

(1923) 01 MAD CK 0035
In the Madras High Court

Kalyanasundarappa Aiyar

APPELLANT

Vs

Chinnasami Servai alias Chinnaswamy Thevan

RESPONDENT

Date of Decision : 16-01-1923

Acts Referred:

Limitation Act, 1963 — Section 4, 5

Citation : 72 Ind. Cas. 13 : (1923) 17 LW 413

Hon'ble Judges : Oldfield, J

Bench : Single Bench

Judgement

Oldfield, J.—In this case, the petitioner's suit was dismissed for default on 20th January 1921. On 24th February 1921 he applied for its

restoration. That application should prima facie have been made not later than 19th February 1921. But it was contended before the lower Court

and is contended here that the time available was extended with reference to the occurrence of holidays on 19th, 20th 21st and 22nd February

1921.

2. As regards 21st and 22nd February 1921 there is no doubt that the lower Court was closed under Government Notification for the

Mahamakam festival. 20th February 1921 was a Sunday. The only question is then whether the Court was closed on 19th February 1921. That

day was a holiday as a penultimate Saturday. But the Court sat and the day was treated as not a public holiday with the special permission of the

High Court, given in its order dated 4th February 1921.

3. It is urged first that the lower Court should have held that the petition to it was in time with reference to Section 4 of the Limitation Act. Section

4 is applicable only when the period of limitation expires on a day when the

Court is closed. It cannot be said that in the present case the Court was closed on 19th February 1921.

4. This failing, it has been suggested that the petitioner had sufficient cause for not making his application to the lower Court within the period

allowed and that the delay in making it should be excused with reference to Section 5, Limitation Act; and, in the circumstances of the case, the

petitioner has been allowed to amend his petition in this Court accordingly. It is material that this Court's order permitting the lower Court to sit on

19th February 1921, though passed on 4th February 1921, was despatched to the lower Court only on 8th February 1921 and was presumably

received there next day. It is not shown what publication of the order there was or that the petitioner who does not live in Kumbakonam itself

could reasonably be expected to take notice of it. This being so, he had, in my opinion, sufficient cause for assuming that the Court would, as usual,

be closed on 19th February 1921, the penultimate Saturday, and for postponing the presentation of his petition to the next Court day, 24th

February 1921.

5. The result is, the lower Court's order must be set aside with a direction to it to restore the petition and deal with it on the merits in accordance

with law. Costs in this Court will follow the result of the proceedings on the restoration petition and be provided for by lower Court in its order

thereon.