

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**CRP (PD).No.4791 of 2017 and CRP (PD) No.748 of 2018
and
CMP.Nos.22519 of 2017 and 3787 of 2018**

CRP (PD).No.4791 of 2017

1. Chozharajan
2. Pavalakodi
3. Durairaj
4. Dharmaraj

... Petitioners

Vs.

Natarajan @ Natesan (Deceased)

1. Chellammal
2. Senthamizhil Selvan
3. Durai Murugan
4. Saravanan
5. Senthil kumar

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 05.07.2014 made in I.A.No.579 of 2014 in O.S.No.210 of 2006 on the file of the District Munsif Court, Jayankondam and allow the Civil Revision

Petition.

For Petitioners : Mr.M.Senthil Vadivu

For Respondents : Mr.M.Sampath Kumar

CRP (PD) No.748 of 2018

Natarajan @ Natesan (Deceased)

1. Chellammal
2. Senthamizhil Selvan
3. Durai Murugan
4. Saravanan
5. Senthil kumar

... Petitioners

Vs.

1. Chozharajan
2. Pavalakodi
3. Durairaj
4. Dharmaraj

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 24.08.2017 in I.A.No.377 of 2016 in O.S.No.210 of 2006 on the file of the learned District Munsif, Jayamkondam and allow this Civil Revision Petition.

For Petitioners : Mr.M.Sampath Kumar

For Respondents : M.Senthil Vadivu

COMMON ORDER

CRP (PD).No.4791 of 2017 is filed as against the fair and decretal orders passed in I.A.No.579 of 2014 in O.S.No.210 of 2006 dated 05.07.2014 on the file of the learned District Munsif, Jayankondam, thereby dismissing the petition seeking re-issuance of warrant for the appointment of Advocate Commissioner.

2. CRP (PD).No.748 of 2018 is filed as against the fair and decretal orders passed in I.A.No.377 of 2016 in O.S.No.210 of 2006 dated 24.08.2017 on the file of the learned District Munsif, Jayankondam, thereby allowing the petition filed under Section 148 of CPC to extend the time for payment of costs.

3. The petitioners are the plaintiffs and the respondents are the defendants in CRP (PD).No.748 of 2018. The petitioners filed a suit for

declaration and injunction in respect of the suit property. In the year 2006, while pending the suit, the plaintiffs filed a petition for appointment of Advocate Commissioner to inspect the suit property and to note down the physical features. Accordingly, the Advocate Commissioner was appointed and filed his report on 20.07.010. Though both the plaintiffs as well as the defendants filed their objections to the Advocate Commissioner's report, the respondents herein did not file any petition to re-issuance of warrant and re-inspect the suit property. Only on 05.06.2014, the respondents filed a petition for appointment of another Advocate Commissioner to inspect the suit property with the help of Surveyor to measure the same and file his report.

4. While pending the said application, when P.W.1 was in box for cross examination, the Trial Court had given several opportunities for cross examining P.W.1. Even then, the respondents herein failed to cross examine P.W.1 and as such, they were set ex-parte and the ex-parte decree was passed on 23.09.2014. The respondents herein filed a petition to set aside the ex-parte decree with a delay of 85 days. The said condone delay petition

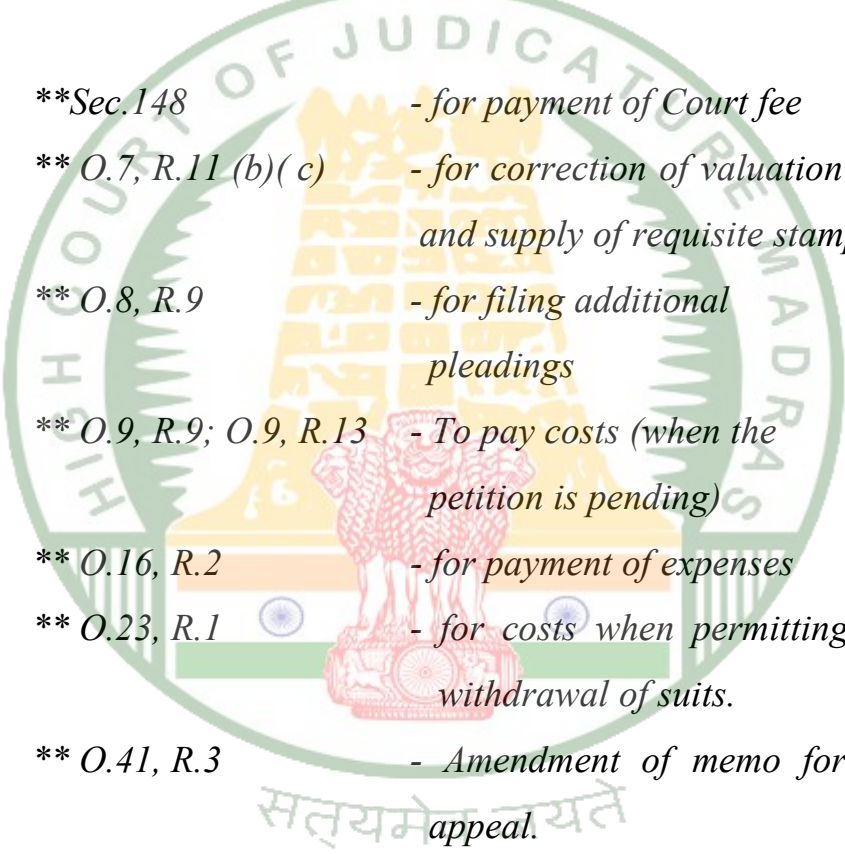
was allowed and subsequently, the ex-parte decree was set aside by an order dated 15.02.2016 on payment of costs of Rs.500/- to be paid to the petitioners on or before 22.02.2016. Even till 22.02.2016, the respondents failed to pay the costs as imposed by the Court below by an order dated 15.02.2016. Thereafter, on 22.03.2016, the respondents filed a petition under Section 148 of CPC to extend the time for payment of costs of Rs.500/-. The same was allowed and aggrieved by the same, the present Civil Revision Petition is filed.

5. The learned counsel for the petitioners in CRP (PD).No.748 of 2018 raised the ground that whether the petition filed under Section 148 r/w 151 of CPC is maintainable. In support of his contentions, he relied upon the judgment of this Court reported in (2005) 3 M.L.J.331 (**Rangasamy Gounder -vs- Muthusamy Gounder**), in which it has been held as follows:-

“14. Time granted by the Court for payment of costs while setting aside an exparte decree under O.9, Rule 13, as a condition precedent thereto is not an act prescribed or allowed by the Code. Section 148 CPC does not apply to

such a case.

15. Section 148 only enables the Court to enlarge the said period to do any act prescribed or followed by the code. Emphasis is on “to enlarge the time to do any act prescribed or allowed by the Code”. To explain the act prescribed or allowed by the Code, we may enumerate few instances.

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- **Sec.148 - for payment of Court fee*
 - ** O.7, R.11 (b)(c) - for correction of valuation and supply of requisite stamp*
 - ** O.8, R.9 - for filing additional pleadings*
 - ** O.9, R.9; O.9, R.13 - To pay costs (when the petition is pending)*
 - ** O.16, R.2 - for payment of expenses*
 - ** O.23, R.1 - for costs when permitting withdrawal of suits.*
 - ** O.41, R.3 - Amendment of memo for appeal.*

16. Thus Sec.148, C.P.C applies to extend the time to do any act prescribed or allowed by the Court only when the matter is pending before the Court and the Court is grant

time not exceeding thirty days with a view to minimise procedural delay. When I.A.No.658 of 2002 has reached the finality, there is nothing more to do any act prescribed or allowed by the Code. Hence it would only be proper to hold that with the dismissal of the application when the Court has become functus officio. Sec.148 cannot be invoked. The effect of Sec.148 (prior to amendment) remains the same even after the amendment by inserting the expression “not exceeding thirty days”. In matters where the Court has become functus officio, inserting of expression time by thirty days is of no avail to the respondent/defendant.

17. What otherwise could not be done through the prior provision, Sec.148 is sought to have been obtained by invoking the inherent jurisdiction of the Court under Sec.151, C.P.C. It is well settled that where the Code contains specific provisions, it would meet the instances of the case, inherent jurisdiction should not be invoked. In Nain Singh v. Koonwarjee, (1971) 1 S.C.J. 252: A.I.R. 1970 S.C 997 the Supreme Court has held:

Under inherent power of Court recognised by Sec.151, a Court has no power to do what is prohibited by the Code. Inherent jurisdiction of the Court must be exercised subject to the rule that if the Code does

contain specific provisions which would meet the necessities of the case, such provisions should be followed and inherent jurisdiction should not be invoked. Further the power under Sec.151 of the Code cannot be exercised as an appellate power.”

6. This Court held that time granted by the Court for payment of costs while setting aside an ex-parte decree under Order 9 Rule 13 of CPC as a condition precedent thereto is not an act prescribed or allowed by the Code. Section 148 of CPC does not apply to such a case. It enables the Court to enlarge the said period to do any act prescribed or allowed by the Code. Emphasis is on “to enlarge the time to do any act prescribed or allowed by the Code”.

7. It is relevant to extract the provision under Section 148 of the Civil Procedure Code as under:- सत्यमेव जयते

“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.”

8. In the case on hand, the respondents were set ex-parte by the ex-parte judgment and decree dated 23.09.2014. Thereafter, they filed the petition to set aside the ex-parte decree with a delay of 85 days. Both the petitions were numbered in I.A.Nos.344 and 1204 of 2015. The condone delay petition was allowed and subsequently, the petition in I.A.No.1204 of 2015 to set aside ex-parte decree was also allowed by an order dated 15.02.2016 on payment of costs of Rs.500/- to be paid to the petitioners on or before 22.02.2016. The respondents did not comply the same and as such, by an order dated 22.02.2016, the petition to set aside the ex-parte decree was dismissed. Thereafter, on 22.03.2016, the respondents filed a petition under Section 148 of CPC for extension of time to pay the costs. The suit was decreed ex-parte and conditional order was not complied with. and therefore, after expiry of time, the application filed under Section 148 of CPC for extension of time cannot be considered. The Court has no power to extend the time, when the Court has become *functus officio*. Therefore,

the above judgment cited by the learned counsel for the petitioners in CRP (PD) No.748 of 2018 is squarely applicable to the case on hand. Thus, Section 148 of CPC applies to extend the time to do any act prescribed or allowed by the Code. Therefore, extension of time is not permissible under Section 148 of CPC.

9. In view of the above discussion, the order passed by the Court below is perverse and illegal and it is liable to be set aside. Accordingly, CRP (PD).No.748 of 2018 is allowed and the order passed in I.A.No.377 of 2016 in O.S.No.210 of 2006 dated 24.08.2017 is hereby set aside. Consequently, the connected Miscellaneous Petition is closed. No costs.

10. In view of the order passed in CRP (PD).No.748 of 2018, nothing survives in CRP (PD).No.4791 of 2017 is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

10/12

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To

1. The District Munsif, Jayankondam.
2. The Section Officer,
V.R. Section, High Court of Madras.



G.K.ILANTHIRAIYAN,J.

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and
CRP (PD) No.748 of 2018**

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