



C.R.P.(PD)No.4443 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4443 of 2024
and C.M.P.No.24755 of 2024

Thondai Mandala Adi Saiva Vellala Community
Sri Prasanna Vinayagar Temple
Represented by its present Trustees,
1. S.Dharmalinga Mudaliar
2. M.Karunakaran Mudaliar
3. R.Chandran Mudaliar
4. N.Vijayasarithi Mudaliar
5. V.Manikandan Mudaliar

.. Petitioner

Vs

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai-34.

2.D.Vijayan

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the
Constitution of India, to set aside the docket order dated 11.07.2024 in



C.R.P.(PD)No.4443 of 2024

O.S.No.6393 of 2015 passed by the learned V Assistant Judge, City Civil Court at Chennai.

For Petitioner : Mr.D.Rajagopal

For R1 : Mr.N.Muthuvel, Govt. Advocate

ORDER

The civil revision petition arises against the docket order passed by the learned V Assistant Judge, City Civil Court at Chennai in O.S.No.6393 of 2015, dated 11.07.2024.

2. O.S.No.6393 of 2015 is a suit for the following reliefs:

“(a) for a declaration declaring that Sri Prasanna Vinayagar Temple situated at Paraniputhur, Mangadu Post, Chennai-600 122 is a denominational temple maintained and administered by Thondai Mandala Adi Saiva Vellala Community people of Paraniputhur.

(b) granting permanent injunction restraining the defendant & his subordinates from interfering with



the plaintiff's right to administer and maintain Sri Prasanna Vinayagar Temple situated at Paraniputhur."

3. Originally, the suit was laid only against the Commissioner, H.R. & C.E. Department. Subsequently, the 2nd respondent before me filed an application to implead himself claiming he is a worshipper of the suit temple. The said application came to be allowed in I.A.No.16601 of 2015. The plaintiff carried the order by way of a civil revision petition to this Court in C.R.P.(PD)No.920 of 2018.

4. This Court, after hearing the learned counsel appearing for the plaintiff and the 2nd defendant, confirmed the order of impleadment and further gave a direction that the issue, whether the 2nd defendant is a proper and necessary party, should be tried at the time of disposal of the suit. Thereafter, the plaintiff filed an application to amend the plaint. The amendment application was allowed and the amended plaint copy was also served on the 2nd defendant on 04.02.2018.



C.R.P.(PD)No.4443 of 2024

5. From 03.01.2019 till 15.07.2022, the matter was being adjourned for the purpose of disposal of I.A.No.15093 of 2018. Till 10.07.2024, the Court did not ascertain whether the 2nd defendant had filed his written statement. On 10.07.2024, the Trial Court had adjourned the matter on 11.07.2024 for two purposes namely,

(i) for verifying the records to see if any written statement filed by the 2nd defendant and

(ii) if not to enable the 2nd defendant to file a written statement.

6. On 11.07.2024, the 2nd defendant filed his written statement. The plaintiff objected to the same stating the written statement should not be permitted to be filed after a lapse of six years. It was also argued that the 2nd defendant has to file an application to condone the delay.

7. The learned Judge rejected the objection of the plaintiff on the ground that the Court did not call upon the 2nd defendant to file a written statement nor did the learned counsel appearing for the plaintiff and the 2nd defendant point out this lacuna in the procedure adopted by the Court in time. Therefore, considering that the mistake had been committed by the Court, the written statement was accepted.



C.R.P.(PD)No.4443 of 2024

8. Challenging the order dated 11.07.2024, this civil revision petition comes up before me.

9. I heard Mr.D.Rajagopal for the civil revision petitioner and Mr.N.Muthuvel, learned Government Advocate, for the 1st respondent.

10. Mr.D.Rajagopal argues that in terms of Order VIII Rule 1 proviso, a written statement has to be filed within 30 days from the date of summons of the plaint is served on the defendant and the Court should not permit a written statement to be received, if it crosses the period of 90 days. He relies upon the judgment of the Supreme Court in ***Ragho singh v. Mohan Singh and others, (2001) 9 SCC 717*** and a judgment of this Court in ***Ramesh Flowers Private Limited v. Sumit Srimal, (2024) SCC OnLine Madras 4785*** to press home this point.

11. I have carefully considered the submissions of Mr.D.Rajagopal.

12. At the outset, I should point out that the plaintiff/civil revision petitioner has not challenged the order of the Court dated 10.07.2024. It



C.R.P.(PD)No.4443 of 2024

was by virtue of that order, the Court permitted the 2nd defendant to file a written statement. What has been challenged before me is the consequential proceedings pursuant to the order dated 10.07.2024 receiving the written statement. Once the main order is not challenged, I do not understand how a consequential order can be put to challenge. In any event, since an objection has been raised, I do not want to reject this revision on the technical grounds.

13. In so far as the first submission of Mr.D.Rajagopal that no application had been filed by the 2nd defendant seeking to condone the delay in filing the written statement is concerned, I had to state that I searched in vain through the Code of Civil Procedure, there is no provision in the Code which permits or empowers the defendant to file an application seeking to condone the delay in filing a written statement. Such a procedure exists in the rules governing proceedings in Original Side of this Court, (See, Order V Rule 5 of O.S. Rules) but it is absent in the C.P.C.

14. When the Code does not have any such provision, I do not have the power to judicially amend the C.P.C. and introduce a procedure



C.R.P.(PD)No.4443 of 2024

which is not found therein. The C.P.C. is a declaration by the Parliament as to how a suit and other proceedings must proceed. It is for the Parliament to make a legislation or an appropriate amendment enabling the defendant to file an application to condone the delay. When no such provision exists, the first submission of Mr.D.Rajagopal has to be rejected.

15. The second plea is that as per the proviso to Order VIII Rule 1 of the Code, a written statement should be filed within 90 days and failure to do so, should result in the forfeiture of right of the defendant. The forfeiture of defence of a party is a power which has to be specifically conferred as in the Commercial Courts Act, 2015 or judicially evolved for the purpose of putting an end to the vexatious defence or the litigation. In any event, I need not trouble myself as the Supreme Court in *Salem Advocate Bar Association, Tamil Nadu, v. Union of India*, (2005) 6 SCC 344, has held that the proviso to Order VIII Rule 1 of the Code is only directory and not mandatory. Though this provision was interpreted in *Kailash v. Nanhku*, (2005) 4 SCC 480 that the power of extension should be exercised in an extremely rare case, I should recollect that *Kailash v. Nanhku* arose out of an election petition



C.R.P.(PD)No.4443 of 2024

and it did not relate to a regular civil dispute. The procedures followed in election petitions are more or less akin to the C.P.C., but the time lines are fixed by virtue of the Representation of the People Act, 1950 and 1951 and that cannot be read into regular civil proceedings.

16. Now I turn to the authorities cited by Mr.D.Rajagopal. The first of the judgments is ***Ragho singh v. Mohan Singh and others, (2001) 9 SCC 717***. That was a case where an application under Section 5 of the Limitation Act that had not been filed and therefore, the Court came to the conclusion that without filing an application under Section 5, the decree passed in the suit cannot be challenged. Needless to point out where a decree is passed in a suit, the Court has crystalised certain rights in the plaintiff. To set aside the same, a higher bar than Order VIII Rule 1 proviso is placed on the party. The Parliament in its wisdom, as I have pointed out earlier, has not included a provision for filing an application to condone the delay as in the case of Section 5 of the Limitation Act, 1963. That being the situation, the said judgement is inapplicable to the facts of the case.



C.R.P.(PD)No.4443 of 2024

17. I have to agree with Mr.D.Rajagopal with the judgment pronounced in ***Ramesh Flowers Private Limited v. Sumit Srimal, (2024) SCC OnLine Madras 4785*** by my brother Justice Mr.G.R.Swaminathan states that a defendant should file an application to condone the delay in filing the written statement. As pointed out above, there is no provision in the Court for a party to file an application to condone the delay. Yet, with all the respect and regard I have for my erudite brother, I am not in a position to agree with him for a simple reason, law does not expect a party to do an impossibility. If the C.P.C. does not have any provision to file an application to condone the delay to expect the party to file such an application amounts to calling upon a party to do an impossible act.

18. In addition, the attention of the learned Judge had not been drawn to Rule 3(2) of the Civil Rules of Practice and Circular Standing Orders issued by the Court in exercise of the statutory power vested in it under Section 122 of the C.P.C. This statutory rule shows that an application need not be in writing, but also includes an “oral application”. Hence, when the Rules permit an oral application to be filed by a party or a counsel appearing on his/her behalf, seeking for extension



C.R.P.(PD)No.4443 of 2024

of time, I am not in a position to hold that a written application should be presented always. If I were to do so, I would be nullifying the requirements of Rule 3(2) of the said Rules.

19. In any event, as pointed out by the learned Trial Judge neither the plaintiff nor the defendant informed the Court that an opportunity had not been granted to the 2nd defendant to file his written statement.

20. Taking note of the fact that the Court has committed an error, the learned V Assistant Judge, City Civil Court, Chennai, applying the principle of *actus curiae neminem gravabit*, has permitted the defendant to come forward with his written statement. Taking note of the lacuna without any delay, the 2nd defendant has, in a day's time, has presented his written statement.

21. In the light of the above discussions, I am not inclined to interfere with the order of the learned Trial Judge. The civil revision petition is dismissed with the following directions:

(i) The learned V Assistant Judge, City Civil Court, Chennai, is requested to strictly adhered to the directions given by this Court in



C.R.P.(PD)No.4443 of 2024

C.R.P.(PD)No.920 of 2018 and expedite the suit at all stages.

WEB COPY

(ii) As directed by this Court in C.R.P.(PD)No.920 of 2018, the learned Trial Judge shall frame, if not already framed, any additional issues which may arise on account of the filing of the written statement by the 2nd defendant. No costs. Consequently, connected miscellaneous petition is closed.

08.11.2024

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

kj

To

V Assistant Judge, City Civil Court at Chennai.



WEB COPY



C.R.P.(PD)No.4443 of 2024

V. LAKSHMINARAYANAN,J.

kj

C.R.P.(PD)No.4443 of 2024
and C.M.P.No.24755 of 2024

08.11.2024