

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Hiranmay Bhattacharyya.

CO 3471 of 2023

**Smt. Archana Maji & Ors.
Vs.
Sri Bhim Prasad Manna & Ors.**

For the Petitioners	:	Mr. Goutam Thakur, Mr. D.P. Adhikari
For the Opposite Party No. 1.	:	Mr. Tanmoy Mukherjee, Mr. Souvik Das, Mr. K. Raihan Ahmed, Mr. Rudranil Das, Mr. Soumava Santra, Mr. Tapas Chatterjee
Heard on	:	03.04.2024
Judgment on	:	03.04.2024

Hiranmay Bhattacharyya, J:

1. This application under Article 227 of the Constitution of India is at the instance of the defendant nos.1(ka), 1(kha) and 1 (ga) and is directed against an order being No.9 dated July 5, 2023 passed by the learned Civil Judge (Senior Division), 1st Court, Tamluk, District-Purba Medinipur in OS No.11 of 2022.

2. By the order impugned, the application under Order VII Rule 11(d) of the Code of Civil Procedure, at the instance of the petitioners, stood rejected. By the later portion of the said order, the petition dated 1st August, 2022 filed by the plaintiff/opposite party herein stood allowed.
3. The opposite party herein instituted a Title Suit being No.2 of 2012 before the Court of the learned Civil Judge (Junior Division), Additional Court, Tamluk. The plaint of the said suit was returned to the plaintiff/opposite party herein with a direction to present the same to the court in which the suit should have been instituted within one month from the date of the Order No.180 dated May 30, 2022. Thereafter, the plaint of the instant suit being OS No.11 of 2022 was filed before the Court of the learned Civil Judge (Senior Division), 1st Court, Tamluk, District-Purba Medinipur on 1st August, 2022.
4. The plaintiff claims that the plaint was returned to him on 27th July, 2022 and due to his illness the plaint could not be presented within the time limit indicated in the order dated 30th May, 2022.
5. The plaintiff, accordingly, filed an application praying for condonation of delay in presenting the plaint of the instant suit beyond the stipulated time limit. Such application appears to have been filed on 1st August, 2022. Subsequently the defendant nos.1(ka) to 1 (ga) filed an application under Order VII Rule 11(d) of

the Code of Civil Procedure praying for rejecting of plaint. Such application appears to have been filed on 17th January, 2023.

6. The learned Trial Judge rejected the application under Order VII Rule 11(d) of the Code of Civil Procedure upon holding that it does not appear from the statement in the plaint that the suit is barred by any law. The learned Trial Judge further observed that non-compliance of the order of the learned Civil Judge (Junior Division), Additional Court, Tamluk and filing/presenting the plaint before that court after the expiry of one month does not attract the provisions of Order VII Rule 11(d) of the Code of Civil Procedure.
7. On the petition dated 1st August, 2022 filed by the plaintiff/opposite party herein the learned Trial Judge was of the view that the prayer of the plaintiff for condonation of delay should be allowed for substantive justice and for the ends of justice with cost of Rs.1,000/-.
8. Being aggrieved, the defendant nos.1 series have approached this court.
9. Mr. Thakur, learned Advocate appearing for the petitioners submits that the presentation of plaint after the same is returned, amounts to a fresh suit being instituted and, therefore, the delay, if any, in presentation of the plaint cannot be condoned by the court under Section 5 of the Limitation Act. He further submits that the plaint does not contain any averment in the manner required under Section 14 of the Limitation Act, 1963 and, therefore, the period

beyond the time limit specified in the order returning the plaint cannot be also excluded in terms of the provisions laid down under Section 14 of the said Act. In support of the aforesaid contentions he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of **ONGC Ltd. v. M/s. Modern Construction and Co. reported at AIR 2014 SC 83, Hanamanthappa and Another v. Chandrashekharappa and Others** reported at **(1997) 9 SCC 688** and **Ketan V. Parekh v. Special Director, Directorate of Enforcement and Anr.** reported at **AIR 2012 SC 683**.

10. Per contra, Mr. Mukherjee, learned advocate appearing for the plaintiff/opposite party submits that the court in exercise of its powers under Section 148 of the Code of Civil Procedure can enlarge the period fixed by the court and, therefore, the order passed by the learned Trial Judge does not call for any interference. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Salem Advocate Bar Association, T.N. v. Union of India* reported at **(2005) 6 SCC 344** and **Nashik Municipal Corporation v. R.M. Bhandari and Another** reported at **(2016) 6 SCC 245**.

11. In reply, Mr. Thakur, learned Advocate appearing for the petitioners places reliance upon a decision of the Hon'ble Supreme Court in the case of **Oriental Insurance Company Limited v. Tejparas Associates and Exports Private Limited** reported at **(2019) 9 SCC 435** in support of his contention that the plaintiff

ought to have approached the Court of the learned Civil Judge (Junior Division), Additional Court, Tamluk for enlarging the time fixed by it while directing return of plaint.

12. Heard the learned Advocates for the parties and perused the materials placed.

13. The primary issue that falls for consideration in this civil revision application is whether the time limit fixed by the court for presenting the plaint before the proper forum can be extended.

14. There is no time limit fixed for presenting the plaint after the same is returned with a direction to file before the appropriate forum either under the Code of Civil Procedure or the Limitation Act, 1963.

15. Section 5 of the Limitation Act provides for extension of the prescribed period if an appeal or any application other than an application under any of the provisions of Order XXI of the Code of Civil Procedure is admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within the prescribed period.

16. As rightly submitted by Mr. Thakur, the provisions of Section 5 of the Limitation Act do not have any manner of application for condonation of delay in presenting the plaint beyond the time limit fixed by the court.

17. Mr. Mukherjee would contend that though in the petition dated 1st August, 2022 the prayer was made for condonation of delay, but in substance enlargement of time was prayed for in accordance with the provisions laid down under Section 148 of the Code of Civil Procedure.
18. Section 148 of the Code of Civil Procedure states that 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 30 days in total, even though the period originally fixed or granted may have expired.
19. Return of plaint for presenting the same before the appropriate Court is an act prescribed or allowed by the Court. In the case on hand, the Court while directing return of plaint fixed a time limit for its presentation before the appropriate court.
20. Upon a bare reading of Section 148 of the Code this court finds that the said provision vests the court with the discretion to enlarge the period fixed or granted by the court for the doing of any act prescribed or allowed by the Code but such period should not exceed 30 days in total.
21. In ***Salem Advocate Bar Association, T.N. (supra)*** the Hon'ble Supreme Court noted that 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 Hon'ble Supreme Court held 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. It was further held that the rigid operation of the Section would lead to absurdity and Section 151 has, therefore, to be allowed to operate fully.

22. The Hon'ble Supreme Court further noted that there may be cases where non-grant of extension beyond 30 days would amount to failure of justice and the object of the Code is not to promote failure of justice. The Hon'ble Supreme Court held that 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.

23. The Hon'ble Supreme Court in ***Nashik Municipal Corporation (supra)*** reiterated the aforesaid proposition of law laid down in ***Salem Advocate Bar Association, T.N. (supra)***.

24. In the case on hand the learned Civil Judge (Junior Division), Additional Court, Tamluk by an Order No.180 dated 30th May, 2022 returned the plaint with a direction to present the same before the court in which the suit should have been instituted within one month from the date of the said order. Admittedly, the plaint could not be presented within the aforesaid time limit of one month. It is also not in dispute that the plaint was presented beyond the period

of 30 days from 30th May, 2022 i.e. the date fixed for presenting the plaint before the proper forum.

25. By applying the ratio decided by the Hon'ble Supreme Court in *Salem Advocate Bar Association, T.N. (supra)* and *Nashik Municipal Corporation (supra)* this court is of the considered view that the court has the power to enlarge the period already fixed by the court while returning the plaint for its presentation before the appropriate court even beyond 30 days in accordance with Section 148 of the Code.
26. The aforesaid issue is, therefore, answered in the affirmative and in favour of the opposite party herein.
27. The next question that arises for consideration is whether the Court before whom the plaint was presented after its return had the jurisdiction to enlarge the period fixed by the Court which directed return of the plaint.
28. Mr. Mukherjee would contend that since the learned Civil Judge (Junior Division), Additional Court, Tamluk returned the plaint on the ground that it lacked jurisdiction, Section 148 of the Code cannot confer jurisdiction upon such court to enlarge the time limit. According to him, the Court wherein the plaint is presented after its return has the jurisdiction to enlarge the time.
29. The Hon'ble Supreme Court in ***D.V. Paul v. Manisha Lalwani*** reported at **(2010) 8 SCC 546** held that in cases where peremptory procedural orders are passed, that by itself, cannot completely

estop the court from taking note of events and circumstances which happen within the time fixed. The Hon'ble Supreme Court reiterated the proposition of law laid down by the Hon'ble Supreme Court in *Chinnamarkathian v. Ayyavoo* reported at (1982) 1 SCC 159 wherein it was held that the scope and exercise of the jurisdiction to grant time to do a thing, in the absence of a specific provision to the contrary curtailing, denying or withholding such jurisdiction, the jurisdiction to grant time would inhere in its ambit the jurisdiction to extend time initially fixed by it. The Court also called in the principle of equity that when circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken, the Court retains to itself the jurisdiction to re-examine the alteration or modification which may necessitate extension of time.

30. The effect of enlarging the time fixed by a Court in exercise of powers under Section 148 of the Code undoubtedly amounts to alteration or modification of the time limit already fixed by the Court for presenting the plaint after its return.
31. This Court, therefore, holds that the Court while directing return of plaint retained to itself the jurisdiction to extend the time limit prescribed by it for presentation before the proper Court. To the mind of this Court the expression "Court" appearing in the last portion of Section 148 of the Code shall necessarily mean the court which fixed or granted the period for doing of any act prescribed or

allowed by the Code. No other Court is vested with the jurisdiction to enlarge the time limit under Section 148 of the Code.

32. This Court, therefore, holds that the Court Judge (Senior Division), 1st Court, Tamruk, District-Purba Medinipur exceeded its jurisdiction in condoning the delay/enlarging the period fixed by the learned Civil Judge (Junior Division), Additional Court, Tamruk for presentation of the plaint.

33. Mr. Thakur would contend that the plaintiff is not entitled to the benefit of Section 14 of the Limitation Act as the material particulars in that regard have not been pleaded in O.S. No.11 of 2022 or in the application for condonation of delay.

34. Section 14 of the Limitation Act can be invoked in an appropriate case for exclusion of time during which a litigant was prosecuting his case with due diligence before a wrong forum.

35. In the case on hand, the plaintiffs have not prayed for exclusion of time under Section 14 of the Limitation Act but has prayed for enlargement of time fixed by the Court for doing an act prescribed or allowed by the Code.

36. In ***Ketan V Parekh (supra)***, the Supreme Court declined to extend the benefit of Section 14 of the Limitation Act on the ground that was no whisper in the application filed by the appellants therein that they had been prosecuting remedy before a wrong forum. The said decision being distinguishable on facts cannot come to the aid of the petitioner.

37. There is no quarrel to the proposition of law laid down in **ONGC Ltd. (supra)** that if the Court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned and the plaintiff can present it before the Court having competent jurisdiction and in such a case, the plaintiff is entitled to exclude the period during which he prosecuted the case before the Court having no jurisdiction in view of the provisions laid down under Section 14 of the Limitation Act. The said issue does not arise for consideration in the case on hand for which the said reported decision does not have any manner of application to the case on hand.

38. In **Oriental Insurance Co. Ltd. (supra)**, a petition under Section 34 of the Arbitration & Conciliation Act was filed within the time limit specified under Section 34(3) of the said Act before a wrong forum. The said application was returned and was presented before the proper Court beyond the prescribed time limit. An application under Section 14 of the Limitation Act was filed for extension of time spent before the wrong forum. Such application was opposed on the ground that proceeding before the wrong forum cannot be considered a bonafide mistake. The said application under Section 14 was rejected by the Court as well as the High Court. The Hon'ble Supreme Court in the special facts of that case restored the application under Section 34 of the said Act.

39. In the case on hand the plaintiff has not filed any application under Section 14 of the Limitation Act. The said reported decision being distinguishable on facts is not applicable to the case on hand.
40. For all the aforesaid reasons, the impugned order allowing the petition dated 1st August, 2022 filed by the plaintiff/opposite party herein suffers from infirmity and, therefore, calls for interference.
41. The later part of the Order No.9 dated 5th July, 2023 condoning the delay in presentation of plaint stands set aside. This order shall not, however, prevent the plaintiff/opposite party herein from approaching the learned Civil Judge (Junior Division), Additional Court, Tamluk with the prayer for enlargement of time under Section 148 of the Code of Civil Procedure. OS No.11 of 2022 shall be retained in the file of the learned Civil Judge (Senior Division), 1st Court, Tamluk, District-Purba Medinipur for a period of 30 days from the date of this order. If within the aforesaid time limit the plaintiff/opposite party herein approaches the appropriate court with the proper application and communicates such fact to the learned court below, the records of OS No.11 of 2022 shall be retained in the file of the learned Civil Judge (Senior Division), 1st Court, Tamluk, District-Purba Medinipur till a decision is taken on such application. In the event a decision in favour of the plaintiff/opposite party herein is passed on the said application, the learned trial judge shall proceed in accordance with law and it will

be open to the defendants/petitioners to work out their remedies in accordance with law.

42. Before parting it is made clear this court has not gone into the merits of the reasons for not presenting the plaint within the time limit stipulated by the court while returning the plaint.
43. If an application as directed by this court is filed within the time limit mentioned hereinbefore, the learned Civil Judge (Junior Division), Additional Court, Tamluk is requested to dispose of such application after giving the opportunities to the petitioners herein to file their objection, if any, thereto and upon hearing the parties by passing a reasoned order as expeditiously as possible without granting any unnecessary adjournments but preferably within a period of three months after the said application is made ready for hearing.
44. With the above observations and directions, the revisional application stands disposed of.
45. There shall be no order as to costs.
46. Urgent certified photocopy of this order, if applied for, be given to the parties upon compliance of usual formalities.

(HIRANMAY BHATTACHARYYA, J.)