

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.Nos.1396 to 1398 of 2010

H.S.Mehta

..Petitioner in all the CRPs

Vs.

The Ootacamund Club,
Rep. by its President and Signatory,
Box No.19, Ootacamund - 643 001,
The Nilgiris

.. Respondent in all the CRPs

Prayer in C.R.P.No.1396 of 2010: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the petition and order dated 08.04.2010 made in I.A.No.1 of 2010 in C.M.A.CFR.No.4640 of 2009 on the file of the learned Subordinate Judge, Nilgiris at Udthagamandalam.

Prayer in C.R.P.No.1397 of 2010: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the petition and order dated 08.04.2010 made in I.A.No.3 of 2010 in C.M.A.CFR.No.4639 of 2009 on the file of the learned Subordinate Judge, Nilgiris at Udthagamandalam.

Prayer in C.R.P.No.1398 of 2010: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the petition and order dated 08.04.2010 made in I.A.No.4 of 2010 in C.M.A.CFR.No.4644 of 2009 on the file of the learned Subordinate Judge, Nilgiris at Udthagamandalam.

For Petitioner : Mr.M.S.Krishnan, S.C.
in all CRPs for M/s.Sarvabhauman Associates

For Respondent : Mr.C.A.Diwakar
in all CRPs

C O M M O N O R D E R

The petitioner/plaintiff filed the suit against the respondent/defendant in O.S.No.183 of 2008 to declare the by-law No.53 and as a consequence the show cause notice dated 24.09.2008 as null and void ab initio and not binding on the

petitioner and a consequential injunction restraining the respondent Club from initiating action based on the show cause notice.

2. After the filing of the suit, the petitioner was suspended on 01.10.2008, without giving him an opportunity to explain though he had submitted his objections. The petitioner filed an interlocutory application in I.A.No.484 of 2008 in O.S.No.183 of 2008 for mandatory injunction directing the defendant Club to revoke the suspension order and also filed an application in I.A.No.35 of 2009 in O.S.No.183 of 2008 to restrain the respondent Club from holding and conducting the Extra Ordinary General Meeting (EGM). In the meanwhile, the respondent Club also filed an application in I.A.No.501 of 2008 in O.S.No.183 of 2008 for rejecting the plaint on the ground that the suit violates the Doctrine of Indoor Management. All the three applications were taken by the trial Court and by a common order dated 05.02.2009, the applications filed by the petitioner in I.A.No.484 of 2008 and I.A.No.35 of 2009 were allowed and the application filed by the respondent Club in I.A.No.501 of 2008 regarding rejection of plaint was dismissed.

3. Challenging the said common order dated 05.02.2009, the respondent club filed civil revision petitions before this Court in C.R.P.Nos.1020, 1021 and 1022 of 2009. This Court by an order dated 01.10.2009, dismissed all the three revision petitions filed by the respondent Club. Though this Court dismissed the civil revision petitions on merits, however, while passing the dismissal order, made certain observations that any erroneous decisions, if any, at which the respondent club felt aggrieved, can be agitated in an appeal to be filed in a regular course. Further in paragraph No.31 there is an observation that there is no impediment for the respondent club to prefer appeal and the appellate Court has to correct the error stated to have been committed by the trial Court.

4. Taking advantage of the above said observations, the respondent club filed appeals before the first appellate Court in C.M.A.CFR.Nos.4639, 4640 and 4644 of 2009, in which they filed applications in I.A.Nos.1, 3 and 4 of 2010 under Order XLI Rule 3-A of C.P.C. to condone the delay in filing the appeals. The said applications were allowed on 08.04.2010 on payment of a cost of Rs.500/- each. Challenging the said orders passed by the appellate Court condoning the delay in filing the appeals, the petitioner has preferred the present revisions before this Court.

5. The learned counsel appearing for the petitioner would submit that the petitioner was elected as a permanent member of the respondent's Club. In the year 2001, first instance of the

respondent Club's biased handling of issues relating to the Club and its members and the petitioner also noticed several irregularities in the functioning of the Committee, who were acting as if they owned the Club. On 28.05.2005, in the Annual General Body Meeting (AGM) the election results were declared, in which the petitioner also participated and results show 5 candidates had polled more than the members present. Therefore, the petitioner moved the Registrar of Companies and petitioner's attempt to examine the minutes of the Respondent Club turned futile. Further, on 29.05.2004, the petitioner questioned the passing of the accounts and thereafter the petitioner started addressing the Club on all its instances of misconduct / failure to follow the procedures.

6. On 22.09.2008, the petitioner filed a suit in O.S.No.182 of 2008, seeking for framing of scheme for the management and administration of the respondent Club. Therefore, on 24.09.2008, the respondent Club issued a show cause notice to the petitioner. According to the petitioner, the notice was nothing but a vindictive and biased action taken against the petitioner for questioning the activities of the Club. Therefore, on 29.09.2008, the petitioner filed a suit in O.S.No.183 of 2008 to declare the by-law No.53 and as a consequence the show cause notice dated 24.09.2008, as null and void ab initio and not binding on the petitioner and a consequential injunction restraining the respondent Club from initiating any action based on the said show cause notice.

7. Subsequently, on 01.10.2008, the respondent Club suspended the petitioner without giving him an opportunity to explain though he had submitted objections. Therefore, the petitioner filed interlocutory application in I.A.No.484 of 2008 in O.S.No.183 of 2008 for a mandatory injunction directing the respondent Club to revoke the suspension order. Immediately, the respondent Club filed an application in I.A.No.501 of 2008 in O.S.No.183 of 2008 for rejecting the plaint on the ground that the suit violates the Doctrine of Indoor Management.

8. Even during the pendency of the suit and the I.A. filed by the petitioner is pending, the respondent Club on 29.12.2008, called for EGM on 07.02.2009 to expel the petitioner from the respondent Club. Immediately, the petitioner filed another interlocutory application in I.A.No.35 of 2009 in O.S.No.183 of 2009 to restrain the respondent Club from holding and conducting the EGM.

9. After inquiry, the learned District Munsif of Udhagamandalam on 05.02.2009, passed a common order in all the above said three applications and allowed the applications filed by the petitioner and dismissed the application filed by the

respondent Club. Against the said order, the respondent Club filed revision before this Court in C.R.P.Nos.1020 to 1022 of 2009. On 01.10.2009, this Court dismissed all the three revision petitions and directed the learned District Munsif of Udhagamandalam to dispose of the suit in O.S.No.183 of 2008, within a period of three months. Further, this Court in the above said order held that the Civil Court has jurisdiction to try the suit. This Court has also held that the remedy for the petitioner is by way of an appeal.

10. Thereafter, the respondent Club filed appeals before the Subordinate Court, Udhagamandalam in C.M.A.CFR Nos.4639, 4540 and 4644 of 2009 along with applications to condone the delay of 30 days in filing the appeals. The respondent Club has calculated the delay from the date of receipt of the order of the civil revision petition instead of the date of the order passed by the trial Court in I.A.Nos.484 & 501 of 2008 and 35 of 2009.

11. According to the learned counsel for the petitioner, the appellate Court failed to consider the fact that the appeal has to be filed from the order of the trial Court and at the time of filing of the appeal the certified copy of the order of the trial Court has to be annexed. They have not filed the appeal by producing the original certified copy obtained from the trial Court and the delay has to be calculated from the date of the original order passed by the trial Court in the above said I.As. and not from the date of disposal of the civil revision petitions by this Court. There is a delay of 321 days in filing the appeal from the date of the original order passed by the learned District Munsif, Udhagamandalam on 05.02.2009, whereas the respondent club has filed the I.As. for condoning the delay of 30 days by calculating the appeal only from the date of the order passed by this Court in the civil revision petitions. Therefore, the order of the learned appellate Judge is without any reason and therefore the order passed by the appellate Court in I.A.Nos.1, 3 and 4 of 2010 has to be set aside as the limitation starts only from the date of the order passed by the trial Court and not from the date of dismissal of the civil revision petitions. In support of his contention, the learned counsel appearing for the petitioner relied upon the following judgements:

"(i) A.Venkatasubbaiah Naidu Vs. S.Chellappan and others reported in (2000) 7 SCC 695

(ii) Sadhana Lodh Vs. National Insurance Co. Ltd., and another reported in (2003) 3 SCC 524

(iii) The Governing Council of America College and Others Vs. M.Devamani Christoher reported in (2010) 3 CTC 604

(iv) Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and

Others Vs. Tuticorin Educational Society reported in (2019) 9 SCC 538."

12. The learned counsel appearing for the respondent Club would submit that the trial Court passed the order on 05.02.2009 and immediately the respondent filed civil revision petition before this Court and this Court dismissed the revisions on merit and made observation that if the respondent Club felt aggrieved by the order passed by the trial Court, they can file a regular appeal and also the respondent Club can approach a competent Court.

13. Therefore, the respondent Club filed appeal before the first appellate Court viz., the Subordinate Court, Udhagamandalam. The original certified copies of the order was filed before this Court in the civil revision petitions and this Court has not remanded the matter to the trial Court or returned the original certified copies filed by the respondent Club for filing appeal before the competent Court. The revisions were dismissed on merits but however, this Court made observations that if the respondent Club is aggrieved, they can file a regular appeal. Based on the dismissal order passed in the revisions, they filed appeals before the appellate Court starting the calculation for condoning the delay from the date of receipt of the copy of the orders in revision petitions. As there was 30 days delay in filing the appeal, they filed applications to condone the delay of 30 days in filing the appeals.

14. The learned counsel appearing for the respondent Club however would submit that once this Court is seized of the matter and the Doctrine of Merger would apply and after the dismissal of the revision, direction / liberty was given to the parties to file regular appeal before competent Court, from the date of disposal of that order they can file an appeal before the competent Court and therefore, as stated by the learned counsel appearing for the petitioner, there is no delay of 321 days but it is only a delay of 30 days. The appellate Court rightly consider the submission made by the respondent Club and condoned the delay however imposed a cost of Rs.500/- in each application and there is no perversity in the order passed by the appellate Court.

15. In support of his contentions, the learned counsel for the respondent Club placed reliance on the following judgements:

"(i) Union of India Vs. West Coast Paper Mills Ltd., reported in (2004) 2 SCC 747

(ii) Union of India Vs. West Coast Paper Mills Ltd., reported in (2004) 3 SCC 747

(iii) Consolidated Engg. Enterprises Vs. Irrigation Deptt. reported in (2008) 7 SCC 169

(iv) S.S.Rathore Vs State of M.P. reported in (1989) 4 SCC 582

(v) L.Varadarajan Vs. Thomas reported in 2000 SCC online Mad 157."

16. I have heard the learned counsel on either side and also perused the entire records carefully.

17. Admittedly, the petitioner herein is a member of the respondent Club and there was a dispute and misunderstanding between the petitioner and the respondent Club and therefore the petitioner filed a suit in O.S.No.182 of 2008 against the respondent Club seeking a framing of scheme for the management and administration of the respondent Club. Immediately, on 24.09.2008, the respondent Club issued a show cause notice to the petitioner and therefore the petitioner filed a suit in O.S.No.183 of 2008 to declare by-law No.53 and consequential show cause notice dated 24.09.2008 as null and void ab initio and not binding on the petitioner and for consequential injunction restraining the respondent Club from initiating action based on the show cause notice.

18. Immediately, on 01.10.2008, the petitioner was suspended and therefore he filed application in I.A.No.484 of 2008 in O.S.No.183 of 2008 for a mandatory injunction directing the respondent Club to rove the suspension order. Subsequently, on 29.12.2008, the respondent Club called for EGM on 07.02.2009 to expel the petitioner from the respondent club. Therefore, the petitioner filed another interlocutory application in I.A.No.35 of 2009 in O.S.No.183 of 2009 seeking to restrain the respondent Club from holding and conducting the EGM. In the meanwhile, the respondent Club also filed an interlocutory application in I.A.No.501 of 2008 in O.S.No.183 of 2008 for rejecting the plaint filed by the petitioner in O.S.No.183 of 2008.

19. The trial Court heard all the above said three applications and passed a common order on 05.02.2009 allowing the applications filed by the petitioner and dismissing the application filed by the respondent Club. Challenging the said orders, the respondent Club had filed revision petitions in C.R.P.Nos.1020 to 1022 of 2009 before this Court and this Court dismissed all the above civil revision petitions on merits. While dismissing the above said revision petitions, this Court made certain observations in paras 31 to 33 with regard to filing of regular appeal.

20. After the disposal of the C.R.Ps by this Court on 01.10.2009, the respondent Club filed appeals before the learned Subordinate Judge, Udhagamandalam in C.M.A.CFR Nos.4639, 4640 and 4644 of 2009. In that they filed application in I.A.Nos.1, 3 and 4 of 2010 under Order XLI Rule 3-A of C.P.C. to condone the delay in filing the appeal before the Court.

21. Though the learned counsel appearing for the petitioner would submit that the appeals should have been filed within 30 days from the date of the order of the trial Court dated 05.02.2009, whereas, they have filed the appeal after 321 days. Therefore, the reasons stated in the affidavit were not in accordance with law and the appellate Court should not have condoned the delay for the reasons stated by the respondent Club.

22. Further the learned counsel would submit that the revisions were dismissed on merits and they were not simply returned, revisions were dismissed on the ground of maintainability and liberty was given to the respondent Club to approach the competent Court. Since the revisions were dismissed on merits and therefore even otherwise, assuming that as per the observations made by this Court they can file the appeal before the competent Court, they should file the appeal from the date of the original order passed by the trial Court, since the appeal is not filed against the order of revision and therefore the appellate court should not have condoned the delay.

23. Per contra, the learned counsel appearing for the respondent Club would vehemently object the contentions raised by the learned counsel for the petitioner and would contend that as per the Doctrine of Merger, the trial Court order merges with the revision Court order and further all the original certified copies are filed before the revision Court and revision Court disposed of the revisions on merits, therefore the orders merged with the revision and therefore the delay has been calculated from the date of receipt of the copy of the revision order and the appellate Court has rightly condoned the delay. Even otherwise, the petitioner need not stick on the technicalities, they can put forth their valid ground in the appeal and they can succeed on merits.

24. I have considered the submissions made by the learned counsel on either side. सत्यमेव जयते

25. Admittedly, the trial Court passed a common order in the above said interlocutory applications on 05.02.2009 and the respondent Club challenged the said orders in C.R.P.Nos.1020 to 1022 of 2009 before this Court and this Court also dismissed the revisions on merits on 01.10.2009. While dismissing the revision this Court has held in paragraphs 31 to 33 as follows:

"31. It is also decided in that case that in all the cases it need not be held that a particular party has to exhaust the alternative remedy and however every case depends upon its nature, facts and circumstances. As far as the present case is

concerned, this Court does not find any wrong nor excessive exercise of jurisdiction on the part of the Court below and that the nature, facts and circumstances of this case do not warrant interference of this Court under Article 227. There is no impediment for the petitioner to prefer appeal and the appellate court has to correct the error stated to have been committed by the trial Court.

32. Following the dicta laid down by the Supreme Court in the decisions as stated above, this Court is of the considered view that there is no ground made out for this Court to invoke Article 227 of the Constitution since the order challenged before this Court is not perverse and any erroneous decisions if any at which the petitioner felt aggrieved, can be agitated in an appeal to be filed in a regular course, that in view of the presence of adequate allegations showing proper cause of action and the prayers and that the plaints are not barred by any law, the revision petitions are not maintainable which deserve to be dismissed.

33. In fine, all the Civil Revision Petitions are dismissed. No costs. Consequently, connected M.Ps. are also dismissed. The learned District Munsif, Udthagamandalam, is directed to dispose of O.S.No.183 of 2008 preferably within three months from the date of receipt/production of copy of the order. The trial court shall not get influenced with any of the observations and findings of this Court contained in this order."

26. It is seen from the order passed by this Court in the revision in paragraph 31 this Court has clearly stated that revision were dismissed on merits. However it observed that there is no impediment for the respondent Club to prefer appeal and the appellate Court has to correct the errors said to have been committed by the trial Court. Further, in paragraph 32 also this Court while dismissing the revision on merits has further made an observation that there was no perversity in the order passed by the trial Court, however it had made an observation that any erroneous decision, if any, at which the respondent Club felt aggrieved, it can agitate it in the appeal to be filed in a regular course and that in view of the presence

of adequate allegations showing proper cause of action and the prayers and that the complaints are not barred by any law, the revision petitions are not maintainable, which deserves to be dismissed. Further in paragraph No.33, this Court directed the trial Court to dispose of the suit in O.S.No.183 of 2008 preferably within a period of three months from the date of receipt / production of a copy of this Court.

27. Though the respondent Club has filed appeals in C.M.A.CFR.Nos.4639, 4640 and 4644 of 2009, in which, they filed applications in I.A.Nos.1, 3 and 4 of 2010 to condone the delay in filing the appeals, though they have stated the reasons for the appeal, it is only a follow up after the disposal of the revisions by this Court and the observations made by this Court in the revisions. Whereas they calculated the delay of 30 days from the date of receipt of the copies of the orders passed in revision and though according to the petitioner the delay has to be calculated from 05.02.2009 when the trial Court passed the order in the said I.As. and not the date of order of revision passed by this Court.

28. Though the respondent Club approached this Court challenging the orders passed in the Interlocutory Applications in I.A.Nos.484 of 2008 and 35 of 2009 in O.S.No.183 of 2008, the nature of relief available to the respondent Club is to file an appeal under Order XLIII Rule 1 before the Subordinate Court, Udhagamandalam. Regarding the dismissal of the I.A.No.501 of 2008 in O.S.No.183 of 2008, seeking rejection of the plaint in O.S.No.183 of 2008 is concerned, revision only would lie before this Court. However, the three revision petitions were filed before this Court and this Court also taken up all the three revisions and passed a common order dated 01.10.2009 and in paragraph 32, this Court has clearly stated that in view of the presence of adequate allegations showing proper cause of action and the prayers and that the complaints are not barred by any law, the revision petitions are not maintainable which deserves to be dismissed. Therefore, I.A.No.501 of 2008 in O.S.No.183 of 2008 is concerned, the order of this Court dated 01.10.2009 made in C.R.P.No.1022 of 2008 is final. If at all aggrieved with the said final order, they have to file a Special Leave Petition before the Hon'ble Supreme Court and no appeal would lie before the Subordinate Court. Therefore, the order passed by the Subordinate Court in I.A.No.4 of 2010 in C.M.A.CFR.No.4640 of 2009 passed by the appellate Court vide order dated 08.04.2010 is liable to be set aside and accordingly set aside and the revision in C.R.P.No.1398 of 2010 stands allowed.

29. As far as the other two revision petitions in C.R.P.Nos.1396 and 1397 of 2010 are concerned, against the orders passed in the applications, by the trial Court only an

appeal would lie under Order XLIII Rule 1 before the Subordinate Court, Udhagamandalam and though before filing appeals before the Subordinate Court, Udhagamandalam they filed revision before this Court in C.R.P.Nos.1020 and 1021 of 2009, this Court dismissed the said revision on merit as there is no perversity, however this Court made observations that if the respondent Club felt aggrieved, they can agitate in an appeal to be filed in a regular course before the appellate Court. Taking advantage of that observation, the respondent Club filed appeals in C.M.A. (CFR) Nos.4639 and 4640 of 2009 along with applications in I.A.Nos.1 and 3 of 2010 to condone the delay of 30 days. Though normally the limitation will be calculated from the date of receipt of the copy of the trial Court order, however the respondent Club after obtaining the copies from the trial Court filed revision petitions before this Court. This Court also entertained the revision petitions but however dismissed the same on merits. Further this Court made some observations, though they have not been given any liberty to file appeal in direct words and also the time spent on revision can be excluded. But, however, this Court while dismissing the revision on merits made certain observation that they can agitate in an appeal to be filed in a regular course before the appellate Court.

30. A careful reading of the application filed by the respondent Club before the appellate Court, they have filed the application not under the Limitation Act, they have filed the application under C.P.C. under Order XLI Rule 3-A read with Section 151 of the C.P.C. the said provisions read as follows:

"Order XLI Rule 3-A : Application for condonation of delay.—

(1) When an appeal is presented after the expiry of the period of limitation specified therefore, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice hereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.

(3) Where an application has been made under sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed

to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal.

* * *

Section 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."

31. A careful reading of Order XLI Rule 3-A would shows that if an appellant had sufficient cause for not preferring the appeal within such period, the Court can condone the delay. Therefore, in this case, the respondent Club have shown a cause that even though they could have filed an appeal before the appellate Court viz., the Subordinate Court, Udhagamandalam, they filed revisions and this Court while dismissing the revisions on merits, this Court has also made observations. Therefore, under these circumstances, filing of an appeal or a revision is only based on the advice of the counsel for the parties. Parties may not know all the technicalities, in which case, against the orders, appeal can be filed and against which order revision can be filed. Therefore, on the wrong advice of the counsel, the parties approached this Court and while disposing of the revisions on merits under Article 227 of the constitution of India, this Court has made observations that parties can approach the appellate Court by way of filing regular appeal. Therefore, in these circumstances, a reading of the affidavit filed by the respondent Club before the appellate Court in I.A.Nos.1 and 3 of 2010, the appellate Court satisfied with the reasons stated in the application, condoned the delay however imposed a cost of Rs.500/- each. It is pertinent to note that as far as the condonation of delay is concerned, it is the discretionary power of the Court. If the Court exercised its discretion not in an arbitrary manner and the revision Court finds that the trial Court or the first appellate Court has exercised its discretion in a judicious way then the revision Court will not interfere with the orders of the trial Court. Further, in the facts and circumstances of this case the judgements relied upon by the learned counsel on either side will not be helpful to the present cases on hands.

32. Therefore, in the above circumstances, this Court does not find any perversity in the order passed by the learned Subordinate Judge, Udhagamandalam in I.A.Nos.1 and 3 of 2010 in

C.M.A.CFR Nos.4639 and 4640 of 2009. Therefore, the revisions in C.R.P.Nos.1396 and 1397 of 2010 are dismissed.

33. In the result, the revision filed in C.R.P.Nos.1396 and 1397 of 2010 are dismissed and the revision filed in C.R.P.No.1398 of 2010 is allowed. Since the suit is pending from the year 2008, this Court also while dismissing the earlier revision petitions in 2010, has directed the trial Court to dispose of the suit within a period of three months, the learned District Munsif, Udhagamandalam is directed to dispose of the suit in O.S.No.183 of 2008, on merits, in accordance with law, after giving opportunity to both the parties, within a period of three months from the date of receipt of a copy of this order. The learned Subordinate Judge, Udhagamandalam is directed to take the C.M.A.(CFR) Nos.4639 and 4640 of 2009 on file, if it is otherwise in order and dispose of the said C.M.As on merits, in accordance with law, after giving opportunity to both the parties, within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Udhagamandalam.
2. The District Munsif,
Udhagamandalam.

+3cc to M/s.C.A.Diwarar, Advocate in SR.NO..28176

C.R.P.Nos.1396 to 1398 of 2010

SSV(CO)
RV(01/10/2020)