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C.R.P.No.1249 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.1249 of 2024

1. Rajeswari

2. Rukmani

... Petitioners

Vs.

1. Sundarambal

2. Sasikala

3. Jayanthi

4. P.Balamurali

5. S.Dhanalakshmi

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, pleased to direct the learned IIIrd Additional District Judge, Gobichettipalayam to number the unnumbered I.A.No..... of 2023 in I.A.No. 01 of 2019 made in A.S.No. 58 of 2018 and dispose the same in accordance with law

For Petitioners : Mr.M.Guruprasad

For Respondents : Mr.K.Sudhakar for R2 & R3

R1 - No appearance

R4 & R5 - Left



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ORDER

This Civil Revision Petition has been filed seeking a direction to the learned III-Additional District Judge, Gobichettipalayam to number the unnumbered I.A.No..... of 2023 in I.A.No. 01 of 2019 in A.S.No. 58 of 2018 and dispose the same.

2. The petitioners are the appellants in A.S.No.58 of 2018 on the file of the learned III-Additional District Judge, Gobichettipalayam. The Appeal was dismissed for default on 08.03.2019 and thereby, the petitioners have filed an application under Section 5 of the Limitation Act to condone the delay of 195 days in filing the application to set aside the order of dismissal of the Appeal. The learned Appellate Judge, by an order dated 27.06.2022 had allowed the petition on payment of cost of Rs.2000/- to the respondents on or before 05.07.2022. Due to the miscommunication between the counsel and the petitioners, the cost could not be paid within time and therefore, the petition to condone delay was dismissed for non-prosecution. Thereafter, the petitioners have filed a petition to enlarge the time for paying the cost, however, the learned appellate Judge had returned the petition on 25.04.2023 stating as follows :-

“ 25.04.2023



Defects Noted

1. Correct provision not mentioned in this petition.
2. This petition properly not filed in time. How the petition is maintainable.
3. Other side notice not given.”

3. Subsequently, the learned counsel for the petitioners had represented the petition by relying on the decisions reported in (2004) 4 CTC 499 and (2006) 3 CTC 418 stating that the petition is maintainable. Despite the same, the Appellate Judge had once again returned the same on 10.08.2023 stating “previous return is not complied with time one month”. Aggrieved by the same, the present revision has been filed.

4. Mr.M.Guruprasad, learned counsel appearing for the petitioners submitted that the Court does not become *functus officio* on dismissal of application for non-compliance of the conditional order. The Court has got powers to extent the time to comply with the conditions or directions even after expiry of time stipulated by the Court and Sections 148,149 & 151 of CPC should be read conjointly and not in isolation and Section 148 confers ample discretionary powers regarding enlargement of time and Section 151 can be invoked to seek order necessary for meet the ends of justice. He



further submitted that the duty of the Court is to administer justice and in such process rigors of procedural law will have to be loosened and substantive justice should be administered and not procedural justice. He also submitted that the trial Court having condoned the delay ought to have extend the time for payment of cost, whereas, the learned trial Judge had erroneously returned the papers stating that it is not maintainable.

5. In support of his contention, the learned counsel for the petitioners relied on the Judgment passed by the Hon'ble Division Bench of this Court in ***Gowri Ammal Vs. Murugan and Others*** reported in **2006 (3) CTC 418**.

6. Mr.K.Sudhakar, learned counsel for respondents 2 & 3 submitted that the appellate Court had fixed a specific time for payment of cost, whereas, the petitioners have failed to pay the amount.

7. Despite service, none appears on behalf of the 1st respondent. Notice sent to the respondents 4 & 5 has been returned as "left". Affidavit of Service has been filed. Respondents 2 & 3 are the contesting parties.



8. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for respondents 2 & 3 and perused the materials available on record.

9. On perusal of records, it is seen that the appellate Court, while condoning the delay, had passed a conditional order to pay a cost of Rs.2000/- on or before 05.07.2022 and due to the miscommunication between the counsel and the party, the order was not complied with by the petitioners. Thereafter, the appellate Court had refused to number the petition filed for extending the time and returned the same stating that the petition is not maintainable.

10. In ***Gowri Ammal Vs. Murugan and Others*** reported in **2006 (3) CTC 418**, the Hon'ble Division Bench of this Court had held that the Court does not become *functus officio* on dismissal of application for non-compliance of the conditional order and the Court has got jurisdiction to extend the time for compliance of orders even after expiry of time originally granted. The Appellate Court having condoned the delay ought to have numbered the application and extended the time for payment of cost. The



relevant paragraphs of the said order are extracted hereunder :-

"16. The above decision would make it clear that the Court cannot be made helpless or powerless where the upper limit fixed under Section 148 cannot take away the power of the Court under Section 151 to pass orders, as may be necessary, for the ends of justice or to prevent abuse of process of Court. The rigid operation, as contained in Section 148, without considering Section 151, as laid down by the Supreme Court, would lead to absurdity. Therefore, both the Sections have to be read together, in order to find out, whether the Petition for extension of time can be entertained or not.

17. The duty of the Court of Law is to administer justice, sometimes loosening the rigors of the procedural law. It is the substantive justice, which should be administered and not the procedural justice. Procedure is meant to facilitate the way for the administration of real justice and not to defeat it.

*18. In the light of the principles laid down by the Supreme Court in **Salem Advocate Bar Association, T.N. v. Union of India**, 2005 (6) SCC 344, Sections 148 and 151, C.P.C. Allow extension of time, even if the original period fixed has expired. Similarly, Section 149 also is equally liberal in this respect.*

19. So, a conjoint reading of Section 148, 149 and 151, C.P.C. would make it clear that the Court has power to extend



time beyond the stipulated period, when sufficient cause exists or events pointed out to the Court of 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.”

11. In view of the above, this Civil Revision Petition stands allowed and the order of return made by the learned III Additional District Judge, Gobichettipalayam, in unnumbered I.A.No..... of 2023 in I.A.No. 01 of 2019 in A.S.No. 58 of 2018 on 10.08.2023 is hereby set aside and the learned III Additional District Judge, Gobichettipalayam, is directed to number the application filed by the petitioners and pass orders on merits in accordance with law. No costs.

07.08.2024

kkn/ham

Index: Yes / No

Neutral Citation : Yes / No

Note : Registry is directed to return the original papers to the counsel for the petitioners.

To:-

The III Additional District Court,
Gobichettipalayam.



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A.D.JAGADISH CHANDIRA, J.

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