

(1998) 03 MAD CK 0020

In the Madras High Court

Case No : C.M.P. No. 2395 of 1999 in S.A. No. 1221 of 1998

P.R. Chandran and 2 others

APPELLANT

Vs

Smt. K. Kamalam and Smt. Sidammal

RESPONDENT

Date of Decision : 22-03-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148

Citation : (1998) 03 MAD CK 0020

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : Sathyanarayanan, for the Appellant; S. Jayakumar, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The petitioners are appellants in S.A. No. 1221 of 1998, which was disposed of by this Court, by order dated

28.10.1998, in the light of a memo of compromise dated 26.10.1998, entered into between the petitioners and the respondents herein. For the

purpose of convenience, the parties are referred to as per their rank in the Second Appeal.

2. It is suffice to refer Clauses 2, 3, 4, 5 and 7(e) of the said memo of compromise dated 26.10.1998, which read as follows:

2. The appellants 1 to 3 hereby jointly undertake to pay the said sum of Rs.24,50,000/- (Rs. twenty four lakhs and fifty thousand only) to the

respondents as stated above on or before 31st January, 1999.

3. On payment of such amount to the respondents as aforesaid the respondents agree that the decree and judgment O.S. No. 640/88 on the file of

the Additional Sub Judge, Salem dated 29.8.1996 shall stand dismissed and only

thereafter the appellants will be entitled to the suit property absolutely.

4. If the appellants 1 to 3 fail to make the payment to the respondents as aforesaid, the appellants unconditionally agree for an order of dismissal of

S.A. No. 1221/98 on the file of this Honourable Court. The appellants further agree without any demur to vacate and hand over vacant possession

of the property which is the subject matter of O.S.No.640/88 to the respondents herein, without demanding or claiming any right, title, interest or

compensation of any nature over the same, immediately after the expiry of the period fixed as above.

5. Further, the appellants undertake not to seek for any extension of time or file an application for the same before this Honourable Court under

any circumstances, whatsoever beyond the date fixed for payment under this memorandum of compromise.

7(e) The appellants shall not give time beyond 31.1.1999 to the prospective purchasers under the agreement for payment and time shall tie the essence of the agreement.

2. As per the above terms of the memo of compromise dated 26.10.1998, the appellants ought to have paid the amount of Rs. 24,50,000/- on or

before 31.01.1999. Since the appellants could not make the said payment in time, i.e., on or before 31.01.1999, they have filed the above

C.M.P., seeking an extension of time by three months to pay the said sum of Rs.24,50,000/- to the respondents herein. It is pertinent to note that

the above C.M.P. was filed on 22.01.1999. i.e., prior to the time (31.01.1999) agreed under the memo of compromise dated 26.10.1998.

3. According to the appellants, they could not make the payment, by 31.01.1999, due to the delay in identifying the prospective buyers of the suit

property, and, in any event, the appellants agree to make the payment within another three months from 1.2.1999, i.e., on or before 30.04.1999,

as they have ultimately identified the prospective buyer, and also have entered into an agreement with them. Hence, the above application. The

learned counsel for the appellants relies on the decisions in:

(i). Om Prakash and Others Vs. State of Uttar Pradesh, . and

(ii) G. Rangaraju Chettiar Vs. Meenakshi Ammal and Others,

5. The application was stoutly opposed by the respondents on the grounds, namely:

i. It is immaterial for the respondents whether the appellants were able to identify the prospective buyer or not, as they are bound to pay the

amount under the terms of the memo of compromise dated 26.10.1998, as the time is the essence of the contract, and, in any event, as per clause

7(e), therein, the petitioners/appellants shall not be entitled for any further time beyond 31.1.1999 and

ii. This Court has no jurisdiction to grant any extension of time to the petitioners/appellants to make the payment of Rs.24,50,000/- beyond

31.01.1999, which would be outside the scope of the terms of the memo of compromise dated 26.10.1998, as the respondent are not willing to

give their consent for such extension of time, permitting the appellants to make the payment after 31.01.1999 or before 30.04.1999,

and contends that, in view of the non-compliance of the terms of the memo of compromise dated 26.10.1998 by the appellants, the Second

Appeal stands automatically dismissed. In this regard, the learned counsel for the respondents, places reliance on the decisions in:

(i) Bethanna Nadar Vs. M. Srinivasan and Others,

(ii) Hukamchand Vs. Bansilal and Others,

(iii) Kuppurajammal v. Meenakshi Ammal reported in A.I.R.1984 Madras 257;

(iv) Pioneer Engineering Co. Vs. D.H. Machine Tools,

(v) Sova Ray and Another Vs. Gostha Gopal Dey and Ors, and

(vi) Gupta Steel Industries v. M/s. Jolly Steel Industries Pvt. Ltd. reported in 1996 (8) ST 223.

6. Section 148 of the CPC reads as follows:

Section 148, CP.C.: ""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 even though the period originally fixed or granted may have expired.

7. Section 148 is intended to grant any time for doing any act prescribed or allowed by the Code to enlarge the said period from time to time, even

though the original period fixed or granted under the decree had expired. However, the question that arises for my consideration is that whether a

period fixed by a memo of compromise between the parties could be extended by the Court, invoking the powers u/s 148.C.P.C.

8. In *Hukamchand Vs. Bansilal and Others*, the Apex Court has held that the executing Court has no jurisdiction to extend the time without the

consent of the parties, but, in the instant case, the petitioners have not sought for extension of the time before the executing Court, but before this

Court, where they had entered into a memo of compromise dated 26.10.1998. Therefore, I am of the considered opinion that the ratio laid down

by the Apex Court in *Hukamchand Vs. Bansilal and Others*, is not applicable to the facts and circumstances of this case.

9. The Apex Court, in *Sova Ray and Another Vs. Gostha Gopal Dey and Ors*, held that, party to a compromise is not entitled to contend that a

clause of the agreement of compromise is illegal. In the instant case, the petitioners do not contend that any of the clauses of the agreement is

illegal, but, on the other hand, they are willing to make the payment of Rs.24,50,000/-, but only seek an extension of time. Therefore, the ratio laid

down by the Apex Court in the above case is not, in any way, helpful to the respondents to oppose such extension.

10. In *Bethanna Nadar Vs. M. Srinivasan and Others*, Kailasam, J., as he then was, has held that an essential term of the agreement embodied in

the decree cannot be changed by an act of the Court on the application of one only of the parties, but the consent of both parties to the original

agreement would be necessary for its modification, and that, this principle is applicable to a provision in the compromise decree, which fixes a

definite period for the performance of an obligation as an essential part of the contract, such as deposit of a sum of money by one party as a

condition of his recovering possession of the property, and therefore, held that the Court had no jurisdiction to grant such extension of time.

11. Similarly in *Kuppurajammal Vs. Meenakshi Ammal and Others*, Ratnam, J., as he then was, in a case relating to the impugned consent final

decree in a partition suit providing that defendants would pay certain sum to the plaintiff within six months towards her share and property would

be allotted to defendants, refused to extend the time on an application by the defendants on the ground that the time was the essence of bargaining

between the parties and the Court had become functus officio.

12. The same view was taken by Delhi High Court in Pioneer Engineering Co. Vs. D.H. Machine Tools, wherein, it was held that the time is fixed

under the compromise decree for performance of obligation under the decree and such time, being the essence of the contract, cannot be extended

by an order of the Court, as the Court has no jurisdiction to extend such time by invoking Section 148, C.P.C.

13. Of course, placing reliance on the decision in Gupta Steel Industries v. M/s. Jolly Steel Industries P. Ltd., reported in 1996 (8) ST 222, the

learned counsel for the respondents, contends that, having passed an order accepting the memo of compromise. this Court is not entitled to

interfere with such consent decree when the respondents are not willing to extend the time for the payment of Rs.24,50,000/-. It may be noted

that, in the said case, the Supreme Court held that the Division Bench of the High Court erred in accepting a delayed payment by the respondents

therein, after committing a default in depositing the amount within the stipulated time. But, in the instant case, the appellants have approached this

Court seeking extension of time before the expiry of the time, which makes all the differences to the facts and circumstances the case in Gupta

Steel Industries v. M/s. Jolly Steel Industries P. Ltd. reported in 1996 (8) ST 222.

14. It is in this regard, I am obliged to refer the decision of the Apex Court in Om Prakash and Others Vs. State of Uttar Pradesh, , wherein it is

held as follows:

Where in an appeal arising out of an application under O.21, R.90, the parties entered into a compromise and invited the Court to make an order

in terms of the compromise which the Court did, the time for deposit stipulated by the parties became the time allowed by the Court and this gives

the Court the jurisdiction to extend the time in appropriate cases. Of course, time would not be extended ordinarily, nor for the mere asking. It

would be granted in rare cases to prevent manifest injustice. True, the Court would not rewrite a contract between the parties but the Court would

relieve against a forfeiture clause; and where the contract of the parties has merged in the order of the Court, the Court's freedom to act to further

the ends of justice would surely not stand curtailed.

15. Following the principles laid down in Om Prakash and Others Vs. State of Uttar Pradesh, , Sathiadev, J., as he then was, in G. Rangaraju

Chettiar Vs. Meenakshi Ammal and Others, has held as follows:

On Supreme Court holding that a contract between the parties gets merged in the order of the Court by passing a compromise decree, and

thereafter it secures the freedom to act to further the ends of justice, the executing Court, in appropriate cases, could extend the time in rare cases

to prevent manifest injustice, and when such powers are invoked, it cannot be resisted by pleading that executing Court is rewriting a contract

entered into between the parties or that it is going behind the terms of the decree.

Mr. Krishnamoorthy, learned counsel for the petitioner, refers to P.K. Sukumaran v. Sulaiman to contend that once the Court loses seizin over the

matter, and in this case, a final decree having been passed, it has no jurisdiction to grant time u/s 148, Civil Procedure Code. This decision, in the

light of the Supreme Court decision above referred to, cannot any longer be relied upon because once the consent memo is treated in the eye of

law as an order of Court, the power of the Court to extend time u/s 148, being available, the Court below has the necessary jurisdiction to extend

time.

16. In view of the ratio laid down in :

(i) Om Prakash and Others Vs. State of Uttar Pradesh, and

(ii) G. Rangaraju Chettiar Vs. Meenakshi Ammal and Others,

I am unable to follow the decisions laid down in

(i) Bethanna Nadar Vs. M. Srinivasan and Others, and

(ii) Kuppurajammal v. Meenakshi Ammal reported in AIR 1984 Mad 257.

17. However, the power of this Court u/s 148, C.P.C., being discretionary, while I am satisfied to grant such extension of time to the petitioners to

pay the amount namely, Rs.24,50,000/- on or before 30.04.1999, the petitioners are further directed to pay the same with interest at the rate of

24% per annum with effect from the date of compromise decree, as the respondents are not at all responsible for the delay caused in non-payment

of the amount, agreed to be paid by the petitioners. The C.M.P. is ordered as prayed for, and if the petitioners do not settle the said amount of

Rs.24,50,000/- on or before 30.04.1999, the Second Appeal shall stand automatically dismissed.