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C.R.P(MD).No.1893 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.04.2023

Pronounced on : 28.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(MD).No.1893 of 2019

1.M.Venkateswaran
2.M.Karthigai Selvan

...Petitioners

Vs.

M.Raman Servai (deceased)

1.R.Chinnammal
2.R.Karupayee Devi
3.R.Ramchandran
4.R.Muthu
5.R.Rajathi
6.R.Rohini
7.R.Murugan

... Respondents

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair order and decreetal order dated 10.12.2018 passed in I.A.No.1478 of 2018 in O.S.No.88 of 2007 on the file of the Principal District Munsif Court, Aruppukottai.

For Petitioners : Mr.V.Muniasamy

For Respondents : Mr.G.Mariappan



ORDER

This Civil Revision Petition is filed against the fair order and decreetal order dated 10.12.2018 passed in I.A.No.1478 of 2018 in O.S.No.88 of 2007 on the file of the Principal District Munsif Court, Aruppukottai.

2. The brief facts of the case:

The revision petitioners are the plaintiffs in O.S.No.88 of 2007 on the file of the Principal District Munsif Court, Aruppukottai. The petitioners filed the said suit against the respondents/defendants for partition of the suit properties mentioned therein. The said suit was "dismissed for default" on 16.11.2012. The petitioners/plaintiffs filed the petition in I.A.No.134 of 2013 to condone the delay of 50 days in filing the petition for restoration. The Trial Court had allowed the petition subject to condition directing the petitioners/plaintiffs to pay a cost of Rs.500/- on or before 28.11.2013. The petitioners/plaintiffs had not complied with that condition and hence, the petition in I.A.No.134 of 2013 was dismissed. Again, in the year 2016, the petitioners have filed the petitions in I.A.No.71 of 2016 to condone the delay of 631 days in filing restoration petition to set aside ex-parte order dated 16.11.2012 passed in O.S.No.88 of 2007 along with the petition in I.A.No.72 of 2016



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for restoration of the said suit. After hearing both, the Trial Court has dismissed both petition by way of common order dated 13.07.2018. Aggrieved by the dismissal order passed in I.A.No.71 of 2016, the petitioners/plaintiffs have preferred Civil Revision Petition in C.R.P. (MD)No.1942 of 2018 before this Court. The said C.R.P.(MD)No.1942 of 2018 was dismissed on 07.09.2018 by giving liberty to the petitioners/plaintiffs to file an Extension of Time application before the Trial Court. The petitioners/plaintiffs have filed the petition in I.A.No. 1478 of 2018 in O.S.No.88 of 2007 under Sections 148 and 149 of the Civil Procedure Code, before the Trial Court seeking extension of time in pursuant to the order passed in C.R.P(MD)No.1942 of 2018 dated 07.09.2018. The respondents have filed their counter objecting to the petition in I.A.No.1478 of 2018. After hearing both, the Trial Court has dismissed the petition in I.A.No.1478 of 2018 in O.S.No.88 of 2007 on 10.12.2018. Aggrieved by the order of the Trial Court, the petitioners/plaintiffs moved this Court by way of this Civil Revision Petition.

3. Heard both side and perused the records in this Civil Revision Petition.



4. The learned counsel appearing for the petitioners has argued that the petitioners filed the main suit in O.S.No.88 of 2007 against the respondents before the Trial Court for partition. The said suit was "dismissed for default" on 16.11.2012. The petitioners have filed the petition in I.A.No.134 of 2013 for condoning delay in filing restoration of the suit and the same was allowed on condition to pay a cost of Rs.500/-. Thereafter, the second petitioner was affected by a mental disorder he was admitted at hospital in Chennai, the cost was not paid. On recovery from illness, the petitioners have filed the petitions in I.A.No.71 of 2016 to condone the delay along with restoration petition in I.A.No.72 of 2016. Both petitions were dismissed by the Trial Court. Against the said dismissal order, the petitioners have filed the Civil Revision Petition in C.R.P(MD)No.1942 of 2018. But, the said revision was dismissed by this Court giving liberty to the petitioners to file the petition seeking extension of time. Hence, the petitioners have filed the petition in I.A.No.1478 of 2018 under Section 148 of the Civil Procedure Code, for extension of time before the Trial Court. The Trial Court without considering the facts and circumstances of the case, has dismissed the said petition as the same was not maintainable. The Trial Court has failed to consider the fact that the delay condone petition in I.A.No.134 of 2013 was allowed on condition and when the said order



was passed, the maintainability of minor was not questioned and discussed. Further, the second minor petitioner was represented through his natural guardian/father. A guardian of a minor in the suit continues to be the guardian even in execution proceedings until he dies or he is removed. This Court has clearly passed an order giving liberty to file an Extension of Time petition before the Trial Court, which could show some indulgence. It is a settled principle by this Court and by the Hon'ble Supreme Court that the power under Section 148 of the Civil Procedure Code can be exercised even if original period fixed had expired and such power is discretionary and intended to be exercised only to meet ends of justice. The petitioners have filed the main suit for partition and hence, the petitioners may given an opportunity to put forth his case by relying on the following decisions of this Court and of various High Court and the Hon'ble Supreme Court.

(1) AIR 2003 NOC 116 (Kant.) (Parvatewwa and Ors. Vs. Bhagawwa and Ors.), wherein it is stated as follows:

“Ex-parte decree was passed against defendants. That decree was set aside and costs awarded for restoring suit. Defendants failed to deposit cost within stipulated time. Plaintiffs however withdrew the cost belatedly paid by defendant. Having done so, the plaintiff cannot seek cancellation of restoration



order raising technical plea that costs were not deposited within time.”

WEB COPY (2) AIR 1937 Calcutta 259, wherein it is held in last paragraph as follows:

“A guardian of a minor appointed in the suit continues to be the guardian of the minor in the execution proceedings until he dies or is removed. The decree holder is therefore not bound to have a fresh guardian of the minor judgment-debtor appointed in the present execution proceeding.”

(3) AIR 2011 Punjab and Haryana 38, wherein it is held in paragraph No.8 as follows:

“In the instant case, the plaintiff has not been adjudged to be of unsound mind either under the Act or in any other proceedings. Consequently, second part of Order 32, Rule 15 CPC applies to the instant case and therefore, it was obligatory on the trial court to conduct inquiry to find out as to whether the plaintiff, by reason of any mental infirmity, is incapable of protecting his interest as plaintiff in the suit. The trial court has, however, failed to conduct any such inquiry. In other words, the trial court has failed to exercise jurisdiction, which vested in it under Order 32, Rule, 15 CPC.”



(4) **AIR 2005 Supreme Court 3353**, wherein it is held in paragraph No.45 as follows:

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“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 Court. The rigid operation of the section would lead to absurdity.....Extension beyond maximum of 30 days, that can be permitted if the act could not be performed within 30 days for the reason beyond the control of the party.”

(5) **2015 (1) CTC 271**, wherein this court held in paragraph No.12 as follows:

“Going by the above decisions of the Honourable Supreme Court and the Division Bench of this Court, it is clear that the Court has power to extend the time even after expiry of the original period. Apart from such proposition of law, it is also made clear by the Honraouble Supreme Court in D.V.Paul’s case, that the curtailment of 30 days alone for extension under Section 148 CPC is also not correct, and on other hand, it is the observation of the Honourable Supreme Court that the power that is inherent in the Court to pass orders for meeting the ends of justice and preventing the abuse of process of the Court, cannot be taken away by putting



upper limit or limiting the period for which the extension can be granted.”

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5. Per contra, the learned counsel for the respondents has vehemently contended that the petitioners have filed the main suit for partition and left it for dismissal for default on 16.11.2012, knowing the fact that they have no valid case. After dismissal for default, the petitioners have not chosen to file restoration petition in time. They have filed the petition in I.A.No.134 of 2013 to condoning the delay of 50 days in filing restoration petition. In that petition, conditional order was passed to pay the cost of Rs.500/- by 28.11.2013. The petitioners have failed to pay the said cost. Then, after lapse of two years, again the petitioners have filed the petitions in I.A.No.71 of 2016 to condone the delay of 671 days in filing restoration petition in I.A.No.72 of 2016. Both petitions were dismissed by the Trial Court. Against the said order, C.R.P(MD)No.1478 of 2018 was filed before this Court and this Court dismissed the said Civil Revision Petition and has given liberty to the petitioners to file the extension petition. The petitioners have filed the extension petition without assigning any valid reason. The petitioners stated that the second petitioner became a psychiatric patient and was admitted in hospital at Chennai. In that circumstance, the petitioners could not pay the cost as per conditional order. The petitioners failed to



prove their reason by letting in oral and documentary evidence. Even as per the medical certificate, filed by the petitioners, the second petitioner was suffering from Schizophrenia under treatment and rehabilitation training at M.S.Chellamuthu Trust and Research Foundation, since 27.09.2014. But, the conditional order was passed on 28.11.2013, i.e. nearly one year prior to treatment of the second petitioner. Though the Court has inherent power to grant an extension of time, it may be done only if the petitioners prove sufficient cause. In this case, the petitioners have not established their reason for non-compliance. The main suit is of the year 2007, if the petitioners are allowed to pay the cost for delay condone, then the litigation would prolong from the restoration petition till finality in the suit is reached. Hence, the petitioners have no valid case in this Civil Revision petition and the same may be dismissed.

6. On perusal of records, it is clear that the petitioners have filed the suit for partition against the defendants. The suit was "dismissed for default" on 16.11.2012. Thereafter, the plaintiffs filed the petition in I.A.No.134 of 2013 to condone the delay of 50 days in filing the restoration petition and the same was allowed on condition to pay a cost of Rs.500/- to other side on or before 28.11.2013. The plaintiffs have not paid the cost. Again in the year 2016, the plaintiffs filed the petition in



I.A.No.71 of 2016 to condone the delay of 671 days in filing restoration petition, which was dismissed by the Trial Court on 13.07.2018. The plaintiffs challenged the order dated 13.07.2018 before this Court in C.R.P(MD)No.1942 of 2018. This Court dismissed the said Civil Revision Petition by giving liberty to file an extension of time petition. As per the direction of this Court, the petitioners have filed the petition in I.A.No.1478 of 2018 seeking extension of time before the Trial Court. But, the Trial Court has declined to grant further time. The learned counsel for the respondents contended that the Court has no power to extend the time after expiry of time granted. The Hon'ble Supreme Court clearly held that the Court has the power to extend the time even after expiry of the original period and that power is inherent in the Court to pass orders for meeting the ends of justice. Procedural law should be construed liberally. The Rule of Procedure are handmaid of justice and shall not be used as a technical ground for defeating ends of justice. This Court has observed while disposing of C.R.P(MD)No.1942 of 2018 that the plaintiffs would not be precluded from instituting another suit on the same cause of action and therefore, in case of this nature of partition suit, the Court below can show some indulgence. The plaintiffs have stated the reason for the delay while filing the delay condone petition and admittedly that was allowed by the trial Court on condition of payment of



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cost Rs.500/- within a stipulated time. While so, the delay was condoned by the Court below. The only delay occurred on payment cost. That was explained by the plaintiffs that the second plaintiff was affected by a mental disorder and he took treatment in Chennai for a long period. In the above facts and circumstances, the Trial Court has to extend the time for payment in the interest of justice and in order to avoid a multiplicity of proceedings. Therefore, the impugned order needs interference by way of this Civil Revision Petition and thus, this Civil Revision Petition is to be allowed by granting further time to pay cost.

7. In the result, this Civil Revision Petition is allowed. The impugned order passed in I.A.No.1478 of 2018 in O.S.No.88 of 2007 on the file of the Principal District Munsif Court, Aruppukottai is set aside and the said petition is allowed. The time for payment of cost is extended and the petitioners are directed to pay the cost of Rs.500/- as directed by the trial Court within a period of 15 days from the date of receipt of a copy of this order. No costs.

28.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

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- 1.The Principal District Munsif Court,
Aruppukottai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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