



C.R.P.Nos.2205 & 2216 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.Nos.2205 & 2216 of 2023

1.Santhakumari
2.Rameshkumar
3.Govinthammal

... Petitioners in both CRPs

Vs.

1.K.Ramamoorthy
2.K.Palanisamy
3.P.A.Palanisamy

... Respondents in both CRPs

PRAYER: The civil revision petitions have been filed under Section 115 of CPC against the order dated 03.03.2023 made in I.A.Nos.1213 & 1214 of 2022 in I.A.Nos.05 & 07 of 2022 in ASCFR Nos.3704 & 3705 of 2021 on the file of the Principal District Judge, Tiruppur, dismissing the petition to extend the period in paying cost.

For Petitioners : Mr.K.Sudhakar

Respondent No.1 : Unclaimed

Respondent No.2 : Left

For Respondent
No.3 : Mr.K.S.Karthik Raja



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COMMON ORDER

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The civil revision petitions have been filed seeking to set aside the order dated 03.03.2023 made in I.A.Nos.1213 & 1214 of 2022 in I.A.Nos.05 & 07 of 2022 in ASCFR Nos.3704 & 3705 of 2021 on the file of the Principal District Judge, Tiruppur, dismissing the petitions to extend the period in paying cost.

2.The brief facts of the cases are as follows:

The petitioners are the plaintiffs in O.S.Nos.413 and 414 of 2018 on the file of the Subordinate Court, Palladam. The suit in O.S.No.413 of 2018 was filed for setting aside the sale deed dated 22.05.2009 and for permanent injunction. The suit in O.S.No.414 of 2018 was filed for a declaration that the decree dated 30.10.2009 in O.S.No.300 of 2009 as void, unenforceable and not binding. While the suit in O.S.No.413 of 2018 was dismissed, the suit in O.S.No.414 of 2018 was decreed partly, against which, the petitioners have filed appeals in ASCFR No.3704 of 2021 and ASCFR No.3705 of 2021 along with petitions in I.A.Nos.5 & 7 of 2022 seeking to condone the delay of 69 days. The Appellate Court had allowed I.A.Nos.5 &



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7 of 2022 in ASCFR Nos.3704 & 3705 of 2021 on 03.06.2022 on payment of cost of Rs.1000/- in each petition to the respondents on or before 09.06.2022 and the matter was listed to be called on 10.06.2022 for reporting compliance. Since the petitioners did not pay the cost on or before 09.06.2022, the petitions came to be dismissed. Thereafter, the petitioners have filed I.A.Nos.1213 & 1214 of 2022 seeking to extend the period to pay the cost in I.A.Nos.5 & 7 of 2022. The appellate Court found that the petitions were filed on 27.09.2022 without an application seeking for extension of time under Section 5 of Limitation Act and without filing an application, seeking extension of time after the expiry of time prescribed under Section 148 CPC. Hence, the appellate Court dismissed the applications, against which, the present civil revision petitions have been filed.

3.Learned counsel appearing for the petitioners would submit that the decree in the suit was passed on 02.03.2021 and the appeal was filed on 26.11.2021. He would further submit that as per the order of the Apex Court, in the matter of cognizance for extension of time, there is no



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requirement for filing an application seeking for condonation of delay in filing the appeal, because the appeal was prepared during the Covid period.

He would further submit that a Division Bench of this Court has held that the Court does not become functus officio on dismissal of application for non compliance of a conditional order and the Court has got powers to extend the time to comply with the conditions or directions even after expiry of time stipulated by the Court and Sections 148, 149 and 151 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 pass necessary order to meet the ends of justice. He also submitted that it is the duty of this Court 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 would submit that if the rights of the petitioners are curtailed, grave injustice would be caused to the petitioners. He would also submit that the trial Court, having condoned the delay, ought to have extended the time for payment of cost, whereas, the trial judge had dismissed the petition and thereby it has to be set aside.



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4. 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**.

5. Per contra, Mr. K. S. Karthik Raja, learned counsel appearing for the third respondent would submit that enlargement of time cannot be granted exceeding 30 days and he would oppose for allowing the revision petitions.

6. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the third respondent.

7. On perusal of the records, it is seen that the appellate Court, while condoning the delay, had passed a conditional order to pay a cost of Rs.1000/- in each petition to the respondents on or before 09.06.2022 and due to illness during covid pandemic, there was miscommunication between the petitioners and their counsel and thereby the order was not complied



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with by the petitioners, which resulted in dismissal of the petitions seeking extension of time.

8. In ***Gowri Ammal Vs. Murugan and Others*** reported in **2006 (3) CTC 418**, the Hon'ble Division Bench of this Court 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-



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***compliance of the order are beyond the control of the party,
as the object of the Code is not to promote failure of justice.”***

9. In view of the above, these Civil Revision Petitions stand allowed and the order dated 03.03.2023 made in I.A.Nos.1213 & 1214 of 2022 in I.A.Nos.05 & 07 of 2022 in ASCFR Nos.3704 & 3705 of 2021 on the file of the Principal District Judge, Tiruppur, is hereby set aside and the Principal District Judge, Tiruppur, is directed to accept the cost imposed in I.A.Nos.5 & 7 of 2022 in ASCFR Nos.3704 & 3705 of 2021 and pass orders on merits in accordance with law. No costs.

Index : Yes/No
Internet : Yes/No
sms

29.10.2024

To

The Principal District Judge, Tiruppur.



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A.D.JAGADISH CHANDIRA, J.,

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