IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.2299 of 2016
and
C.M.P.No.12038 of 2016

Kuppa Gounder ... Petitioner/Petitioner/1st Defendant

Vs.

1.Lakshmi
2.Mallika
3.Ellammal ... Respondents/ Respondents/Plaintiffs

PRAYER : The Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order dated 10.01.2014 passed in I.A. Nil of 2012 in I.A.No.605 of 2009 in O.S.No.144 of 2006 on the file of the Principal District Munsif Court, Vandavasi, in rejecting the petition filed under Section 148 of C.P.C to extend the time for payment of cost as not maintainable.

For Petitioner : Mr.P.Mani
For Respondents : No appearance

ORDER
(*Heard through video conferencing*)

The Civil Revision Petition has been filed challenging the order of the learned Principal District Munsif Court, Vanthavasi, in rejecting the petition filed for extension of time, under Section 148 of CPC for paying cost as not maintainable.

2. Heard the arguments advanced by the learned counsel for the petitioner. Despite notice has been ordered on the respondents and their names printed in the cause list, no one appeared.

3. The petitioner was the defendant in the suit. Since he was set ex parte on 19.10.2009 and an exparte order was passed, he has filed a petition to set aside the ex parte order in I.A.No.605/2009 and the said petition was allowed on the condition that the petitioner should pay a cost of Rs.200 to the respondent on or before 01.10.2010. Since he failed to pay the cost, the petition to set aside the ex parte order stood dismissed.

4. On 13.06.2012 the petitioner has filed a petition under Section 148 CPC seeking extension of time to pay costs of Rs.200. Admittedly the time for paying the costs got expired on 01.10.2000 itself. However, after waiting for 1 ½ years, the petitioner has filed a petition under Section 148 CPC for seeking extension of time.

5. The learned counsel for the petitioner would draw the attention of this Court to the Judgment of this Court reported in **2006 2 MLJ 729**[**Gowri Ammal vs Murugan, Anbu, Sekar And Saroja**], in order to canvass his contention that the petition under Section 148 is very much maintainable and it ought not to have been rejected in *limine* as not maintainable.

6. In the said judgment a reference has been made to the judgment of the Supreme Court, in" ***Salem Advocate Bar Association, T.N. Vs. Union of India"*** in this connection**.** The relevant portion of the judgment is extracted as under:

> *"15. Referring to the above judgment, the Supreme Court in* Salem Advocate Bar Association, T.N. v. Union of India , while dealing with the very same question, would make the following observation:
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> *41. The amendment made in Section 148 affects the power of the court to enlarge time that may have been fixed or granted by the court for the doing of any act prescribed or allowed by the Code. The amendment provides that the period shall not exceed 30 days in total. Before amendment, there was no such restriction of time. Whether the court has no inherent power to extend the time beyond 30 days is the question. We have no doubt that the upper limit fixed in Section 148 cannot take away the inherent power of the court to pass orders as may be necessary for the ends of justice or to prevent abuse of process of the court. The rigid operation of the section would lead to absurdity. Section 151 has, therefore, to be allowed to operate fully. Extension beyond maximum of 30 days, thus, can be permitted if the act could not be performed within 30 days for reasons beyond the control of the party. We are not dealing with a case where time for doing an act has been prescribed under the provisions of the* Limitation Act which cannot be extended either under Section 148 or Section 151. We are dealing with a case where the time is fixed or granted by the court for performance of an act prescribed or allowed by the court.
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> *42.* In Mahanth Ram Das v. Ganga Das , this Court considered a case where an order was passed by the Court that if the court fee was not paid by a particular day, the suit shall stand dismissed. It was a self-operating order leading to dismissal of the suit. The party's application filed under Sections 148 and 151 of the Code for extension of time was dismissed. Allowing the appeal, it was observed : (SCR pp.767-68) Page 1689 How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out often enough to be inexpedient. Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of

> events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians.
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> *43. There can be many cases where non-grant of extension beyond 30 days would amount to failure of justice. The object of the Code is not to promote failure of justice.* Section 148, therefore, deserves to be read down to mean that where sufficient cause exists or events are beyond the control of a party, the court would have inherent power to extend time beyond 30 days."

7. It is laid down in the above judgment that section 148 does not deal with the time prescribed under the Limitation Act, but it only deals with the time which is fixed by the Court for performing certain acts and hence the petition for extension is maintainable.

8. To entertain the petition is one thing and to adjudicate it on merits, is another thing. Every petition which is maintainable may not be allowed and the maintainability of a petition can not be expected to have a positive impact on the petition. It is up to the Trial Judge to consider the merits of the petition filed under Section 148 petition and pass appropriate orders after taking the same on file. The trial Court has misguided itself by thinking that the petition itself should not be received because it is not maintainable fundamentally. Since the petition under section 148 filed to extend the time is to perform an act ordered to be done by the Court, the Court can take the petition on file. However it has to be decided only on merits.

With these observations this Civil Revision Petition is **allowed** and the order of the Principal District Munsif Court, Vandavasi, in I.A. Nil of 2012 in I.A.No.605 of 2009 in O.S.No.144 of 2006, is hereby set aside. No costs. Consequently, connected civil miscellaneous petition is also closed. The Petition filed under Section 148 CPC should be disposed of within a period of two weeks from the date of receipt of a copy of this order.

24.06.2021

Speaking/Non-speaking
Index : Yes/No
Internet : Yes/No

jrs

R.N.MANJULA,J.

Jrs

To

1.The Principal District Munsif Court, Vandavasi

2.The Section Officer,
V.R.Section,
High Court, Madras.

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