

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

CORAM :

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P (PD).Nos.2403 & 2404 of 2018
and
Cmp.Nos.14841 & 14842 of 2018

Sri Venkateshwara Financer,
Rep.by its Owner,
V.Varadararajan, S/o.Late Viswanathan ... Petitioner/Plaintiff
(in both CRP)

Versus

Sargunammal ... Respondent/Defendant
(in both CRP)

Prayer in CRP.No.2403 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Docket order dated 18.07.2018 made in I.A.No.290 of 2018 in I.A.No.529 of 2017 in O.S.No.89 of 2013 on the file of the learned Subordinate Judge at Vaniyambadi, Vellore District.

Prayer in CRP.No.2404 of 2018: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Docket order dated 18.07.2018 made in I.A.No.291 of 2018 in I.A.No.531 of 2017 in O.S.No.90 of 2013 on the file of the learned Subordinate Judge at Vaniyambadi, Vellore District.

For Petitioner : Mr.Udaya Kumar S.
(in both CRP)

For Respondent : Mr.N.Suresh
(in both CRP)

COMMON ORDER

These Civil Revision petitions have been filed challenging the docket orders dated 18.07.2018 made in I.A.No.290 and 291 of 2018 in I.A. Nos. 529 and 531 of 2017 in O.S.Nos.89 & 90 of 2013 respectively by the Court below, by which the court below extended the time limit for compliance of the earlier order 23.04.2018 for the payment of cost of Rs.2,500/- in both the applications.

2.The Court below, while passing the order dated 23.04.2018, in I.A.No.529 and 531 of 2017, filed under Section 5 of the Limitation Act to condone the delay of 48 days in filing the petition to set aside the exparte decree passed in O.S.Nos.89 & 90 of 2013, stated that the time limit for the payment of cost to the revision petitioner was extended till 04.06.2018, on failure to pay the cost of Rs.2,500/- to the revision petitioner herein, the application would be dismissed automatically on 06.06.2018. But she has not paid the costs to the revision petitioner herein, within the time limit.

3.The learned counsel for revision petitioner submits that the court below became functus officio to extend the time, while so, the Court below has no authority to pass the order extending the time. In such case, the revision petitioner has no other remedy against the said docket but to file a Civil Revision Petition before this Court. In support of his contention, he relied on the judgments of this Court in reported in 2001 (3) Law weekly 254, 2003 (3) MLJ 770 and 2005(3) MLJ 331 and also relied on the judgment of Hon'ble Supreme Court of India, in the case of Bholi (Dead) by LR's vs. Lachhman Singh & others. Further, the learned counsel for the petitioner contended that the Court below should not have extended the time by virtue of the impugned order as the said court become functus officio to pass any order for extension of time beyond 06.06.2018. Therefore, he submitted that the order passed was without any application of mind and the same is liable to be set aside.

4.Per contra, the learned counsel for the respondent submitted that the applications were filed under Section 148 of CPC, for extension of time. The court below has power to extend the time, in case, if the order has been passed with the condition on payment of cost within the time limit. Hence, the application filed under Section 148 of CPC was heard on merits and decided by the court below. In the result, the application was allowed and the time limit was also extended by the court below. Further, he submitted that the court has not become functus officio to extend the time for payment of costs and in this regard, he relied on the judgment of the Division Bench of this Court in the case of Gowri Ammal vs. Murugan & others reported in CDJ 2006 MHC 1278, and also reported Judgment of this Court in CDJ 2014 MHC 6722 in the case of Kumarasamy vs. Venkatesan, and contended that there is no illegalities in the order passed by the Court below and the same is not liable to be set aside. There is no merit in the present Civil Revision Petition and he prayed to dismiss the revision petition.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6. Upon perusing the records, an exparte order was passed on 03.04.2017 in O.S.Nos.89 & 90 of 2013. Immediately, after passing the exparte order, the respondent herein filed the applications in I.A.Nos.529 & 531 of 2017 respectively in the suit, to condone the delay of 48 days in filing the petitions to set aside the exparte order dated 03.04.2017. The said petitions were allowed on 23.04.2018 on condition to pay a sum of Rs.2,500/- as cost. As per the order of the Court below, the respondent herein was supposed to pay the cost on or before 06.06.2018, but, she has not paid any cost as ordered by the Court below in I.A.Nos.529 & 531 of 2017. Subsequently, she filed applications in I.A.Nos.290 & 291 of 2018 in I.A.Nos.529 & 531 of 2017 respectively, after a lapse of 7 days from the date on which she ought to have complied with the order on 06.06.2018, therefore, she filed the said applications under Section 148 of CPC., to extend the time for payment of costs of Rs.2,500/-. The Court below after considering the petitions on merits extended two weeks time to pay the cost of Rs.2,500/-. At this juncture, it would be appropriate to refer the decision rendered by the Division Bench of this Court reported in Gowri Ammal vs. Murugan & others reported in CDJ 2006 MHC 1278, wherein, it was held as follows:-

"10. Section 148 of CPC 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 CPC, even if an application has been filed subsequent to the expiry of the original period fixed. "

7. Further, this Court also elaborately discussed and arrived at a conclusion to extend the time limit even after the expiry of time as per Section 149 of CPC, in another the judgment reported in CDJ 2014 MHC 6722 in the case of Kumarasamy vs. Venkatesan, wherein, these aspects were considered in paragraph No.14, which reads as follows:-

"14.Keeping the above principles in mind, if we look into the facts and circumstances of the present case, it would show that the application filed after the expiry of the time, is certainly entertainable and the Court below has rightly entertained. Therefore, it cannot be contended that the trial Court ought not to have entertained the application. When once the Court has the power to extend the time for performing the action as directed in the original order, it goes without saying that the original order itself is revived and therefore, the consequential dismissal or deemed dismissal also gets restored to its original position. If a power is conferred to extend the time even after its expiry, exercise of such power and passing an order thereon, would over-ride the consequential order or orders. Otherwise, it is meaningless to confer such power. Hence, restoration of the original order becomes automatic, once the time is extended. Such restoration is only technical in nature and does not require an adjudication."

8.A perusal of the judgment would show that even an application was filed for an extension of time, after the expiry of the time limit fixed by the Court, the Court has power to entertain the petition. In the present case, admittedly the application was filed after a period of 7 days, from the time limit fixed by the Court below. The time was granted for the payment of costs of Rs.2,500/- on or before 04.06.2018. Further, the Court below observed that in case of the non-payment of the said amount, the application would be dismissed automatically on 06.06.2018. Since the costs was not paid, the application was dismissed. A petition for extension of time was filed after a lapse of 7 days from the date on which, she ought to have been complied with the order on 06.06.2018. As per the law laid down by the Division Bench of this Court in the above judgment, even after the expiry of the time limit fixed by the Court below for the payment of costs, the application for extension of time for payment of costs is permissible. The said principle will apply to the present case as well. Therefore, I do not find any substances in the submissions of the learned counsel for the revision petitioner. Thus, this Court does not find any merits in the present revision petitions.

9.In the result, the Civil Revision Petitions are dismissed confirming the order dated 18.07.2018 made in I.A.No.290 and 291 of 2018 in I.A.No.529 and 531 of 2017 in O.S.No.89 and 90 of 2013 on the file of the learned Subordinate Judge at

Vaniyambadi, Vellore District. No costs. Consequently, the connected miscellaneous petitions are closed.

10.However, while dismissing the Civil Revision Petitions, since the matter is pending for eight years, this Court directs the Court below to dispose of the suits, within a period of four months, from the date of receipt of a copy of this order.

11.In case, if the costs has not been paid as directed by the Court below so far, two weeks time is granted for the payment of costs of Rs.2,500/- as directed by this Court, from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

klt

To

The Subordinate Judge,Vaniyambadi, Vellore District.

+1cc to Mr.N.Suresh, Advocate Sr.No.10672

C.R.P (PD).Nos.2403 & 2404 of 2018
and
Cmp.Nos.14841 & 14842 of 2018

CA(CO)
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