

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.03.2018
CORAM
THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.23588 of 2013

P.Arasakumaran

.. Petitioner

Versus

The Sub Registrar,
Office of the Sub-Registrar,
Vazhapaadi.

.. Respondent

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the respondent relating to his proceedings dated 06.05.2013 in Na.Ka.No.225 of 2013, quash the same and the direct the respondent to register the decree dated 27.4.2012 made in O.S.No.30 of 2012, on the file of the 1st Additional District Munsif, Salem.

For Petitioner : Mr.I.Abrar Mohamed Abdullah

For Respondent : N.Manikandan,
Government Advocate

O R D E R

This writ petition has been filed challenging the impugned order dated 06.05.2013, issued by the respondent in Na.Ka.No.225 of 2013 and to direct the respondent to consider the request of the petitioner to register the Judgment and Decree passed in O.S.No.30 of 2012, on the file of the First Additional District Munsif, Salem, dated 27.4.2012.

2. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent and perused the materials available on record.

3. The learned counsel for the petitioner would submit that the Suit in O.S.No.30 of 2012 was decreed on 27.4.2012. The petitioner applied for the certified copy on 30.4.2012 and the copy was made ready only on 05.04.2013 and within a period of one week, the petitioner approached the respondent for registration. However, it was rejected, stating that it was filed beyond the period of limitation.

4. The learned counsel for the petitioner further submitted that in similar facts, this Court allowed the writ petition in W.P.No.12983 of 2005, dated 30.3.2010 and issued suitable directions to the respondent to register the judgment and decree.

5. Sub-section (2) of Section 12 of Limitation Act, reads as follows:

"12. Exclusion of time in legal proceedings -
(1)

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded."

6. This Court, in the earlier writ petition in W.P.No.12983 of 2005, by following the decision of the Full Bench of the Court, reported in the case of Murlidhar Shrinivas V.Motilal Ramcoomar, has set aside the order and issued suitable orders to register the documents, which reads as follows :

"9. In Murlidhar Shrinivas V.Motilal Ramcoomar the Full Bench, speaking through BEAUMONT, C.J., held that the Court cannot impose upon the statutory right of an appellant a restriction not warranted by the Act and a rule providing that no time shall be allowed for obtaining a copy of the decree unless such copy be applied for within specified days from the date of the decree would be ultra vires. In computing the time for appeal from a decree it is legitimate (in a proper case) to exclude the period requisite for obtaining a copy of the decree even when no application for such copy was made till after the expiration of the time for appeal. A Full Bench of the Madras High Court presided over by SRINIVASAN, J. (later a Judge of the Supreme Court) held that though the application for certified copies for judgement and decree was made after the prescribed period of limitation, the period was liable to be excluded in all cases depending on whether sufficient cause was shown or not. We find ourselves in respectful agreement with the view so taken by the Full Benches of the Bombay and Madras High Courts".

7. It is not in dispute, that the judgment and decree have to be registered within a period of 120 days, as per Article 23 and 25 of the Limitation Act. In the case on hand, the First Additional District Munsif, Salem has decreed the Suit by way of judgment and decree dated 27.4.2012. The petitioner applied for the certified copy, within a period of three days i.e. on 30.04.2012 and the copy was made ready on 05.04.2013. It is also not in dispute that the petitioner submitted an application on 08.04.2013, for registration of the judgment and decree. It is seen that on the same day, the application was returned on the ground that it was applied out of time. Despite, the petitioner has approached the respondent again to register the document as per the decision of this Court in W.P.No.12983 of 2005, it was rejected.

8. A plain reading of Section 12 (2) of the Act would establish that in computing period of limitation time taken for obtaining copy of the decree should be excluded. The Judgment referred supra made the position vividly. In the instant it seems that the respondent calculated the period from the date of pronouncement of the judgment and if the time for obtaining the copy of decree is excluded, it would be in time.

9. For the reasons stated above, the order impugned in this writ petition is liable to be set aside and accordingly, set aside. This writ petition is allowed. The Respondent is directed to register the judgment and decree within a period of eight weeks, from the date of receipt of a copy of this order. However there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Sub Registrar,
Office of the Sub-Registrar,
Vazhapaadi.

+1cc to Government Pleader SR.No.19260

+1cc to Mr.I.Abrar Mohammed Abdullah, Adocate SR.No.18357

NM(CO)

sm:3.4.2018

W.P.No.23588 of 2013