

(1890) 10 MAD CK 0018
In the Madras High Court

Rangasayi

APPELLANT

Vs

Mahalakshamma

RESPONDENT

Date of Decision : 02-10-1890

Acts Referred:

Citation : (1891) ILR (Mad) 391

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

Muttusami Ayyar, J.—I took part in both the decisions to which my learned colleague refers in his judgment, and the observations made in

Venkatachalam v. Mahalakshamma * were made with reference to the length to which the decided cases had proceeded. The period for making

the deposit is prescribed by the Legislature with reference to all cases, and it is at all events necessary for the petitioner to show ""that he was

diligent in due time to be prepared to lodge the deposit within the limited period."" But the affidavit before us does not show that he used due

diligence for procuring the necessary funds before the 25th March last.

2. Though it was urged at the hearing that he had letters in his possession from certain persons who promised to lend if he waited till the jaggery

season in the local market, yet no affidavits were filed by them. Nor is there anything to show that he had applied to them for loans in sufficient time

before the expiration of the prescribed period. It does not appear to me that a promise by the petitioner's friends to lend on the arrival of a

particular season in the local market is a sufficient cause for extending the prescribed time or cogent reason within the meaning of the Privy Council

decision, especially when regard is had to the facts of the case with reference to

which the Lords of the Judicial Committee used the expression.

3. It is true that the petitioner was permitted to sue in the Original Court and to appeal to the High Court in formd pauperis, but the prescribed

period of six months from the date of the appellate decree and of six weeks from the date of the certificate is ordinarily sufficient for raising funds

on credit. This is not a case in which any arrangement made within the prescribed time for obtaining a loan proved infructuous from some

unforeseen cause.

4. I am therefore of opinion that no sufficient cause or cogent reason is shown for granting the application. I would refuse the application.

Best, J.

5. Petitioner was on the 12th February 1890 granted a certificate u/s 600 of the CPC to enable him to appeal to the Privy Council, and had u/s

602 of the Code to give security and make a deposit of money for costs incidental to the appeal within six weeks from the above date (i.e.) by the

26th March. On the 25th March he put in the Petition No. 314 asking that the time for giving the security and making the deposit might be

extended two months on the ground that he is ""poor and unable to procure the necessary funds within the time prescribed."" This petition came

before a single Judge on the 25th April, and was then ordered to be posted before a Bench of two Judges. The vacation began on the 12th May

and nothing more was done in the matter till petitioner filed his second petition No. 611 on the 14th August, in which he explains that he had

employed as his Vakil the late Mr. T. Subba Rao, and proceeded to his native place to collect the necessary funds to furnish the necessary

security in this Honourable Court, and also to prosecute the appeal before the Privy Council,"" that he ""did not receive any information from his said

Vakil, and upon enquiry learned that Mr. T. Subba Rao had died."" He, therefore, requests that, under the circumstances, orders may be issued to

the Registrar to receive the sum of Rs. 4,500 which he has now produced. That petitioner is a poor man is apparent from the fact of his having

been allowed to prosecute the suit throughout in forma pauperis, and there is no difficulty in believing the truth of his statement that he was unable

to raise this sum of Rs. 4,500 within the six weeks mentioned in Section 602. It has been held by the Privy Council that the time may be extended,

but not without cogent reason.--See *Burjore and Bhawani Pershad v. Mussumat Bhagana* L.R. 11 IndAp 7 ; ILR 10 Cal. 557. I should certainly

have held the reasons alleged by the petitioner to be sufficiently cogent had it not been for the decision of this Court in *Venkatachalam v.*

Mahalakshmmamma (Ante, p. 392), in which it was held that the ""cogent reasons referred to by the Privy Council must be such as would lead the

Court to believe that the party was diligent in due time to be prepared to lodge the deposit within the limited period, and that he was prevented

from making his deposit not owing to absence or difficulty of getting funds, but owing to some circumstances accidental or otherwise over which he

had no control, or owing to mistake which the Court would consider not unreasonable or caused by negligence."" This decision of a Division Bench

of this Court was followed in a subsequent case *Subha v. Ramasami C.M.P.*, No. 623 of 1889, unreported It seems to me that absence of funds

or difficulty in raising the same, if true, is very cogent reason for granting an application such as the present one for extending the time and accepting

the money now brought into Court; but the decisions above referred to are binding on me. I must therefore defer to the opinion of my learned

colleague.

* The plaintiff in this suit, the petitioner, applies to have an appeal to the Privy Council admitted, u/s 603, Civil Procedure Code.

On the 20th of July 1888 petitioner obtained a certificate after notice to the respondent u/s 600, and had six weeks" time, expiring on the 31st of

August to perform the requisition of Section 602, amongst other things to deposit Rs. 4,500. On the 31st August 1888, petitioner tendered at the

Registrar"s office Rs. 2,000, but was informed such sum could not be received as the proper sum was Rs. 4,500. On the 31st of August the

petitioner applied to the Court to extend the time for making the deposit, offering security on the property of one Buchchirazu for the amount, but

he was not then prepared with a mortgage on that property. On the 11th September, the Court, however, allowed petitioner (as he lived in

Vizagapatam) three weeks" time to file affidavits explaining the delay. Afterwards the Court allowed a further period of three weeks to file such

affidavits. Affidavits and a petition were filed on the 19th of October 1888. In his affidavit the petitioner says that on the 4th of August he was

made aware by letter from his Counsel that Rs. 4,500 should be deposited by the 31st of August, but he says he was unwell from the 15th July to

the 15th of August, and he could not go to Vizagapatam to get help from his friend Sankaraya who helped him in the suit, until he became better.

He says that on the 18th August he got to Vizagapatam and then found that Sankaraya had gone to his village a long way off where there was no

Post Office, and he applied to persons, whom he names, for assistance, but they said they could do nothing without the security of Sankaraya, that

he was told by first grade pleaders, whom he names, that, as he had already deposited Rs. 2,500 for security for defendant's costs he need only

deposit Rs. 2,500 more. He states that he raised Rs. 2,000 on jewels of some of his relatives and started for Madras on the 24th of August and

brought Buchchirazu, a rich man, with him to stand security for any other sum required, but that the money already tendered was refused and he

started for Vizagapatam and got the additional money from Sankaraya, and on the 7th September he produced Rs. 4,500 to the Registrar who

refused it, but the Court allowed the Registrar to receive the money pending his furnishing affidavit to explain the delay.

Rajanna and Ramajogi say they agreed to lend Rs. 2,500 to the plaintiff, but refused to do so except on the security of Sankaraya, and ultimately

on the 5th September, gave that sum to petitioner.

Sankaraya says he has assisted the petitioner with money and advice in this suit, and that he was absent from Vizagapatam at his village from the

12th of July until the end of August, and that when he got there he found petitioner had gone to Madras, and that in September he became security

for the petitioner and got him the loan of Rs. 2,500.

The plaintiff states that he was suffering from an ulcer until about the 12th of August, but in his first petition to this Court on the 31st of August he

did not mention the fact that he had been ill.

Section 602 provides that within six months from the date of the decree complained of or within six weeks from the grant of the certificate, the

appellant should deposit the amount required to defray the expenses of translating, &c., and that time expired on the 31st of August. It has been

held by the Privy Council in *Burjore and Bhawani Pershad v. Bhagana* ILR 10 Cal. 557 : S.C.L.R. 11 I.A 7 that the provision in section 602 is

directory, and it was hold there that when the money was brought within time to be deposited but owing to wrong information the money was

brought to a District Court instead of to the Court of the Commissioner, the time was rightly extended so as to enable the appellant to have

deposited the money in the Court of the Commissioner.

This case was pressed, as showing that as the petitioner acted as to the amount in error, owing to the wrong information given by the Vakils in

Vizagapatam, the same principle should be applied in this case as in the case in the Privy Council. But in the case in the Privy Council the appellant

was prepared with his deposit before the last day, and would have lodged it, and went to a Court to lodge it in due time. It was merely owing to an

error in respect of the right Court that the money was not deposited. Even suits brought in Courts erroneously but bona fide when there is no

jurisdiction are excluded from limitation in certain cases.

The Privy Council agreed with the decision in *re Soorjmukhi Koer* ILR 2 Cal. 272 that discretion was allowed but to be exercised only for cogent

reasons. Cogent reasons referred by the Privy Council must be such as would lead the Court to believe that the party was diligent in due time to be

prepared to lodge the deposit within the limited period, and that he was prevented from making his deposit, not owing to absence or difficulty of

getting funds, but owing to some circumstance accidental or otherwise over which he had no control, or owing to mistake which the Court would

consider not unreasonable or caused by negligence.

Here the petitioner probably made Borne enquiries before the certificate to enable him to raise money and may then have been promised help if he

gives security. But although he was aware on the 4th of August that Rs. 4,500 should be deposited, he did not, owing as he says to illness, take

any active step to get the money until the 14th or 15th of August. Although he may have been unwell he could have written to his friends or some

of them and made preparation to get money when he went to Vizagapatam. It is not alleged, though suggested, that his letter would not probably

reach Sankaraya if written immediately after the 4th of August. When he arrived at Vizagapatam the appellant found that he could not get money

without Sankaraya's security. He acted on the advice of Vakils who told him that only Rs. 2,000 was required, but this was contrary to the advice

of his own Counsel in Madras. He got Rs. 2,000 in time and brought with him, he says, a rich friend who would help him to raise money, and so

far was to some extent diligent, but was not in due time, for when he got to Madras he had not the full amount and could not then get the residue.

No doubt Vizagapatam is a very great distance from Madras, and it is suggested that people of his class are generally dilatory and perhaps

careless of the activity necessary to comply with rules prescribing times for complying with Court rules. But the provision contained in the CPC

cannot be departed from to meet such circumstances. We feel we cannot, upon the ground stated in the petition and affidavits, consider the time

should have been extended beyond the 31st of August.

The result is the (sic) is not admitted. The appellant is to pay the respondent's costs of this petition. (sic) Registrar will return the money to the

petitioner.