
(2013) 06 MAD CK 0122
In the Madras High Court
Case No : C.R.P. (NPD) (MD) No. 873 of 2013

M. Suruli Servai	Vs	APPELLANT
C. Subbiah Servai and The Tahsildar		RESPONDENT

Date of Decision : 04-06-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 3A, 115, 115(1)
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5

Citation : (2013) 06 MAD CK 0122

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : H. Lakshmi Shankar, for the Appellant;

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The defendant in O.S. No. 169 of 2001 on the file of the learned District Munsif, Nilakottai suffered a decree for

declaration and injunction, as against which he wanted to prefer an appeal before the learned Principal Subordinate Judge, Dindigul. As there was

a delay in preferring the appeal, a petition was filed wrongly u/s 5 of the Limitation Act instead of invoking Order 41 Rule 3-A of the Code of Civil

Procedure, praying for an order condoning the delay of 2,428 days in preferring the appeal. The reason assigned in the supporting affidavit was

that the son of the petitioner was entrusted with the job of following the case and he, after promising the petitioner to get the certified copies of the

judgment and decree and make arrangements for filing the appeal, betrayed the petitioner by colluding with the respondent/decreed holder and

thereby, the above said delay was caused in preferring the appeal. After contest, the said petition, which had been numbered as I.A. No. 55 of

2012 in the unnumbered A.S.-- of 2012 on the file of the learned Principal Subordinate Judge, Dindigul, was dismissed by the impugned order

holding that the petitioner was not able to prove that he was prevented by a reasonable cause from preferring the appeal in time and that there was

no acceptable explanation for the inordinate delay of 2,428 days in preferring the appeal.

2. The said order dated 03.12.2012 dismissing I.A. No. 55 of 2012 on the file of the learned Principal Subordinate Judge, Dindigul, is impugned in

the present Civil Revision Petition filed u/s 115 of the Code of Civil Procedure.

3. The matter stands listed today for admission. The arguments advanced by Mr. H. Lakshmi Shankar, learned Counsel for the revision petitioner

are heard and the materials placed on record in the typed set of papers are considered.

4. As per amended Section 115 of the Code of Civil Procedure, the power of revision has been vastly circumscribed. It says that the High Court

may call for the record of any case which has been decided by any Court subordinate to such High Court and in which, no appeal lies thereto, and

if such subordinate Court appears, (a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise the jurisdiction so

vested, or (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case

as it thinks fit.

5. Hence, as per the amended provision of Section 115 of the Code of Civil Procedure, only on three grounds, an order against which no appeal

lies, can be interfered with by the High Courts. Either the Court whose order is challenged should have exercised the jurisdiction not vested in it by

law, meaning that the order was passed by a Court without jurisdiction, or the order should show that the Court failed to exercise a jurisdiction

vested on the Court. The third ground on which the High Court can interfere with the order by exercise of its power of revision is that though the

Court, whose order is impugned, is clothed with jurisdiction, its exercise of jurisdiction was illegal or that the order was passed with material

irregularity. Excepting the question of jurisdiction, the other ground on which the order can be challenged in the revision u/s 115 of the Code of

Civil Procedure, is that the order has been passed with a material irregularity in

exercising the jurisdiction.

6. Mr. H. Lakshmi Shankar, learned Counsel for the petitioner would submit that though the petitioner may not be in a position to fit in the Civil

Revision Petition in any one of the above said clauses (a) to (c) to Section 115(1) of the Code of Civil Procedure, the impugned order of the

learned Principal Subordinate Judge, Dindigul, can be tested using the power of superintendence of the High Court over the subordinate Courts

under Article 227 of the Constitution of India.

7. No doubt, the power of superintendence over all Courts and Tribunals throughout the territory in relation to which the High Court exercises

jurisdiction, is conferred on the High Court under Article 227 of the Constitution of India. But, such a power of superintendence cannot be

exercised so as to convert the power of superintendence into an appellate power in disguise. Normally, the High Courts will interfere with the

orders of the subordinate Courts or Tribunals within its territory in relation to which it exercises the jurisdiction in case of want of jurisdiction on the

part of the lower Court or Tribunal, errors of law, gross violation of natural justice, miscarriage of justice, abuse of process of law or in the event of

a finding being perverse. In a way, it can be said that the power of revision conferred on the High Court u/s 115 of the Code of Civil Procedure,

has been tuned in such a way that the power of revision can be exercised only in case of absence of jurisdiction or failure to exercise jurisdiction or

illegal exercise of jurisdiction leading to miscarriage of justice. The power of superintendence over the lower Courts and Tribunals, shall also be in

line with the provision contained in Section 115 of the Code of Civil Procedure, but the power under Article 227 of the Constitution of India is not

controlled by the provision found in Section 115 of the Code of Civil Procedure. It shall be even wider than the power conferred on the High

Court u/s 115 of the Code of Civil Procedure, but the very purpose of abridging the power of revision of the High Court by restricting its revisional

power to certain categories of orders alone, shall not be defeated by indiscriminate exercise of the power of superintendence conferred on the

High Court under Article 227 of the Constitution of India. The High Court exercising the power of superintendence cannot interfere with the order

of the subordinate Courts simply because it can take a different view on merits

than the view taken by the subordinate Court, whose order is sought to be challenged. More concrete grounds are to be made out for interference with the orders of the subordinate Courts in exercise of the power of superintendence under Article 227 of the Constitution of India.

8. The cases enumerated above are illustrative and not exhaustive. The power of superintendence under Article 227 of the Constitution of India

shall be generally limited to want of jurisdiction, gross violation of natural justice, commission of errors of law, perverse findings or abuse of

process of Court leading to miscarriage of justice or if it is shown that grave injustice has been done to a party and it is a fit case to exercise the

jurisdiction to pass necessary orders in exercise of the power of superintendence.

9. In this case, the petitioner was the defendant in the original suit. He entered appearance, filed his written statement and contested the suit and at

last, lost the legal battle as the suit resulted in a decree in favour of the opposite party, namely the plaintiff in the suit. Thereafter, within the time

prescribed by the statute, the appeal ought to have been filed. It was not filed in time. Suppose, there was an unavoidable delay, which could be

reasonably explained, then the power of the appellate Court under Order 41 Rule 3-A of the Code of Civil Procedure, can be exercised to

condone the delay in filing the appeal and entertain the appeal.

10. Here is a case, in which, the delay caused in filing the appeal before the appellate Court cannot be said to be normal. On the other hand, it is

abnormal and inordinate. The delay of 2,428 days has been sought to be explained by casting the blame on the son of the petitioner stating that the

son of the petitioner had taken the job of applying for certified copies and making preparations for filing the appeal and that the petitioner came to

know that his son did not act according to his expectation and on the other hand, he seemed to have acted with an intention of helping the opposite

party. The affidavit does not say who made arrangements for filing of the copy application and what instructions had been given by the petitioner to

his son towards the job of filing the appeal in time. It simply states that the copy application was filed on the very next day after the pronouncement

of the judgment and the copies were made ready and were delivered to the Counsel without delay. After the copies were delivered to the Counsel,

no steps were taken by the petitioner to contact the Counsel and instruct him to

prepare the appeal papers. The petitioner has not even given particulars as to what are the steps taken by him to ascertain whether his son was taking necessary steps for filing of the appeal as instructed by him.

11. In any event, the petitioner being the party, no appeal could have been filed by his son without his authorisation by way of power of attorney. It

is not the case of the petitioner that the power of attorney was given to the son of the petitioner. Hence, the Court below has rightly come to the

conclusion that the delay was inordinate and the delay was sought to be explained by casting the blame on the son of the petitioner as an

afterthought. The impugned order of the Court below cannot be said to be an order passed without jurisdiction or in wrong exercise of jurisdiction.

The order cannot be said to be an example of failure to exercise of jurisdiction conferred on the Court. No error of law is pointed out. The finding

of the Court below cannot also be stated to be perverse. The order cannot be said to be an abuse of process of law or an order causing

miscarriage of justice or a grave injustice to a party. In short, it can be concluded that the petitioner has not made out a case for interference with

the impugned order of the Court below either in exercise of the power of revision u/s 115 of the CPC or the power of superintendence under

Article 227 of the Constitution of India. The revision does not even merit admission and the same deserves dismissal at the threshold. Accordingly,

this Civil Revision Petition is dismissed. No costs.