



CRP (NPD) Nos.2598 and 2599 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.06.2023
Pronounced on	28.07.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

CRP (NPD) Nos.2598 and 2599 of 2009

CRP (NPD) No.2598 of 2009

1.P.Jayaraman (died)

2.Chinnaponnu

3.Kumudha

4.Punitha

5.Anitha

6.Minor Harshi

(Being rep by legal representation and next friend
Chinnaponnu, the Grandmother of the Minor)

7.Vignesh

8.Kamesh

9.Rakesh

(Petitioners 2 to 9 brought on records as LR's of the deceased

sole petitioner viz., P.Jayaraman vide Court order dated 12.04.2023

made in CMP.Nos.11523 to 11525 of 2019)

... Petitioners

Vs.

1.Rukmani



CRP (NPD) Nos.2598 and 2599 of 2009

2.Navaneethamma

3.Kumari

Srinivasulu Naidu (died)

4.Kannaiah

5.Vasantha

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the order dated 09.06.2009 in I.A.No.128 of 2008 in O.S.No.225 of 1999 on the file of the learned Subordinate Judge, Poonamallee.

CRP (NPD) No.2599 of 2009

1.P.Jayaraman (died)

2.Chinnaponnu

3.Kumudha

4.Punitha

5.Anitha

6.Minor Harshi

(Being rep by legal representation and next friend
Chinnaponnu, the Grandmother of the Minor)

7.Vignesh

8.Kamesh

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(Petitioners 2 to 9 brought on records as LR's of the deceased)



CRP (NPD) Nos.2598 and 2599 of 2009

sole petitioner viz., P.Jayaraman vide Court order dated 12.04.2023

made in CMP.Nos.11435, 11437 and 11441 of 2019)

... Petitioners

Vs.

1.Rukmani

2.Navaneethamma

3.Kumari

Srinivasulu Naidu (died)

4.Kannaiah

5.Vasanth

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the order dated 03.07.2009 in I.A.S.R.No.4980 of 2009 in I.A.No.128 of 2008 in O.S.No.225 of 1999 on the file of the learned Subordinate Judge, Poonamallee.

For Petitioners : Mr.A.Palaniappan

For Respondents : No appearance

(in both petitions)



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COMMON ORDER

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The revision petition in CRP(MD) No.2598 of 2009 is filed as against the order dated 09.06.2009 made in I.A.No.128 of 2008 in O.S.No.225 of 1999, on the file of the learned Subordinate Judge, Poonamallee.

2.The revision petition in CRP(MD) No.2599 of 2009 is filed as against the order made in I.A.S.R.No.4980 of 2009, dated 03.07.2009, in I.A.No.128 of 2008 in O.S.No.225 of 1999 on the file of Sub Court, Poonamallee.

Facts:-

3. The respondents herein as plaintiffs have filed the above suit in O.S.No.225 of 1999 for partition in the suit property against the defendants in the suit and had impleaded the first petitioner herein as the purchaser of the property by virtue of a sale deed dated 23.07.1997.

4.While so, an *ex parte* preliminary decree was passed on 09.12.2002 against the first petitioner for non-filing of the written statement. According to the first petitioner, his father was looking after several suits and the present



suit. Thereafter, his father died on 27.02.2003. The first petitioner was of the opinion that in the aforesaid suit, written statement was filed by his father.

The first petitioner preferred a petition to condone the delay of 1754 days in filing the set aside application on 09.12.2002. The trial Court allowed the said application on 09.06.2007 on payment of cost of Rs.500/- on or before 19.06.2009. However, the conditional order was not complied by the first petitioner. The first petitioner submitted that he was not aware of the order passed on 09.06.2009, since the counsel for the first petitioner failed to note down the conditional order passed in I.A.No.128 of 2008. Thereafter, the first petitioner filed an application for extension of time for payment of cost, the same was rejected by the trial Court.

5. During pendency of this revision petition, the first petitioner died and his legal heirs were impleaded.

Rival Submissions:-

6. The learned counsel appearing for the revision petitioners would submit that, it is the duty of Court, to administer justice. In the present case, the petition filed by the first petitioner was allowed on payment of cost and



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such cost was not paid within prescribed time and petition to condone delay was dismissed. Thereafter, the first petitioner filed an application for extension of time and it was dismissed on ground that cost was not paid. It is submitted that, the Hon'ble Supreme Court in ***Salem Advocate bar Association, Tamil Nadu Vs Union of India (2005 (6) SCC 344)*** held that the upper limit fixed in Section 148 cannot take away inherent powers of Court to pass orders for ends of justice. Therefore, the Trial Court without considering the above principles rejected the application filed by the first petitioner for extension of time for payment of costs erroneously and calls for interference.

7. On the other hand, the learned counsel on behalf of the respondents would submit that the Court has no power to extend the time under Section 148 CPC, since the Court was not seisin of the matter and it became *functus officio*. Now it has to be considered whether the application has been dismissed for non-compliance of the conditional order, the Court has become *functus officio* and, as such, it cannot entertained the petition for extension of time under Section 148 of CPC is liable to be rejected.



Discussions:-

WEB COPY 8. 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.”

9. A plain reading of the above would show that when any period or time is granted by the Court for doing any act, the Court has the discretion from time to time to enlarge such period even if the time originally fixed or granted by the Court has expired. Previously discretion was given to the Court to enlarge the period fixed or granted by the Court for any act prescribed or allowed by the Code . The CPC (Amendment) Act, 1999 puts a limit of 30 days on the enlargement of such period. The words “not exceeding thirty days in total” have been inserted with a view to curtail procedural delay caused by any party to the suit or proceeding. Enlargement of time, whether one-time or phased, cannot exceed thirty days. Before



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amendment there was no such restriction of time. However, as per the principles laid down in ***Salem Advocate bar Association, Tamil Nadu Vs Union of India (2005 (6) SCC 344)*** 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.

10. In the light of the principles laid down by the Hon'ble Supreme Court in ***Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (2005 (6) SCC 344)***, Section 148 and 151 CPC, allow extension of time even if the original period fixed has expired. A conjoint reading of Section 148 and 151 CPC would make it clear that the Court has power to extend the 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. In the present case, the trial Court simply rejected the application stating that the earlier order was not complied within stipulated time. Therefore, while setting aside the order of the trial Court in I.A.S.R.No.4980 of 2009, dated 03.07.2009, this Court deem it appropriate to direct the Court below to



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number the petition seeking extension of time, if there are *bona fide* reasons for non-compliance of the order and the trial Court may consider the same and pass orders in accordance with law.

11. To make it clear, this Court do not give any opinion about the merits of the matter. The trial Court uninfluenced by any of the observations made by this Court in this order, shall dispose of the matter on merits, taking into consideration various circumstances shown by the parties and deciding the question as to whether the application can be allowed or dismissed.

12. The civil revision petition in CRP(MD)No.2599 of 2009 is allowed accordingly. Consequently, the Civil Revision Petition in CRP(MD)No.2588 of 2009 is disposed of accordingly. No costs.

28.07.2023

Index : Yes/No
Internet : Yes
cp/vsn



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K.GOVINDARAJAN THILAKAVADI

cp/vsn

To

The Subordinate Judge,
Poonamallee.

Pre-Delivery Order made in
CRP (NPD) Nos.2598 and 2599 of 2009

28.07.2023

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