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C.R.P.(MD)No.13 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.01.2026

PRONOUNCED ON : 29.01.2026

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)No.13 of 2023

M/s. Visu Financiers,
represented by its Managing Partner,
T.Rani, Karur Town.

... Petitioner

-VS.-

G.Sundararaj

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order passed in I.A.No.236 of 2019 in O.S.No.144 of 2004, dated 15.10.2022 on the file of the Principal Subordinate Court, Kumbakonam.

For Petitioner :Mr.K.Suresh
For Respondent :Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates



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ORDER

The present Civil Revision Petition has been filed challenging the order passed by the learned Principal Subordinate Judge, Kumbakonam, in I.A.No. 236 of 2019 in O.S.No.144 of 2004, dated 15.10.2022.

2.Heard Mr.K.Suresh, learned Counsel for the Revision Petitioner and Mr.S.Anand Chandrasekar, learned Counsel for the respondent.

3.The brief facts of the case are as follows:

3(1).The Revision Petitioner is the plaintiff in the suit in O.S.No.144 of 2004 on the file of the Principal Subordinate Court, Kumbakonam, and the respondent is the defendant in the suit. The said suit was filed for recovery of money due on the mortgage executed by the defendant. In the said suit, an *ex parte* decree was passed on 12.11.2009. Thereafter, the respondent/defendant filed an application in I.A.No.101 of 2010 to set aside the *ex parte* decree,



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dated 12.11.2009. In the said application, a conditional order was passed directing the respondent/defendant to deposit 1/3 of the decreed amount on or before 18.04.2011. Challenging the same, the respondent/defendant has preferred a revision petition before this Court in C.R.P(MD)No.2019 of 2011. This Court had dismissed the said petition with a direction to the respondent/defendant to comply with the conditional order passed by the trial Court in I.A.No.101 of 2010 on or before 30.11.2011. Challenging the said order, the respondent/defendant had preferred an SLP before the Hon'ble Supreme Court in S.L.P.No.35939 of 2012, which was also dismissed by the Hon'ble Supreme Court vide order, dated 09.01.2012.

3(2).Thereafter, the respondent/defendant had filed an application in I.A.No.215 of 2012 before the trial Court seeking permission to deposit 1/3 amount, which was also dismissed by the trial Court by order, dated 05.12.2012, against which, the respondent/defendant had preferred a revision petition before this Court in C.R.P(MD)No.555 of 2013. This Court had dismissed the said revision petition vide order, dated 02.07.2018. Thereafter, the revision petitioner/plaintiff had filed a final decree application in I.A.No.



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236 of 2019 in O.S.No.144 of 2004. The learned Principal Subordinate Judge, Kumbakonam, vide order, dated 15.10.2023, had dismissed the said application on the ground of limitation. Challenging the said dismissal order, the plaintiff has preferred the present Civil Revision Petition.

4.Mr.K.Suresh, learned Counsel for the petitioner submitted that the trial Court has erroneously dismissed the final decree application on the ground of limitation without considering the fact that the respondent is litigating the issue upto 02.07.2018 before this Court as well as before the Hon'ble Supreme Court. He further submitted that the trial Court has failed to consider that the execution of civil Court decree by way of final decree application cannot be come under the ambit of residuary clause under Article 137 of the Limitation Act.

5.He also lamented that after passing of the preliminary decree, the respondent/defendant had litigating the issue till 02.07.2018 before this Court as well as before the Hon'ble Supreme Court and that the limitation would start only from 02.07.2018 and that the litigating period has to be excluded, while



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calculating the limitation period. However, the trial Court without considering the explanations offered by the revision petitioner/plaintiff, has erroneously dismissed the final decree application, which is *per se* illegal and needs interference of this Court.

6.He also pointed out that when the final decree application was filed before the trial Court, the trial Court has numbered the said application, heard the parties and thereafter, it has been dismissed by the trial Court on the ground of limitation. He further added that if the trial Court has returned the said application on the ground of limitation under Article 137 of the Limitation Act, then the limitation would have commenced immediately, but the trial Court proceeded to post the matter on merits and thereafter, the said application has been dismissed by the trial Court on the ground of limitation without even considering the explanations given by the revision petitioner/plaintiff, which is *non est* in the eye of law.

7.He also contended that the trial Court has erroneously come to the conclusion that the present case falls under Article 137 of the Limitation Act.



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However, it is his contention that in case of any civil Court decree, execution petition can be filed within a period of twelve years, as per Article 136 of the Limitation Act. It is his further contention that the trial Court has failed to consider the fact that the revision petitioner was bona fide contesting the case initiated by the respondent and hence, Section 14 of the Limitation Act comes to the rescue of the revision petitioner. In support of his contentions, he relied upon the following judgments:

(1)The Judgment of Hon'ble Supreme Court in the case of ***Meghraj vs Jesraj Kasturjee and another*** reported in **AIR 1975 Mad 137**:

(2)The Judgment of the Hon'ble Division Bench of this Court in the case of ***B.Abdul Malick and Co., Tirupattur and others vs State Bank of India***, reported in **2018 SCC OnLine Mad 13658**; and

(3)The judgment of the High Court of Allahabad in the case of ***Mahipal Singh vs Board of Revenue and others***, reported in **2020 SCC OnLine All 637**.



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8.*Per contra*, Mr.S.Anand Chandrasekar, learned Counsel for the respondent submitted that the revision petitioner had not given any specific provision in his application and that when there is no specific provision quoted, the residuary clause has to be taken into consideration and that Article 137 of the Limitation Act will apply in the present case and the limitation will run from the date of judgment and therefore, the application filed by the revision petitioner cannot be taken into consideration. He also contended that the final decree application has been filed with an inordinate delay without giving any sufficient reasons and the trial Court has rightly dismissed the final decree application, which needs no interference of this Court.

9.He further contended that when the proceedings were on going between the parties, nothing prevented the revision petitioner from filing a final decree application before the trial Court and if any application is filed, limitation will commence from the date of decree and the reasons now attributed by the revision petitioner are only a lame excuse. He referred to



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Section 15 of the Limitation Act, which reads as follows:

"15.Exclusion of time in certain other cases.—

(1) In computing the period of limitation of any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.—In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.

(3) In computing the period of limitation for any suit or application for execution of a decree by any receiver or interim receiver appointed in proceedings for the adjudication of a person as an insolvent or by any liquidator or provisional liquidator appointed in proceedings for the winding up of a company, the period beginning with the date of institution of such proceeding and ending with the expiry of three months from the date of appointment of such receiver or liquidator, as the case may be, shall be excluded.

(4) In computing the period of limitation for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

(5) In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government, shall be excluded."



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10.By referring the above provision, he pointed out that the revision petitioner has not made out a case in compliance to Section 15 of the Limitation Act. In support of his contentions, he relied upon the following judgments:

(1)The judgment of Hon'ble Supreme Court in the case of ***Monotosh Kumar Mitra vs Amarendranath Shaw (dead) and others***, reported in (2000) 2 SCC 672, wherein, it has been held as follows:

"5.An application for passing of the final decree is governed by residuary Article 137 of the Limitation Act, 1963, under which application for passing of final decree has to be filed within three years from the date when the right to apply accrues. If the right to apply for final decree had accrued to the plaintiff on default being committed by the defendants in payment of the first instalment itself on 31-3-1969, the application for passing of final decree would be required to be filed within three years from the date of default. Not disputing that the default was committed by the defendants in payment of the first instalment, learned counsel for the appellant contends that default committed in each subsequent year in payment of instalment gives rise to a fresh cause of action to apply for passing of final decree and, therefore, such an application having been filed on 15-2-1973, would not be time-barred at least in respect of the instalments which were payable under the decree on 31-3-1970, 1971 and 1972. It is further contended that the application may be time-barred, at best, in relation to default committed by the defendants for



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payment of the first instalment payable on or before 31-3-1969."

(2)The judgment of this Courts in the case of ***Velaguru Asari vs Suppa Naciken and others***, reported in ***AIR (31) 1944 Madras 209***, wherein, it has been held as follows:

"The decisions of the Privy Council in Abdul Majid v. Jawahir Lal [(1914) I.L.R. 36 All. 350 (P.C.)] , Batuk Nath v. Munni Dei [(1914) I.L.R. 36 All. 284 (P.C.)] and Sachindra Nath Roy v. Maharaj Bahadur Singh [[1921] I.L.R. 49 Cal. 203 (P.C.)] seem to us to have application here. In the first of these cases the Privy Council dismissed an appeal for want of prosecution. The appeal arose out of a mortgage suit. After the appeal had been dismissed, the decree-holder applied under section 89 of the Transfer of Property Act for an order making the decree for sale absolute and contended that the period of limitation ran from the date of the dismissal of the appeal by the Privy Council and not from the date of the High Court's decree. If the date of the dismissal of the appeal by the Privy Council was to be taken, the application was in time, otherwise it was time-barred. The decree-holder's contention was that the High Court's decree had become merged in the order of the Privy Council. Their Lordships refused to accept this contention. In delivering the judgment Lord Moulton said that the order dismissing the appeal for want of prosecution did not deal judicially with the matter of the suit and could in no sense be regarded as an order adopting or confirming the decision appealed from. It merely recognised authoritatively that the appellant had not complied with the conditions under which the appeal was open to him and therefore he was in the same position as if he had not appealed at all. The other decisions are also to the same effect. As we have already said, neither the order of the District Judge of 24th August 1937 in the appeal filed by the first defendant, nor the order passed by the District Munsif on 22nd September 1937 dismissing the first defendant's application for an order setting aside the ex parte decree,



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can in any sense be regarded as a merger of the order granting the preliminary decree."

(3)The judgment of this Court in the case of ***P.Subramania Pillai vs Vadivu Ammal and others***, reported in ***1988-2 MLJ 287***, wherein, it has been held as follows:

"3. There is no dispute that according to Clause 2(i) of the preliminary decree for sale passed in this case in Form 5-A of Appendix D to the Civil Procedure Code, the appellant was ordered to pay into the court on or before 26.4.1973 or any later date upto which time for payment may be extended by court, a sum of Rs. 4,455-27 with interest on Rs. 2,100 at 6 per cent per annum, from 26.3.1973 till the date of payment. The appellant did not pay any amount at all and the time for payment was also not extended by the court. Under Clause (3) of the preliminary decree, it was further ordered and decreed that in default of payment, the plaintiff may apply to the court for a final decree for the sale of the mortgaged properties. Thus, in accordance with Clause (3) of the preliminary decree, the decree holder secured a right to apply for the passing of a final decree for the sale of the mortgaged properties on the failure of the appellant to pay the amount on or before 26.4.1973. To put it differently, the right to apply for a final decree in accordance with Clause (3) of the preliminary decree accrued to the decree holder on the failure of the appellant to pay the amount on or before 26.4.1973. Where a person has obtained a preliminary decree for sale and the amount payable thereunder had not been paid within the time granted by the decree, in order to sell the properties mortgaged and realise the amounts due, such a person has necessarily to obtain a final decree and the right to apply for such a final decree accrues or arises on the failure of the appellant to pay the amount due within the time granted. In this case, the appellant had been granted time to pay the amount till 26.4.1973 and on his failure to pay the amount within that time, the right to apply for the passing of a final decree arose in favour of the



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decree holder on and from 27.4.1973. The Article applicable to such an application is Article 137 of the Limitation Act, 1963 providing for a period of three years, to make the application when the right to apply accrues. In this case, the right to apply for a final decree arose in favour of the decree holder on and from 27.4.1973 and the application for the passing of a final decree was filed only on 21.12.1978. Consistently it has been laid down that the Article applicable to such an application is Article 181 of the Limitation Act, 1908, corresponding to Article 137 of the Limitation Act (Act 36 of 1963), 1963-vide *Subbulakshmi Ammal v. Ramanujam Chettiar* 42 Mad. 777; *Mummadi Venkatiah v. Boganathan Venkatasubbiah* 58 L.W. 441 : 42 M.L.J. 51; *Rajamayyer alias Subramania Iyer Vs. Venkatasubba Iyer and Others*, and *The Kumbakonam Municipal Council Vs. Poonachi alias Habina Beevi*. Applying the principle laid down in the aforesaid decisions, it follows that the application filed by the respondents on 21.12.1978 for the passing of a final decree was barred by limitation.”

(4)The judgment of this Court in the case of ***State Bank of India vs Kasim***, reported in ***1999 (III) CTC 109***; and

“8.Though the learned counsel appearing for the appellant argued on merits, challenging the findings of the trial Court, rejecting the case of the plaintiff as against the 2nd defendant, I am not inclined to go into the same, in view of the legal submission that has been raised by the learned counsel for the 2nd respondent. It is not in dispute that the trial Court has granted the preliminary decree on mortgage in favour of the plaintiff as early as on 29.10.1982. The trial Court has granted three months time to the 1st defendant to pay the decree amount and thereafter the liberty has been given to the plaintiff to proceed with the final decree proceedings. The learned counsel for the appellant on instruction has submitted that so far no application for final decree was filed which fact has been denied. It cannot be disputed that application for passing final decree, after the expiry of three years cannot be maintained. I seek support to the said conclusion from the decision in *Kumbakonam Municipal Council v. Poonachi*, 1980 (II) M.L.J. 378,



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wherein it has been held as follows:

*“A preliminary decree for partition merely defines the shares of the parties in the properties and the division by metes and bounds and allotment of properties has to be done only under the final decree for which an application has to be filed. But till the final decree is passed, the suit itself is pending and any such application can be construed to be an application in a pending suit for which there is no time limit prescribed. But in the present case, clause (iii) of the decree referred to earlier provides for the filing of an application for the passing of a final decree. Under the preliminary decree in the present case, no amount has been declared and the time within which that amount has to be paid has also been fixed and the consequence of non-payment within that time have also been indicated, in that it would be open to the petitioner to take out an application for final decree and bring the property to sale for the realisation of the amount due to it. Thus, the preliminary decree in the present case has not left any matter untouched or pending in the sense that a partition suit keeps alive most of the matters even after the preliminary decree. The only thing that remained under the decree in the present case was to file an application for a final decree and proceed thereafter with the sale of the property and, therefore, such an application cannot be characterised as strictly an application in a pending suit belonging to the category of a partition suit as was the case in *K.S. Doraiswami Nadar (died) and others v. Vinayaka Ratnaswami Nadar and others*, 1969 (1) M.L.J. 392. Even this decision, therefore, does not in any way assist the petitioner. The learned Counsel for the petitioner placed very strong reliance upon the decision in *Sivan Pillai v. Anbayyan and others*, 1976 (1) M.L.J. 385. In that case, the proceedings arose out of a suit to enforce a mortgage and a preliminary decree was passed on 30th January, 1958. Thereafter, the appellant filed an application in I.A. No. 126 of 1969 purporting to be under Order 34, rule 5, Code of Civil Procedure, for passing a final decree. An objection was raised by the respondent that since the preliminary decree had been passed on 30th January, 1958 and no application had been filed within three years from the date of the preliminary decree, the application for final decree filed in 1969 was barred by limitation. The Courts below accepted this contention and dismissed the application. *Ismail, J.* (as he then was), held that the application for the passing of the final decree was not barred. In that case, the preliminary*



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decree itself was not passed in accordance with the provisions contained in Order 34, Code of Civil Procedure, in that no time limit was fixed for the payment of the amount. Under those circumstances, the learned Judge held that the consequences, of an omission by the Court to do its duty cannot be visited on a litigant and, therefore, the petition would be within time. That is not the situation in the present case. It is not the case of the petitioner that the preliminary decree passed in the present case was not in accordance with the provisions of Order 34, Code of Civil Procedure. Indeed, the decree accords completely with the requirements of Order 34, Code of Civil Procedure, and provides for the payment of the amount by the respondent herein within a prescribed time and also as to what further remedies would be available to the petitioner in the event of default. Consequently, the considerations which weighed with Ismail, J., (as he then was), in that case to hold that the application was in time cannot apply in the present case. If the preliminary decree in the present case contemplated the filing of an application by the petitioner in default of payment by the respondent within the time prescribed, then the right to apply for the final decree accrued on the date when the payment was not made as provided for under the decree, and as stated earlier, old Article 181 corresponding to Article 137 of the Limitation Act, 1963, would be applicable and an application has to be filed within three years from the date when the right to apply for final decree accrued in favour of the petitioner, that is, on the non-payment by the respondent of the amount decreed on or before 22nd September, 1974. In this view, the application sought to be filed in the present case on 5th April, 1978 is clearly out of time and the rejection thereof by the Court below was quite correct.”

In view of the above, the plaintiff cannot now file any petition for final decree and thereby the plaintiff has lost his right over the mortgage security.”

(5)The judgment of this Court in the case of **L.K.Raju vs S.N.Samiappan**, reported in (2017) 4 MLJ 141;



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“7. It is well settled that Application for final decree is governed by the residuary Article 137 of the Limitation Act, in which an Application for final decree is to be filed within three years from the date when the right to apply accrues. If the right to apply for final decree had accrued to the plaintiff on default being committed by the defendant for payment of the decretal amount. An Application for final decree ought to have taken out within a period of three years as specified under Article 137 of the Limitation Act. In this case, Application for final decree itself has been filed on 01.06.2009, i.e. Beyond the period of limitation of three years. Right to apply for final decree accrued to the plaintiff in this case is on the expiry of the two months time granted to the defendant for payment of decretal amount, by the trial Court in the preliminary decree dated 23.10.2003. Therefore, right to file Application for final decree accrued in the month of December 2003 itself and the Application for final decree ought to have been taken out within three years i.e., on or before 23.12.2006. Whereas in this case, the Application for final decree as could be seen from the lower Court records, was filed on 01.06.2009, much beyond the period of limitation, without filing an application to condone the delay. 8. Further, in the Application for final decree, there was no explanation whatsoever pleaded, for the delay in filing such application and no evidence whatsoever has been led to satisfy the Court that he had sufficient cause for not preferring the Application within the period of limitation. The learned trial Court has simply taken up the Application on file and passed final decree in pursuant to the preliminary decree. In this regard, it is relevant to extract Section 3 of the Limitation Act, 1963 which is as follows:-

“3. Bar of Limitation. (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. (2) For the purposes of this Act,- (a) a suit is instituted,- (i) in an ordinary case, when the plaint is presented to the proper officer; (ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and (iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator; (b) any claim by way of a set off or a counter



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claim, shall be treated as a separate suit and shall be deemed to have been instituted- (i) in the case of a set off, on the same date as the suit in which the set off is pleaded; (ii) in the case of a counter claim, on the date on which the counter claim is made in court; (c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.”

11.This Court considered the submissions made on either side and perused the materials available on record.

12.The points for consideration are

(1)Whether Article 137 of the Limitation Act is applicable to the present case? and

(2)Whether the litigation period between the parties to the *lis* can be excluded while calculating the number of delays in filing the final decree application?

13.The following facts are not in dispute:

(1)The Revision Petitioner has filed a suit in O.S.No.144 of 2004 on the file of the Principal Subordinate Court, Kumbakonam, for recovery of money



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due on the mortgage executed by the defendant.

(2)In the said suit, an *ex parte* decree was passed on 12.11.2009.

(3)The respondent/defendant has filed an application in I.A.No.101 of 2010 to set aside the *ex parte* decree, dated 12.11.2009, in which, a conditional order was passed directing the respondent/defendant to deposit 1/3 of the suit amount on or before 18.04.2011.

(4)Challenging the above order, the respondent/defendant has preferred a revision petition before this Court in C.R.P(MD)No.2019 of 2011, which was dismissed by this Court with a direction to the respondent/defendant to comply with the conditional order passed by the trial Court in I.A.No.101 of 2010 on or before 30.11.2011.

(5)Challenging the same, the respondent/defendant has preferred an SLP before the Hon'ble Supreme Court in S.L.P.No.35939 of 2012, which was also dismissed by the Hon'ble Supreme Court by order, dated 09.01.2012.

(6)The respondent/defendant, thereafter, had filed an application in I.A.No.215 of 2012 before the trial Court seeking permission to deposit 1/3 amount, which was dismissed by the trial Court by order, dated 05.12.2012.

(7)Challenging the same, the respondent/defendant had preferred a



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revision petition before this Court in C.R.P(MD)No.555 of 2013. This Court vide order, dated 02.07.2018, had dismissed the said revision petition.

(8)The revision petitioner/plaintiff had filed a final decree application in I.A.No.236 of 2019 in O.S.No.144 of 2004 and the learned Principal Subordinate Judge, Kumbakonam, vide order, dated 15.10.2023, had dismissed the said application on the ground of limitation.

14.With regard to the applicability of Article 137 of the Limitation Act in the present case, it is to be seen that Article 137 of the Limitation Act would apply only when there is no specific period is provided in the statute and it is a residuary provision and it applies only when no other specific limitation period is prescribed for an application. Further, as rightly contended by the learned Counsel for the petitioner, as per Article 136 of the Limitation Act, the time limit of twelve years from the date of decree is prescribed for enforcement of any decree passed by a civil Court.

15.The Hon'ble Division Bench of this Court in ***B.Abdul Malick and Co., Tirupattur and others vs State Bank of India***, reported in ***2018 SCC***



OnLine Mad 13658, wherein, it has been held as follows:

“30. In a suit on a mortgage, after the passing of the preliminary decree, if the decree holder-plaintiff does not apply for the passing of final decree within the period prescribed by Article 181 of the old Limitation Act or Article 137 of the new Limitation Act and on that ground the said application was dismissed as barred by limitation, what happens to the pending suit itself does not appear to have been considered so far. If the analogy of the partition suit is taken, once a preliminary decree declaring the shares of the parties has been passed, that suit is said to be pending till a final decree is passed. There being no period of limitation prescribed for filing an application for final decree in a suit, the suit will be pending till the final decree is actually passed and there is no compulsion on any of the parties to the preliminary decree to apply for a final decree within a particular time. Therefore, with regard to a suit for partition, once a preliminary decree has been passed, it has to be adjourned sine die with liberty to any of the parties to whom shares have been allotted to apply for the passing of a final decree. If the parties to whom shares have been allotted under the preliminary decree do not apply for the passing of a final decree within a reasonable time, the Code does not confer a power on the Court to dismiss that suit on the ground that nobody has applied for the passing of the final decree, either suo motu or on the application of any one of the parties to the suit.

31. Order XXXIV of the Code of Civil Procedure elaborately deals with the manner of disposal of a suit on a mortgage, but, it does not contain any provision for dismissing a suit on a mortgage in which a preliminary decree has been passed already, on the ground that the plaintiff had not applied for the passing of a final decree within the time prescribed by law, either suo motu or on the application of the judgment-debtor.

32. As a matter of fact, once the application made by a plaintiff for passing a final decree is dismissed on the ground that it is barred by limitation, we are left with a peculiar and nebulous position of the suit being still pending and the preliminary decree already passed not having been cancelled, but at the same time, the plaintiff in the suit not



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being able to realise the fruits of the decree which they obtained under the preliminary decree.

33. Order XXXIV, Rule 2(1) read with Rule 4(1), Code of Civil Procedure contemplates a Court fixing a date within 6 months before which the amount determined by the Court or declared by the Court should be paid by the mortgagor, at every stage, there is provision in that Order itself for extending the time so fixed.

34. As a matter of fact, even in a case where a sale has already been ordered and sale has been held, there is a provision for payment of the amount due by the mortgagor before the confirmation of the sale. All these may indicate that the judgment-debtor has an opportunity of paying the amount not merely within the time prescribed under Order XXXIV, Rule 2(1) read with Rule 4(1), Code of Civil Procedure or within the extended time, but also even before the confirmation of the sale itself. The whole scheme of Order XXXIV, Code of Civil Procedure, is to give the mortgagor an opportunity of getting the time fixed in the preliminary decree for payment of the amount extended.

35. In the present case, as clearly stated about the executability, if the defendants failed to pay the amount in question within the prescribed period, it cannot be said that the decree issued in favour of the respondent-bank, was not executable.

36. No doubt, law of limitation is based on a sound public policy, but, at the same time, the court would not be willing to apply the rigours of the Limitation Act to defeat a just and valid claim of the Bank which has now crystalised on adjudication by a competent court of law.

37. Applying the principle of limitation in the facts of this case would amount to, depriving the respondent-bank of the fruits of the judgment. It would amount to giving undue benefit to the borrowers and the guarantors. The preliminary mortgage decree which was subsisting on the date of coming into force of Section 31-A of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would be covered under the definition of 'debt' under Section 2(g) and within the meaning of 'decree and order' under Section 31-A of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

38. For the reasons stated above, we would also find that the period of limitation prescribed for the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil



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Court as prescribed under Article 136 of the Limitation Act, would apply in the facts of the present case. This provides 12 years period of limitation and, therefore, the decree dated 12.04.1993 was executable for a period of 12 years from the date of expiry of four months time. Therefore, the application filed under Section 31 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 filed on 09.08.2004 would not be barred by limitation. A formal certificate of recovery has to be issued in terms of the decree passed in O.S. No. 167 of 1982. The certificate has to be executed just like execution of a money decree in accordance with the provisions and procedures of law.

39. We are also conscious of the fact that the respondent-bank is the custodian of public money. It is pertinent to note that the loan in the present case was disbursed in the year 1976 and the properties were mortgaged in the same year; further the title deeds were deposited in the year 1980, the suit on the mortgage was filed in the year 1982 and the decree was passed on 12.04.1993. The judgment and decree passed in favour of the Bank has not been interfered by the Lower Appellate Court in the First Appeal filed by the petitioners-defendants, therefore, the respondent Bank cannot be deprived of the fruits of the judgment and decree which are clearly executable, where there is no denial of the liability affecting the merits of the case or any question as to the jurisdiction of the court. Therefore, the claim made by the respondent-bank shall not come within the purview of the residuary clause of the Limitation Act, namely, Article 137. Instead, the claim made by the respondent-bank would come within the purview of Article 136 of the Limitation Act and in such case, the claim made by the respondent-bank on 09.08.2004 was within the period of limitation.”

16.The Hon'ble Division Bench has taken into consideration the old Article 181 in the Old Limitation Act and the Article 137 of the new Limitation Act along with Order XXXIV CPC, which deals with the manner of disposal of the suit of a mortgage. Further, the Hon'ble Division Bench has taken into



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consideration the Order XXXIV Rule 2(1) read with Rule 4(1) of CPC, which contemplates a Court fixing a time limit for depositing the amount determined by the Court and the Hon'ble Division Bench has rendered its finding positively on the ground that the decree holder should not be suffered because of the delay in filing an application, as it frustrates the decree, which is in favour of the decree holder.

17.In such view of the matter, this Court is of the view that Article 137 of the Limitation Act cannot be applicable to the present case and only the Article 136 of the Limitation Act can be applicable to the present case and as such, the limitation period for filing the final decree in the present case is twelve years. Hence, the findings rendered by the Court below relying on Article 137 of the Limitation Act are *per se* illegal and in this case, only the Article 136 of the Limitation Act would apply, as in the present case, the petitioner has filed the final decree application under Order 34 Rule 5 CPC.

18.Further, in this case, after the preliminary decree was passed in favour of the plaintiff/revision petitioner, the respondent/defendant had filed an



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application in I.A.No.101 of 2010 to set aside the *ex parte* decree, dated 12.11.2009, in which, a conditional order was passed directing the respondent/defendant to deposit 1/3 of the suit amount on or before 18.04.2011. The said order was also challenged before this Court and the same was dismissed by this Court, against which, SLP was filed and the same was also dismissed and thereafter also, the respondent/defendant filed petitions after petitions and after contesting all these litigations, the revision petitioner/plaintiff had filed a final decree application in the year 2019 and the entire facts has been properly explained by the revision petitioner in the affidavit filed in support of the final decree application, which was also not dispute by the respondent/defendant.

19.The learned Single Judge of this Court in the case of ***Meghraj vs Jesraj Kasturjee and another*** reported in **AIR 1975 Mad 137**, held that “*the consensus, therefore, appears to be this. If under explainable circumstances an appeal or an application is filed in Court, but without a formal application or a written application for excusing the delay in the presentation of the same, then the Court should circumvent technicality and afford a reasonable*



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opportunity to the aggrieved party to mend matters. Otherwise, it would lead to miscarriage of justice.”

20.The Allahabad High Court in the case of ***Mahipal Singh vs Board of Revenue and others***, reported in **2020 SCC OnLine All 637**, held as follows:

*“16. In the case of **Meghraj v. Jesraj Kasturjee** reported in [AIR 1975 Mad 137](#), it was observed that in the absence of formal written application for condonation of delay, the court should circumvent technicality and afford a reasonable opportunity to the aggrieved party to mend matters. Otherwise it would lead to miscarriage of justice. Paragraph 4 of the aforesaid judgment reads as follows:—*

“The consensus, therefore, appears to be this. If under explainable circumstances an appeal or an application is filed in Court, but without a formal application or a written application for excusing the delay in the presentation of the same, then the Court should circumvent technicality and afford a reasonable opportunity to the aggrieved party to mend matters. Otherwise, it would lead to miscarriage of justice.”

17. A bare perusal of the order of the revisional authority would show that the restoration application was dismissed as barred by time as it did not accompany with an application for condonation of delay when it was filed. It does not appear from the said order that any opportunity was given by the revisional authority to the petitioner to move an application for condonation of delay. If the restoration application was defective the revisional authority should have given an opportunity to the petitioner to remove the defect, moreover an application for condonation of delay may be oral also.

*18. In the case of **Firm Kaura Mal Bishan Dass v. Firm Mathra Dass Atma Ram** reported in **AIR 1959 Punj 646** it was held that merely because there was no written application filed by the appellant is hardly*



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a sufficient ground for refusing him the relief, if he is otherwise entitled to it.

19. A similar observations were made by the Gujarat High Court in the case of *Markland Pvt. Ltd. v. State of Gujarat*, reported in [AIR 1989 Guj 44](#). It has been held that in the absence of written application for condonation of delay, the delay in filing the appeal can be condoned.

20. Identical view was taken by this Court in *Indrasani Devi v. D.D.C., Varanasi* reported in [1981 All LJ 637](#), which was followed by another Single Judge of this Court in the case of *Muneshwari Devi v. Jitan Singh* reported in 1993 AWC 792.

21. More or less, the same view has been taken in the case of *Smt. Shakuntala Devi v. Banwari Lal*, reported in 1997 AWC 622.

22. The filing of the application for condonation of delay is in the realm of procedure. The procedure as far as possible cannot and should be interpreted in such a way so as to take away the right of the parties.

23. The Apex Court with a reference to Section 5 of the Limitation Act in *N. Balakrishnan v. M. Krishnamurthy* reported in [\(1998\) 7 SCC 123](#) : *JT* (1998) 6 SC 242 has laid down that the primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. In the judgment, it has been held that rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Ultimately, in para 14, it has been stated that it must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the court must show utmost consideration to the suitor. It has been laid down that in such matters, approach of the court should be justice oriented. The paragraph 14 of the aforesaid judgment is reproduced hereinbelow:—



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“14. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

21.In the above judgment, the learned Single Judge has relied upon several judgments involved in an identical situation and had held that "the time limit fixed for approaching the Court in different situations is not because on expiry of such time a bad cause would transform into a good cause. The learned Single Judge by referring to several judgments had come to the conclusion that there should be an explanation for the delay.

22.In view of the law laid down by the Hon'ble Supreme Court in various judgments, the period of litigation can be excluded while calculating the delay and in this case, there is no question arise that the revision petitioner



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has filed the final decree application beyond the limitation period.

23.In view of the same, the Civil Revision Petition is allowed and the order passed by the learned Principal Subordinate Judge, Kumbakonam, in I.A.No.236 of 2019 in O.S.No.144 of 2004, dated 15.10.2022 is set aside. The trial Court shall proceed with the final decree application in accordance with law. No costs.

29.01.2026

Internet :Yes/No
NCC :Yes/No
Index :Yes/No

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To

The Principal Subordinate Judge, Kumbakonam.



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N.SENTHILKUMAR, J.

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Order made in
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29.01.2026