



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.R.P (MD)No.111 of 2009

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Parvathy

... Petitioner/
Petitioner/Plaintiff

Vs.

1.Subramanian @ Kasi Nadar ... 1st Respondent/
1st Respondent/1st Defendant

2.Kalaichamy Nadar ... 2nd Respondent/
2nd Respondent/3rd Defendant

3.Kulalamaniammal

4.Manickam

5.Murugaiah

6.Janaki

... Respondents 3 to 6/
Respondents 4 to 7/LRs of 2nd Defendant

7.Valliammal

8.Amaravathi

9.K.Ramasamy

10.Krishnan

11.K.Chandran

12.K.Thangarathinam

... Respondents 7 to 12/
LRs of the deceased 2nd Respondent

[R.7 to R.12 are brought on record as LRs., of the deceased 2nd Respondent, vide order of this Court dated 01.11.2019 made in M.P(MD)Nos.1 to 3 of 2014 in C.R.P (MD)No.111 of 2009.]

Prayer : Petition filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 04.07.2007 insofar as it relates to the dismissal of I.A., for non-payment of the cost passed in I.A.No.508 of 2006 in O.S.No.98 of 2000 on the file of the Principal District Munsif Court, Tenkasi.

For Petitioner : Mr.D.Srinivasaragavan

For Respondents: Mr.D.Nallathambi for R.3 to R.6

No appearance for R.1, R.2, R.7 to R.12

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ORDER

The present Civil Revision Petition has been filed challenging the order dated 04.07.2007 insofar as it relates to the dismissal of I.A., for non-payment of the cost passed in I.A.No.508 of 2006 in O.S.No.98 of 2000 on the file of the Principal District Munsif Court, Tenkasi.

2. The petitioner, who is the plaintiff, filed a suit in O.S.No.98 of 2000 on the file of the Principal District Munsif Court, Tenkasi, for permanent injunction. The said suit was dismissed and an exparte decree was passed on 04.07.2002 and thereafter, the petitioner herein filed I.A.No.508 of 2006 to restore the suit on file and the said application was allowed on 27.06.2007 on condition that the petitioner herein shall pay a cost of Rs.1,000/- (Rupees One Thousand only) to the respondent on or before 03.07.2007. As the petitioner herein could not pay the cost within the stipulated time, the petitioner sought for extension of time which was not entertained by the lower Court. Aggrieved by the same, the present revision has been filed.

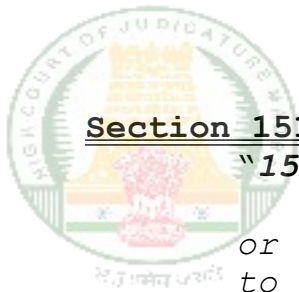
3. It is the contention of the learned Counsel for the petitioner herein that the lower Court erred in not granting time without looking into the provisions of Sections 148 and 151 of the Code of Civil Procedure and that the Court has got ample powers to extend the time even after the expiry of the time and the Court will not become *functus officio*.

4. The issue as to whether the Court has got powers to extend the time by taking up the matter even after expiry of the period, was considered by the Division Bench of this Court in **Gowri Ammal v. Murugan and others reported in 2006 (3) CTC 418**, pursuant to the reference made by the learned Single Judge. Though the Court becomes *functus officio*, in the light of the provisions of Section 148 read with Section 151 of the Code of Civil Procedure, the Court has got inherent powers to extend the time after the expiry of the time stipulated, but not exceeding the period of 30 days in total. For the sake of convenience, Sections 148 and 151 of the Code of Civil Procedure are extracted hereunder:

Section 148:

"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."



Section 151:

"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."

5. The Division Bench of this Court in **Gowri Ammal v. Murugan and others reported in 2006 (3) CTC 418**, has observed as follows:

"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.

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 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.

23. In the present case, the Trial Court simply dismissed the application, stating that it had no power. But, we have concluded that the Court has got power to entertain an application under Sections 148 and 151, C.P.C., to consider the merits of the matter for condoning the delay or for extending time. Admittedly, in this case, the application has been filed before the Trial Court under Sections 148 and 151, C.P.C."

6. The Division Bench of this Court has held that 30 days time mentioned in Section 148 of the Code of Civil Procedure can be extended by filing a petition to condone the delay as substantial justice has got to be done and the procedures shall not be a hindrance to administer justice. In paragraph 23 of the said decision, it has been made very clear that in that case, an application has been filed before the trial Court under Sections 148 and 151 of the Code of Civil Procedure seeking extension after the expiry of the time prescribed by the lower Court. In the present case, no application has been filed.

7. It is to be noted that while relying on a judgment, if it is found that the factual situation totally differs, then there is no compulsion for the Courts to blindly rely on the same to arrive at a conclusion, as held by the Honourable Supreme Court in the case of **Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others**, reported in (2002) 3 SCC 533, as follows:



"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington vs. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

8. From the aforesaid decision of the Honourable Supreme Court as well as the judgment of the Division Bench of this Court, the present case is distinguishable as there is no application filed seeking extension of time after expiry of the time. The Court may in its discretion extend the time on filing necessary application and the Court cannot *suo motu* extend the time by means of verbal request. Even assuming that the petitioner could not file an affidavit and petition, she could have filed at least a Memo to that effect which is absent in this case. There is no quarrel over the proposition as Section 148 of the Code of Civil Procedure has got greater discretionary powers with regard to enlargement of time. However, the maximum period that could be extended is 30 days in total and that the Court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total.

9. Though the time granted in the application filed by the petitioner is less than 30 days and that the Court may extend time any number of time, but the total period shall not exceed beyond 30 days from the date of original decision, but the same could be exercised only on filing an application which is absent in this case. The litigation is pending for more than nearly two decades and it had attained finality on 03.07.2007 itself. Hence, I am of the view that this Civil Revision Petition is liable to be dismissed.

10. In the result, this Civil Revision Petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)



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To
The Principal District Munsif ,
Tenkasi.

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