioner is now willing to pay the sum of Rs.1,000/- towards the costs, as directed by the Trial Court by its Order dated 23.12.2003 in I.A.No.4244 of 2003 in O.S.No.6462 of 1999.

7. Per contra, learned counsel for the respondent would submit that the respondent has been made to run from one Court to another for almost 12 years and therefore, considering the conduct of the petitioner, which according to him, is a clear case of abuse of process of Court, the instant revision will have to be dismissed.

Discussion:

8. The conditional order passed by the Trial Court in I.A.No.4244 of 2003 in O.S.No.6462 of 1999 on 23.12.2003 directed the petitioner to pay

the costs of Rs.1,000/- to the respondent. The petitioner has not complied with the conditional order, instead, he has approached this Court by way of revision and also filed an Appeal A.S.No.626 of 2006 before the IVth Additional Judge, City Civil Court, Chennai, against the dismissal of the suit.

9. Without any fault, the respondent has been driven to various Courts for defending the proceedings initiated by the petitioner and because of that, he would have definitely incurred costs and would have also spent a considerable amount of time in defending the said proceedings, that too, for a meagre amount of Rs.1,000/- which was the conditional order passed by the Trial Court. But the said issue as to whether the Court has got powers to extend the time for making payment beyond 30 days is now well settled by the decision of the Division Bench Judgment of this Court reported in 2006 (3) CTC 418, as cited supra. In view of the said decision, the revision will have to be allowed, but at the same time, the respondent will have to be adequately compensated for having made to appear before this Court as well as before the IVth Additional Judge, City Civil Court, Chennai in A.S.No.626 of 2006.

10. This Court is of the considered view that apart from the sum of Rs.1,000/-, the petitioner will have to pay the respondent an additional costs of Rs.10,000/-.

Conclusion:

11. In the light of the above observations, the Civil Revision Petition is allowed on condition that the petitioner pays the respondent a sum of Rs.1,000/- towards costs, as directed by the Trial Court in I.A.No.4244 of 2003 in O.S.No.6462 of 2003 on 23.12.2003 and also pay an additional cost of Rs.10,000/- to the respondent within a period of four weeks from today. However, there shall be no order as to costs.

22.11.2018

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Index:Yes/No

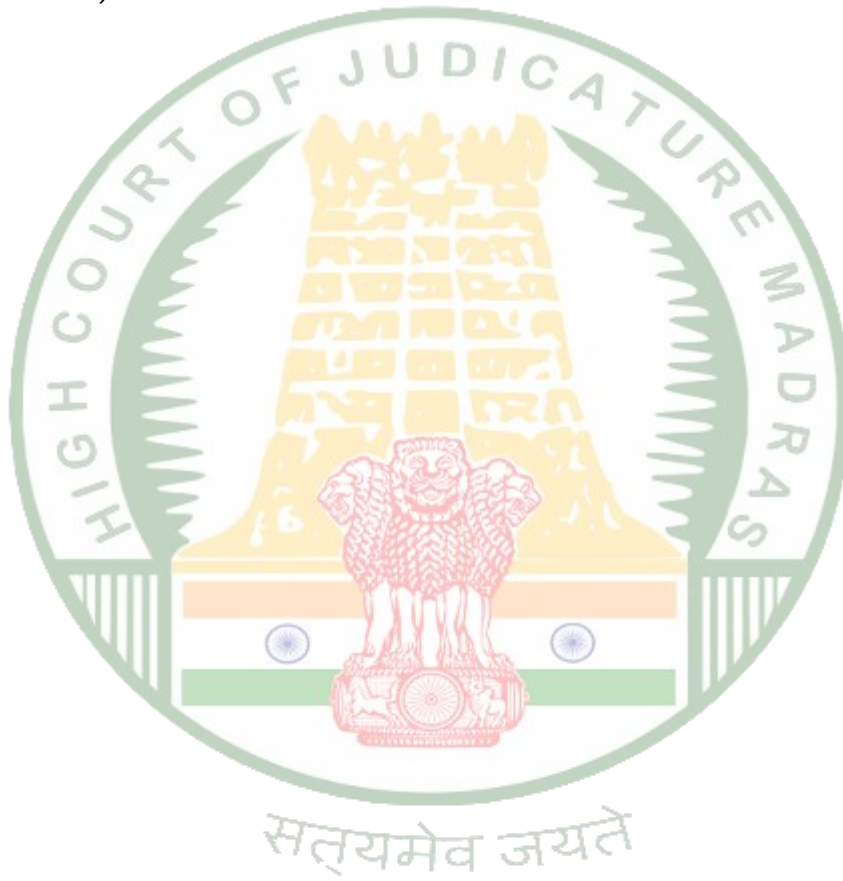
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Speaking/Non-Speaking orders

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To

The XVII Assistant Judge,
City Civil Court,
Chennai



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ABDUL QUDDHOSE, J.

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