
(1987) 12 MAD CK 0037
In the Madras High Court

Perumaiya and Others

APPELLANT

Vs

T. Muniyappa and Others

RESPONDENT

Date of Decision : 08-12-1987

Acts Referred:

Citation : (1988) 1 LW 151 : (1988) 1 MLJ 318

Hon'ble Judges : Sivasubramaniam, J

Bench : Division Bench

Judgement

Sivasubramaniam, J.—This revision is directed against the order passed in I.A. 19 of 1986 in the un-numbered appeal on the file of the District Judge, Dharmapuri.

2. The respondents herein filed an appeal before the District Court, Dharmapuri, against the judgment and decree in O.S. 188 of 1979 on the file of the District Munsif, Hosur. As there was delay in filing the said appeal, they filed a petition in I.A. 18 of 1986 to excuse the delay in filing the said appeal. Pending disposal of the said appeal they also filed another application in I.A. 19 of 1986, for staying of the operation of the decree passed by the trial Court. It was resisted by the petitioners herein on various grounds, excepting the ground on which the present revision is now filed. The learned Judge granted stay as prayed for. Aggrieved against the said order, the petitioners have filed the present revision petition.

3. Mr. M.V. Krishnan, learned Counsel appearing for the petitioners, relied upon the provisions of Sub-Rule (3) of Rule 3A of Order 41, Civil Procedure Code, which reads as follows:

Where an application has been made under Sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under Rule 11, decide to hear the appeal.

According to him, the said provision is a complete bar for granting any relief by way of stay pending disposal of the petition filed to excuse the delay in filing the

appeal. A plain reading of the provisions makes it clear that no order of stay can be granted pending disposal of the petition to excuse the delay.

4. The learned Counsel for the respondents submits that even though there is such a bar under Sub-rule (3) of Rule 3A of Order 41, Civil Procedure Code, the Court has got inherent powers u/s 151 of the Code to grant stay. He relies upon the decision of this Court in Gouse Bi Vs. Salima Bi, . It is seen that the said decision was rendered on the appeal filed before the commencement of the amended provision of the Civil Procedure Code. Originally, there was a bar for the Court proceeding with the appeal until the petition to excuse the delay is disposed of. In those circumstances, this Court held that the Court has got inherent power to grant an order of stay. But the position is different after the commencement of the amended provision of the Civil Procedure Code. Now, there is a specific provision prohibiting grant of stay pending disposal of the petition to excuse delay in filing the appeal. In view of such a positive provision, I feel the inherent power u/s 151, Civil Procedure Code, cannot be exercised by the Court. It is no doubt true that the present case deserves such exercise of the inherent power of the Court. But unfortunately, I am not able to exercise such power in view of the positive provision contained in the said sub-rule extracted above. Therefore, the order passed by the lower appellate Court is liable to be set aside.

5. In the result, this revision petition is allowed and the order passed by the lower appellate Court is set aside. Since the decree is for permanent and mandatory injunction, the decree-holders are likely to execute the decree and demolish the construction even before the disposal of the petition filed for excusing the delay in filing the appeal. Therefore, the lower appellate Court is directed to dispose of the petition in I.A. No. 18 of 1986 in the un-numbered appeal within one week of the date of receipt of this order. Meanwhile, it is open to the respondents herein to move the executing Court for grant of reasonable time. No costs.