



CRP.Nos.3690, 3691, 3693, 3694, 3696 and 3697 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

CRP.Nos.3690, 3691, 3693, 3694, 3696 and 3697 of 2022

and

CMP.Nos.19520, 19524, 19529, 19531, 19532 & 19533 of 2022

- 1.V.Jayalakshmi
K.Revathi (Died)
- 2.S.Sumathi
- 3.V.Malathi
- 4.S.Jayanthi
- 5.L.Anandhi
- 6.M.Rathi
- 7.Karunanidhi
- 8.Abarna

..... Petitioners in all CRPs

Vs

- 1.B.Suresh
- 2.B.Lakshmi
- 3.The Joint Sub-Registrar
Arakkonam.
- 4.The Tahsildar
Arakkonam.
- 5.The District Collector
Arakkonam.

..... Respondents in all CRPs



Prayer in CRP.No.3690 of 2022 : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 24.02.2022 passed in I.A.No.80/2021 in I.A.No.535/2019 in O.S.No.338/2014 on the file of the Subordinate Judge, Arakkonam and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

Prayer in CRP.No.3691 of 2022 : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 24.02.2022 passed in I.A.No.78/2021 in I.A.No.535/2019 in O.S.No.338/2014 on the file of the Subordinate Judge, Arakkonam and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

Prayer in CRP.No.3693 of 2022 : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 24.02.2022 passed in I.A.No.76/2021 in I.A.No.534/2019 in O.S.No.338/2014 on the file of the Subordinate Judge, Arakkonam and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

Prayer in CRP.No.3694 of 2022 : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 24.02.2022 passed in I.A.No.77/2021 in I.A.No.534/2019 in O.S.No.338/2014 on the file of the Subordinate Judge, Arakkonam and pass



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such further or other orders as this Court may deem fit and proper in the circumstances of the case.

Prayer in CRP.No.3696 of 2022 : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 24.02.2022 passed in I.A.No.79/2021 in I.A.No.535/2019 in O.S.No.338/2014 on the file of the Subordinate Judge, Arakkonam and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

Prayer in CRP.No.3697 of 2022 : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 24.02.2022 passed in I.A.No.75/2021 in I.A.No.534/2019 in O.S.No.338/2014 on the file of the Subordinate Judge, Arakkonam and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioners : Mr.K.Venkatasubban

For Respondents : Mr.G.Jeremiah for R1 & R2
Mr.C.Sathish, Government Advocate
for R3 to R5



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COMMON ORDER

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These civil revision petitions arise against the order dated 24.02.2022 passed by the learned Subordinate Judge, Arakkonam in I.A.Nos.75, 76 and 77 of 2021 in I.A.No.534 of 2019 in O.S.No.338 of 2014 and I.A.Nos.78, 79 and 80 in I.A.No.535 of 2019 in O.S.No.338 of 2014.

2. The revision petitioners are the defendants 1 to 7, and the respondents 1 and 2 herein are the plaintiffs in O.S.No.338 of 2014. The suit in O.S.No.338 of 2014 came to be dismissed for default on 18.11.2016. In order to restore the suit to file, the plaintiffs have taken out I.A.No.534 of 2019 to condone the delay of 1092 days in filing a restoration petition against the order of dismissal of suit dated 18.11.2016. I.A.No.535 of 2019 was filed under Order IX Rule 9 of CPC to set aside the said order dated 18.11.2016 and to restore the suit to file. Pending these petitions, the second defendant died, hence the plaintiffs have taken out I.A.Nos.75, 76 and 77 of 2021 in I.A.No.534 of 2019 and I.A.Nos.78, 79 and 80 in I.A.No.535 of 2019 in O.S.No.338 of 2014.



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3. I.A.No.75 of 2021 is filed under Section 5 of the Limitation Act to condone the delay of 2993 days in preferring a petition to set aside the abatement against the death of the second defendant. I.A.No.76 of 2021 is filed under Order XXII Rule 9 of CPC to set aside the abatement caused due to the death of the second defendant. I.A.No.77 of 2021 is filed under Order XXII Rule 4 of CPC to bring on record the legal heirs of the deceased second respondent and array them as respondents 11 and 12. Similar are the prayers in I.A.Nos.78, 79 and 80 of 2021 in I.A.No.535 of 2019.

4. The learned Subordinate Judge, Arakkonam had allowed the aforementioned applications on condition that the plaintiffs shall pay a sum of Rs.2,000/- as cost to the defendants on or before 28.02.2022. Since the plaintiffs could not comply with the condition imposed by the learned Trial Judge, they filed a petition in I.A.No.1 of 2022 seeking for extension of time. The learned Judge had allowed the said application on 01.03.2022 and extended the time. Aggrieved by the same, the present revision is filed.

5. Heard Mr.K.Venkatasubban, learned counsel for the revision petitioners and Mr.G.Jeremiah, learned counsel for respondents 1 and 2.



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6.1 Mr.K.Venkatasubban would make two submissions. His primary submission is that the Trial Court had ordered that the cost had to be paid to the defendants on or before 28.02.2022, in default of which, all the interlocutory petitions will stand dismissed. He added that the plaintiffs have taken out an application seeking extension of time on 01.03.2022. That application came to be allowed on the same day, without notice being served on the defendants. He argued, the Court has become *functus officio* to pass an order on 01.03.2022, extending the time for making the payment of cost.

6.2 His second submission is that though the order reads that Rs.2,000/- to be paid as cost to the respondents therein, the decreetal order shows that the cost to be paid is Rs.2,000/- per application. Therefore, the learned Trial Judge had ignored the decreetal order and had granted extension of time only for payment of Rs.2,000/- in toto.

7. This is strictly opposed by Mr.G.Jeremiah, who submits that immediately on coming to know that the amount had not been paid by the plaintiffs, they moved an application in I.A.No.1/2022, and since the



lodgement was produced on the same day, the learned Judge allowed the application in the interest of justice. He also pointed out that the respondents have refused to receive the cost, and therefore, the cost had been deposited into the Court. He would also state that the Court does not become *functus officio* by virtue of time having expired. He contended that the Court continues to have jurisdiction and no error had been committed by the Court below. He would further point out that from the reading of the judgment and decree, the decree reads on matters not been found in the judgment and therefore, for the purpose of receipt of cost, one should go by the 'ORDER' and not on the basis of what has been written in the decreetal order.

8. The rival submissions are carefully weighed. It has been settled by a Division Bench of this Court in ***Gowri Ammal Vs Murugan and Ors, 2006 (3) CTC 418*** that the Court does not become *functus officio* by a mere fact that the period fixed in an order has gone by. The powers under Section 148 CPC is always available to the Court to extend the time so granted by it.

9. I can understand the grievance of Mr.K.Venkatasubban that his clients have not been put on prior notice, before the application seeking



extension of time came to be allowed. Even this has been stoutly resisted by

Mr.G.Jeremiah, that in the light of the Division Bench judgement, it is only a procedural infraction which does not take away the jurisdiction of the Court.

10. If the Court had become *functus officio*, then the question of Court extending the time will not arise. However, as held in **Gowri Ammal's** case the Court continues to retain its jurisdiction in the overall proceedings till they are finally disposed of as required by Civil Procedure Code. Furthermore, as per Rule 3(2) of the Civil Rules of Practice and Circular Orders, the Standing Orders framed in exercise of the powers conferred by Section 122 of the Code of Civil Procedure 1908, even a written application is not necessary for the purpose of extending time under Section 148. An oral application would suffice. Taking into consideration the judgment of the Division Bench, I have to conclude that the civil courts continue to have jurisdiction, and therefore, the first argument of K.Venkatasubban stands rejected.

11. Insofar as his second plea is concerned that the Court should have gone by the decretal order and not by the order. Where there is a judgment



and decree, the judgment always prevails. It is the judgment that is written by the judicial officers and not the decree. The decree should follow the judgment and not vice-versa. A careful perusal of the judgment shows that the learned Trial Judge had ordered the applications filed for condonation of delay, setting aside the abatement and impleading the parties respectively on payment of Rs.2,000/- as cost. However, while drafting the decreetal order, the operative portion of the common order ought to have been carried out in each of these I.A applications. Unfortunately, it was not done so. This is an error committed by the ministerial staff, and that cannot be laid on the plaintiffs' / petitioners' doors. The petitioners therein having complied with the order of the Trial Court, I do not find any reason to interfere with the same.

12. Now Mr.K.Venkatasubban would plead that the applications in I.A.No.534 of 2019 filed to condone the delay of 1092 days in filing a restoration petition and in I.A.No.535 of 2019 filed to restore the suit to file, may be directed to be disposed of at an early date.

13. The very perusal of the records makes it clear that the parties have



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been litigating for the past one decade, placing faith in the judiciary. By delaying the proceedings, it does not benefit the plaintiffs. Instead of giving a direction for disposal of I.A.No.534 of 2019 and I.A.No.535 of 2019, I am inclined to exercise my supervisory powers in the present revision, to condone the delay of 1096 days and to restore the suit on to the file of the learned Subordinate Judge, Arakkonam, on condition that the plaintiffs pays the revision petitioners/defendants a sum of Rs.12,000/- (Rupees Twelve Thousand only) on or before 25.04.2024.

13. In fine, the revision petitions are disposed of in terms of the conditions hereinabove stated. Consequently, connected miscellaneous petitions are closed.

Post the matter for reporting compliance on 26.04.2024.

23.04.2024

Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
ds



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To:

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- 1.The Subordinate Judge
Arakkonam.
- 2.The Section Officer
VR Section, High Court, Madras.



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V.LAKSHMINARAYANAN,J.

ds

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