

(1997) 10 MAD CK 0026

In the Madras High Court

Case No : C.M.P. No. 12805 of 1997 in C.R.P. SR. No. 40117 of 1996

K. Alagappan Padayatchi represented by Power Agent K.
Chinnayya

APPELLANT

Vs

V. Alagappan Padayatchi

RESPONDENT

Date of Decision : 27-10-1997

Acts Referred:

Madras High Court Rules, 1967 — Order 4 Rule 21

Citation : (1997) 3 CTC 500 : (1998) 1 LW 183 : (1998) 1 MLJ 711

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : N.S. Malini, for the Appellant; K. Yamunan, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

R. Balasubramanian, J.—The prayer in this petition is as follows:

For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon''ble Court may be pleased to condone the defective

presentation of the above C.R.P. SR. No. 40117 of 1996 in not filing the certified copies of the order and the decretal order in I.A. No. 635 of

1995 in O.S. No. 123 of 1995 on the file of the District Munsif Court, Kerranur, Pudukottai District, at the time of presentation of the C.R.P. SR.

No. 40117 of 1996 and condone the delay of 372 days in filing the above order and decretal order and pass such further or other orders as this

Hon''ble Court seem fit and proper.

2. From the records, it is seen that the civil revision petition is filed against the order and decretal order dated 13.11.1995 on the file of the District

Munsif-cum-Judicial Magistrate, Keeranur. That was an application filed under

Order 6, Rule 17 of the CPC by the plaintiff to amend the plaint. In this order I am not going into the merits of the order challenged in the revision. The records show that the revision itself came to be filed before this Court on 18th of June, 1996. The Registry returned the papers for the first time on 5.7.1996. One of the returns is ""certified copy of the order and decretal order in I.A. No. 635/1995 should be filed"". The second return was on 15.7.1996; the third return was on 8.10.1996 and the fourth return was on 12.3.1997. From the second and third returns referred to above, it is noticed that the requirement of the filing of the certified copies of the order and the decretal order had not been complied with. The records further show that the certified copy of the petition and order dated 13.11.1995 in I.A.No.635 of 1995; certified copy of the decretal order dated 13.11.1995 in I.A.No.635 of 1995 and the certified copy of the order dated 13.11.1995 came to be filed on 24th June, 1997 before this Registry. Thereafter, the Registry returned the papers once again on 12.6.1997 containing the following directions among other returns: ""Affidavit and petition to condone the defective presentation of C.R.P. in not filing the certified copy of order and decretal order in I.A.No.635/1995 at the time of presentation of C.R.P. should be filed."" To comply with this requirement of the Registry of this Court alone, C.M.P. No, 12805 of 1997 has come to be filed. Therefore one thing is clear i.e., on the date when the Civil Revision Petition was filed, the certified copy of the order and the certified copy of the decretal order in I.A.No.635 of 1995 in O.S.No.123 of 1995 on the file of the District Munsif-cum-Judicial Magistrate, Keeranur were not filed.

3. If that being the position the question that falls for consideration in my hands at this stage is whether the relief as prayed for in C.M.P.No.12805 of 1997 could be granted and if not what would be the appropriate application the revision petitioner should file? Since the issue on hand revolves round procedural aspect, I deemed it fit to have the assistance of the experienced lawyers on the appellate side practicing in this Court. Mr. K. Yamunan as well as Mr. N. Mani Narayan Advocates were present on the last occasion when this matter was listed before me and I sought for their help in deciding this issue. Today Mr. K. Yamunan appeared in Court and assisted me with case laws, sparing his valuable time to enable me

to decide the issue.

4. Before I proceed further, I want to place on record that the three certified copies of the orders referred to above have been made ready on

7.3.1996 itself and taken delivery on 11.3.1996 . Therefore, those certified copies of the orders were available with the revision petitioner when he

presented the revision for the first time before this Court on 18.6.1996.

5. The requirements to be complied with at the time of filing the Civil Revision Petitions, as pointed out by Mr. K.Yamunan learned counsel

appearing as Amicus Curiae, is provided for under Order IV, Rules 20 and 21 of the Appellate Side Rules. Order IV, Rule 21 of A.S. Rules starts

with the words ""Civil Revision Petition u/s 115 of the Code or any other enactment."" Therefore, all civil revision petitions filed before this Registry

have to necessarily satisfy the requirement of Order IV, Rule 21 of the Appellate Side Rules. The above referred to Rule is extracted hereunder:

21. Civil revision petition u/s 115 of the Code or any other enactment shall be accompanied by-

(1) a certified copy of the decree of order which is to be revised,

(2) a certified copy of the judgment, if any, on which decree is based.

(3) a certified copy of the judgment or order, if any, of the Court or tribunal of the first instance.

(4) One set of additional typewritten copies of the judgments and orders referred to above.

(5) as many clear authenticated copies on plain paper of the memorandum of grounds on the revision petition as there are respondents to be

served, together with another such copy for the court record.

(6) the particulars for service of notices on the respondents set out in Form No. 2 of the Schedule to these rules; and

(7) the fees prescribed for service of notices on the respondents.

A Division Bench of this Court while dealing with a matter arising under the Tamil Nadu Buildings (Lease and Rent Control) Act in its reported

judgment M.A. Rajarathnam Vs. T. Rajammal, had occasion to advert to the provisions contained in Order IV, Rule 21 of the Appellate Side

Rules. In that judgment it is stated as follows:

It is convenient, at this stage, to refer to the procedure which has been

prescribed by the Appellate Side Rules of this Court for proceedings in revision. Order 4, Rule 21 of the Appellate Side Rules, 1965, provides that civil revision petitions u/s 115 of the Code or any other enactment shall be accompanied among other things, by a certified copy of the decree or order which is to be revised and a certified copy of the judgment, if any, on which the decree is based as well as a certified copy of the judgment or order, if any, of the Court or Tribunal of the first instance.

We have earlier referred to the language of Order 4, Rule 21 of the Appellate Side Rules which regulate not only revisions filed u/s 115,

C.P.Code, but also revision petitions filed under any other enactment. Having regard to the insistence by the Appellate Side Rules that in order to

be a proper presentation, any memorandum of revision petition has got to be accompanied by a certified copy of the order sought to be revised.

Another learned single Judge of this Court had also occasion to consider the scope of Order 4, Rule 21 of Appellate Side Rules in- a reported

judgment viz., C. Ravi Vs. A. Janardhanan, . The learned Judge has held as follows:

The Appellate Side Rules framed under the CPC specifically provides that the memorandum of civil revision petition shall among other things be

accompanied by a certified copy of the judgment, if any, on which the decree is based and so the inherent power u/s 151, Civil Procedure Code,

cannot be exercised inconsistent without coming into conflict with the above said Rules.

Therefore from a reading of the relevant provision contained in the Appellate Side Rules and the two judgments above referred to, the

requirements to be complied with in presenting a civil revision petition as provided for in Order 4, Rule 21 of the Appellate Side Rules appear to

be mandatory and it cannot be said that complying of the requirements, all or any one of the same can be dispensed with at the discretion of the

Court.

6. When the law requires the filing of the certified copy of the proceedings of the court below at the time of filing of the civil revision petition and

which is challenged therein, can it be said that a civil revision petition filed without satisfying the requirement of Order 4, Rule 21 of the Appellate

Side Rules could be called as a valid presentation or not? In this context, the

learned Counsel Mr. K. Yamunan, brought to my notice several judgments of the Hon"ble Supreme Court of India as well as of this Court and they are as follows:

(a) Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Others, . In that case, the appeal was filed without the certified copy of the decree and

only with the certified copy of the judgment and the bill of costs. The Registry pointing out that defect returned the papers. The cause papers were

represented with an endorsement that no decree had been drawn and then the Registry registered that appeal. At the lime of hearing of the appeal,

an objection was taken about the competency of the appeal in the absence of the certified copy of the decree appealed against. In deciding that

objection, the Hon"ble Supreme Court of India held as follows:

If at the time when the appeal is preferred a decree has already been drawn up by the trial Court and the appellant has not applied for it in time it

would be a clear case where the appeal would be incompetent and a penalty of dismissal would be justified on the ground that the appeal is not

accompanied with a certified copy of the decree. The position would however be substantially different if at the time when the appeal is presented

before the appellate Court a decree in fact has not been drawn up by the trial Court; in such a case if an application has been made by the

appellant for a certified copy of the decree, then all that can be said against the appeal preferred by him is that the appeal is premature since a

decree has not been drawn up and it is the decree against which an appeal lies. In such a case, if the office of the High Court examines the appeal

carefully and discovers the defect the appeal may be returned to the appellant for presentation with the certified copy of the decree after it is

obtained. Where the appeal has passed through the stage of admission (appeal having been presented only with certified copy of judgment and bill

of costs endorsed on it) through oversight of the office, then the only fair and rational course to adopt would be to adjourn the hearing of the

appeal with a direction that the appellant should produce the certified copy of the decree as soon as it is supplied to him. In such a case it would be

open to the High Court and it would be it's duty, to direct the subordinate Court to draw up the decree forthwith without delay. On the other hand

if a decree has been drawn up and an application for its certified copy has been

made by the appellant after the decree was drawn up, the office of the appellate Court should return the appeal to the appellant as defective, and when the decree is filed by him, the question of limitation may be examined on the merits.

No hard and fast rule of general applicability can be laid down for dealing with appeals defectively filed under Order 41, Rule 1, Civil Procedure

Code. Appropriate orders would have to be passed having regard to the circumstances of each case but the most important step to take in cases

of defective presentation of appeals is that they should be carefully scrutinized at the initial stage soon after they are filed and the appellant required to remedy the defects.

(b) In Phoolchand and Another Vs. Gopal Lal, , it has been held as follows:

The requirement of Order 41, Rule 1 is mandatory and in the absence of a copy of the decree, the filing of the appeal would be incomplete,

defective and incompetent. But there may be circumstance where an appeal may be competent even though a copy of the decree may not have

been filed along with the memorandum of appeal.

Thus where the trial court does not frame a formal decree when it varied the shares and even when time was granted by the High Court and the

appellant moved the trial Court for doing so it did not frame a decree and the High Court also did not order the trial Court to do so it must be held

to be an exceptional case where in the absence of the copy of the decree the appeal could be maintained Jagat Dhish Bhargava Vs. Jawahar Lal

Bhargava and Others, , Follows.

(c) In Shakuntala Devi Jain Vs. Kuntal Kumari and Others, , it has been held as follows:

Under Order 41 Rule 1 the appellate court can dispense with the filing of the copy of the judgment but it has no power to dispense with the filing

of the copy of the decree. A decree and a judgment are public documents and u/s 77 of the Evidence Act. Only a certified copy may be produced

in proof of their contents. The memorandum of appeal is not validly presented, unless it is accompanied by certified copies of the decree and the

judgment. An order u/s 47 is a decree, and the High Court had no power to dispense with the filing of a copy of the decree. Ordinarily a decree

means the formal expression of an adjudication in a suit. The decree follows the judgment and must be drawn up separately. But u/s 2(2), the term

decree"" is deemed to include the determination of any question within Section 47. This inclusive definition of decree applies to Order 41, Rule I.

In some courts, the decision u/s 47 is required to be formally drawn up as a decree and in that case the memorandum of appeal must be

accompanied by a copy of the decree as well as the judgment. But in some other Courts no separate decree is drawn up embodying the

adjudication u/s 47 in such a case, the decision u/s 47 is the decree and also the judgment, and the filing of certified copy of the decision is

sufficient compliance with Order 41 Rule 1. As the decision is the decree, the appeal is incompetent unless the memorandum of appeal is

accompanied by a certified copy of the decision.

The question is whether the delay in filing the certified copy or, in filing the certified copy or, to put differently, the delay in re-filing the appeal with

the certified copy should be condoned u/s 5 of the Limitation Act. If the appellant makes out sufficient cause for the delay, the Court may in its

discretion condone the delay. Section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial

power and discretion ought to be exercised upon principles which are well understood; the words ""sufficient cause"" receiving a liberal construction

so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant. (In the present case the

Supreme Court condoned the delay in refiling the appeal with a certified copy of the Order).

(d) In Balakrishna Industrial Works Vs. C.S. Venkatachari and Another, , it has been held as follows:

Order, 41, Rule 1, CPC makes a distinction between a copy of the decree and that of a judgment. That order does not empower the appellate

Court to dispense with a copy of the decree. The presentation of a memorandum of appeal, without a copy of the decree appealed against, is not a

valid presentation and the appeal is not maintainable.

(e) In In RE Ramappa AIR 1946 Mad. 163 it has been held as follows:

The production of the printed copies of judgment is not mandatory. Court has power to dispense with the production of the printed copies of

judgment so long as a certified copy of judgment is there.

(f) In M. Muthupalani Vs. M.D. Kanan, two Hon"ble Judges of this Court have held as follows:

There is no doubt that the order rejecting the application filed by the defendant in the suit under Order 7, Rule 11 read with Section 151 of the

CPC to reject the plaint cannot be held to be a decree. It is an order because it does not determine the rights of the parties involved in the suit. The

petitioner has produced a certified copy of the order. This satisfied Rule 21(1) of Order 4 of the Appellate Side Rules. As such the civil revision

petition ought to have been registered.

The settled position of law as could be culled out from the above referred to judgments, except the last one referred to above, is that the filing of

the decree copy can never be dispensed with. On facts, the last referred to judgment, in my respectful view, does not apply to the case on hand.

7. As already noticed by me, the revision petitioner had the certified copy of the three orders which he filed before this Court, even on the day

when he filed the civil revision petition. Even at the earliest point of time after presentation viz., on 5.7.1996 itself, the Registry had found out this

defect and pointed out the same to the Counsel who had entered appearance for the revision petitioner. However the certified copy of the

proceedings challenged in this revision came to be filed only on 24.6.1997. When that being so, and in view of the several judgments referred to

above, I am of the firm opinion that on the day viz., 18.6.1996, when the civil revision petition came to be filed before this Court, it was not validly

presented and it was liable to be rejected on that sole ground alone. In other words, the revision before this Court on 18.6.1996 was totally an

incompetent one as the law requires the filing of the certified copy of the decree and the order/judgment challenged in this revision along with the

memorandum of grounds of revision. However as the revision papers were under the processing stage, during which time the revision petitioner

was directed to comply with the defect pointed out viz., the non-filing of the certified copy of the proceedings of the Court below, those certified

copies of the proceedings came to be filed on 24.6.1997. Under these circumstances, the date i.e., 24.6.1997 is the day on which it could be said

that the civil revision petition came to be properly instituted before this Court. In

that situation it looks clear that there is delay in filing the civil revision petition itself and necessarily a petition u/s 5 of the Limitation Act, as this revision arising u/s 115 of the Code of Civil Procedure, has to be filed. This appears to be the view of the Hon"ble Supreme Court of India in its judgment reported in Shakuntala Devi Jain Vs. Kuntal Kumari and Others, . In that case, the appeal was filed in the High Court on 17.3.1967 without the certified copy of the order, to dispense with an application was on record. The appeal was registered and on 25.10.1967, an objection was raised by the other side about the competency of the appeal without the certified copy of the order. This was followed by an application u/s 5 of the Limitation Act and the filing of the certified copy of the order itself on 6.11.1997. The High Court rejected the appeal as incompetent as it was not accompanied by a certified copy of the order and there was no sufficient ground for condoning the delay in filing the copy as well. The Hon"ble Judges posed the following questions to themselves for consideration: ""Whether the delay in filing the appeal should be condoned u/s 5 of the Limitation Act?"" On facts, the Hon"ble Judges found that the application u/s 5 of the Limitation Act should be allowed.

8. Under these circumstances, I am of the considered opinion that the relief as prayed for in C.M.P. No. 12805 of 1997 is misconceived and the application itself is not maintainable in the form in which it is made. Since the civil revision petition had been filed without the certified copies of the order and decretal order, it has to be necessarily held that there was no valid presentation of the civil revision petition on 18.6.1996 as provided for under Order 4, Rule 21 of the Appellate Side rules. The civil revision petition can at best be held to be validly presented only on 24.6.1997 on which date only the certified copies of the proceedings of the lower Court challenged in this revision came to be filed. Therefore, there is a clear delay in filing the civil revision petition and the delay in filing the same has to be necessarily explained by an affidavit of the party containing the reasons and it is for the Court before which it is placed to decide as to whether the relief in that application should be granted or not. Therefore, the C.M.P. No. 12805 of 1997 is dismissed as incompetent and not maintainable. It is open to the revision petitioner to file an appropriate affidavit explaining the delay in filing the civil revision petition and get appropriate orders.

9. I place on record my deep appreciation for the valuable assistance rendered by Mr. K. Yamunan, learned counsel appearing as amicus curiae to this Court in deciding this issue in the midst of his busy work.