
(2006) 04 MAD CK 0325
In the Madras High Court
Case No : C.R.P. PD. No. 836 of 2004

Gowri Ammal

APPELLANT

Vs

Murugan, Anbu, Sekar and Saroja Ammal

RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148, 149, 151
Constitution of India, 1950 — Article 141

Citation : (2006) 2 MLJ 729

Hon'ble Judges : S.R. Singharavelu, J; M. Karpagavinayagam, J

Bench : Division Bench

Advocate : R. Bharanidharan, for the Appellant; R. Gowtham Narayanan, for N. Nithianandam, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—The question posed before this Bench, as referred to by Justice P. Sathasivam, the learned single Judge, is as follows:

After dismissal of the earlier petition for non-compliance of the conditional order within the time stipulated, whether the Court has jurisdiction to entertain a petition for extension of time, filed u/s 148 read with Section 151 CPC ?

2. The short facts are as follows:

(i) Murugan and others, respondents herein, are the plaintiffs. They filed a suit in O.S. No. 16 of 1999, for partition and separate possession.

(ii) Gowri Ammal, petitioner herein, is the second defendant, and she purchased the suit property from one Dhanapal Gounder, first defendant, who is the father of respondents 1 to 3 and husband of fourth respondent, in the year 1989, through a registered sale deed.

(iii) On 20.09.1999, the suit was decreed ex parte as against the second defendant, petitioner herein. She came to know about the ex parte decree only

when a notice was served on her in the final decree proceedings on 27.01.2002. Thereafter, she filed an application, namely, I.A. No. 180 of 2002, seeking to condone the delay of 1009 days in filing a petition to set aside the ex parte decree.

(iv) After hearing the parties, the delay was condoned by the trial Court, imposing a condition on the petitioner to pay a sum of Rs. 500/- to the respondents on or before 18.03.2003. The said amount was not paid in time. Therefore, the petition to condone the delay was dismissed on 18.03.2003.

(v) On 05.08.2003, the petitioner filed an application vide I.A. No. 435 of 2003 under Sections 148 and 151 CPC, to extend the time for payment of costs.

(vi) By an order dated 27.02.2004, the said I.A. was dismissed by the trial Court, on the ground that the Court had no power u/s 148 CPC to extend the time granted earlier, as it had become functus officio.

(vii) As against the said order of dismissal, the petitioner has filed this Civil Revision Petition.

3. When the matter came up before the learned single Judge, on behalf of the petitioner, it was argued that the Court had ample power to extend the time u/s 148 read with 151 CPC, even after expiry of the period fixed, in the light of the rulings rendered by Justice V. Kanagaraj, as he then was, in Pakkiammal Vs. Anaiappan, and Arthanari and Another Vs. S. Seshagiri Rao and Others, .

4. On the other hand, on behalf of respondents, three other decisions, namely, (i) D. Raju v. N. Ramalingam 2001 (3) L.W.254, rendered by Justice N.V. Balasubramanian, as he then was; (ii) Angammal v. Ramasamy 2003 (3) M.L.J.770 and (iii) K. Rangasamy Gounder v. Muthusamy Gounder 2005 (3) M.L.J.331, rendered by Justice R. Banumathi, were cited, wherein it was held by the respective Judges that the Court had no power to extend the time u/s 148 CPC, since the Court was not in seising of the matter and it became functus officio.

5. However, the learned single Judge, who referred the matter to this Division Bench, found that subsequent to the judgments rendered by Justice N.V. Balasubramanian and Justice R. Banumathi, the Supreme Court, in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), , rendered the judgment, reiterating the principles laid down by it earlier in Mahanth Ram Das Vs. Ganga Das, , that though maximum time of thirty days was prescribed in Section 148 of the Code, considering the object of the Code, namely, to promote justice, the Court can invoke both Sections 148 and 151 CPC, to condone the delay, if the circumstances so warrant.

6. On the basis of the said judgment of the Supreme Court, the learned single Judge thought it fit to refer the matter to the Division Bench, to have an elaborate consideration, with reference to the said aspect, as the decisions of Justice N.V. Balasubramanian and Justice R. Banumathi required re-consideration.

7. That is how, this revision has been placed before this Division Bench, on the orders of the Hon"ble Chief Justice, for considering the question, stated above.

8. We have heard the learned Counsel for the petitioner and also the respondents.

9. At the outset, it shall be stated that the submission made by the learned Counsel for the respondents that the moment the application has been dismissed for non-compliance of the conditional order, the Court has become functus officio and, as such, it cannot entertain a petition for extension of time under Sections 148 and 151 CPC, is liable to be rejected, on the sole reason that there is a categorical observation by the Supreme Court, which is a ratio decidendi, that in these matters, the Court can invoke both Sections 148 and 151 CPC, to entertain such a petition for extension of time, even though the period has already been expired.

10. Section 148 CPC reads as follows:

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired.

11. The above Section is clear that even after expiry of the period already granted, the Court has jurisdiction to extend the period subsequently, by exercising the power u/s 148 CPC, even if an application has been filed subsequent to the expiry of the original period fixed.

12. The Supreme Court, in Mahanth Ram Das Vs. Ganga Das, , while dealing with the same question, has made the following observation:

5. The case is an unfortunate and unusual one. The application for extension of time was made before the time fixed by the High Court for payment of deficit court fee had actually run out. That application appears not to have been considered at all in view of the peremptory order which had been passed earlier by the Division Bench hearing the appeal, mainly because on the date of the hearing of the petition for extension of time, the period had expired. The short question is whether the High Court, in the circumstances of the case, was powerless to enlarge the time, even though it had peremptorily fixed the period for payment. If the Court had considered the application and rejected it on merits, other considerations might have arisen; but the High Court, in the order quoted, went by the letter of the original order under which time for payment had been fixed. Section 148 of the Code, in terms, allows extension of time, even if the original period fixed has expired, and S. 149 is equally liberal. A fortiori, those sections could be invoked by the applicant when the time had not actually expired. That the application was filed in the vacation when a Division Bench was not sitting should have been considered in dealing with it even on July 13, 1954, when it was actually heard. The order, though passed after the expiry of the time fixed by the original judgment, would have operated from July 8, 1954. How

undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out, often enough to be inexpedient. Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely stop a Court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians. Cases are known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding, even though a final order had been passed.... But, we are of opinion that in this case the Court could have exercised its powers first on July 13, 1954, when the petition filed within time was before it, and again under the exercise of its inherent powers, when the two petitions under S. 151 of the CPC were filed....

13. The above observation would make clear the view of the Supreme Court that Section 148 CPC confers ample discretionary powers regarding enlargement of time and Section 151 CPC also provides the inherent powers conferred on Courts, to make any order that is necessary for ends of justice.

14. What is important, at this juncture, is, in such matters, either Section 148 or section 151 CPC should not be read in isolation. On the contrary, both the Sections should be read together, when the result could be easily arrived at in the circumstances of the case.

15. Referring to the above judgment, the Supreme Court in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), , while dealing with the very same question, would make the following observation:

41. The amendment made in Section 148 affects the power of the court to enlarge time that may have been fixed or granted by the court for the doing of any act prescribed or allowed by the Code. The amendment provides that the period shall not exceed 30 days in total. Before amendment, there was no such restriction of time. Whether the court has no inherent power to extend the time beyond 30 days is the question. We have no doubt that the upper limit fixed in Section 148 cannot take away the inherent power of the court to pass orders as may be necessary for the ends of justice or to prevent abuse of process of the court. The rigid operation of the section would lead to absurdity. Section 151 has, therefore, to be allowed to operate fully. Extension beyond maximum of 30 days, thus, can be permitted if the act could not be performed within 30 days for reasons beyond the control of the party. We are not dealing with a case where time for doing an act has been prescribed under the provisions of the Limitation Act which cannot be extended either u/s 148 or Section 151. We are dealing with a case where the time is fixed or granted by the court for performance of an act

prescribed or allowed by the court.

42. In Mahanth Ram Das Vs. Ganga Das, , this Court considered a case where an order was passed by the Court that if the court fee was not paid by a particular day, the suit shall stand dismissed. It was a self-operating order leading to dismissal of the suit. The party's application filed under Sections 148 and 151 of the Code for extension of time was dismissed. Allowing the appeal, it was observed : (SCR pp.767-68)

How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out often enough to be inexpedient. Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians.

43. There can be many cases where non-grant of extension beyond 30 days would amount to failure of justice. The object of the Code is not to promote failure of justice. Section 148, therefore, deserves to be read down to mean that where sufficient cause exists or events are beyond the control of a party, the court would have inherent power to extend time beyond 30 days.

16. The above decision would make it clear that the Court cannot be made helpless or powerless where the upper limit fixed u/s 148 cannot take away the power of the Court u/s 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, Sections 148 and 151 CPC 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 Sections 148, 149 and 151 CPC 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 for 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.

20. The decision rendered by the Supreme Court on this point, which is a ratio decidendi, is a law on the land, binding on all Courts in India, under Article 141 of the Constitution of India. Where the Supreme Court has stated that the law laid down in a particular case is the applicable law, it cannot be contended that the decision rendered by the Supreme Court has not considered the point, regarding functus officio. It is not only a matter of discipline for the High Courts in India, but it is the mandate of the Constitution, as provided under Article 141, that the law declared by the Supreme Court shall be respected by all the Courts and the counsel as well as the parties, within the territory of India.

21. In view of the above conclusions, we are in total agreement with the view expressed by the learned single Judge, that the decisions rendered by the other learned single Judges in (i) D. Raju v. N. Ramalingam 2001 (3) L.W.254 ; (ii) Angammal v. Ramasamy 2003 (3) M.L.J.770 and (iii) K. Rangasamy Gounder v. Muthusamy Gounder 2005 (3) M.L.J.331, require re-consideration.

22. Accordingly, we hold that the decisions rendered by this Court in (i) D. Raju v. N. Ramalingam 2001 (3) L.W.254; (ii) Angammal v. Ramasamy 2003 (3) M.L.J.770 and (iii) K. Rangasamy Gounder v. Muthusamy Gounder 2005 (3) M.L.J.331 are not good laws.

23. In the present case, the trial Court simply dismissed the application, stating that it had no power. But, we have concluded that the Court has got power to entertain an application under Sections 148 and 151 CPC, to consider the merits of the matter for condoning the delay or for extending time. Admittedly, in this case, the application has been filed before the trial Court under Sections 148 and 151 CPC.

24. Therefore, while setting aside the order of the trial Court, we deem it appropriate to remand the matter to the trial Court, to consider the merits of the matter. Accordingly, the matter is remanded. If there are bona fide reasons for non-compliance of the order, the trial Court may consider the same and pass orders in accordance with law.

25. To make it clear, we do not give any opinion about the merits of the matter. The trial Court, uninfluenced by any of the observations made by this Court in this order, shall dispose of the matter on merits, taking into consideration various circumstances shown by the parties and deciding the question as to whether the application can be allowed or dismissed.

26. Civil Revision Petition is allowed. No costs. Consequently, the connected C.M.P. No. 8071 of 2004 is closed.