
(1978) 06 MAD CK 0002

In the Madras High Court

Case No : Civil Revision Petition No. 400 of 1978

The General Manager Heavy Vehicles Factory and Another

APPELLANT

Vs

T. Shedrak

RESPONDENT

Date of Decision : 16-06-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 2, Order 41 Rule 3, Order 41 Rule 3(1), 115
Limitation Act, 1963 — Section 5

Citation : (1979) ILR (Mad) 55

Hon'ble Judges : Ismail, J

Bench : Single Bench

Advocate : K.N. Balasubramaniam, M. Raghavan and M. Gomathi, for the Appellant; V. Ratnam, for the Respondent

Final Decision : Dismissed

Judgement

Ismail, J.—This is a Petition u/s 145 of the CPC by the Respondents in Civil Miscellaneous Petition No. 621 of 1976 cm the file of the

Court of the Subordinate Judge of Kancheepuram. That civil miscellaneous Petition was one filed by the Respondent herein for condonation of a

delay of 555 days in re-presenting the appeal before the learned Subordinate Judge, Notice of this petition was issued to the Petitioners herein and

they opposed the Court condoning the delay. Over ruling the objection, the Court condoned the delay and it is that order that is sought to be

revised the present Civil revision petition.

2. As soon as the civil revision petition came up for admission, I felt a doubt whether the civil revision petition was competent at all, in view of the

fact that the delay that was condoned in the present case was not with reference to the proper presentation of the appeal, but with reference to the

re-presentation of the appeal. In view of this doubt. I directed notice of this question to be given to the Advocates Association, Madras the Bar

Association. Madras and the Women Lawyers Association, Madras and in response to my notice, they are represented before this Court now and

oppose the stand of the learned Counsel for the Petitioners and contend that this civil revision petition is not maintainable.

3. Consequently, the question for consideration is whether the civil revision petition is maintainable.

4. Mr. K.N. Balasubramaniam learned Counsel for the Petitioners, at one stage, sought to contend that the delay involved in the present case is not

a delay in the re-presentation of the papers, but a delay in proper presentation of the appeal itself. I declined to allow Mr. Balasubramaniam, to

raise this point, because the entire controversy proceeded before the lower Court only on the basis that the delay involved was in the re-

presentation of the appeal and not in the proper presentation of the appeal and the grounds of civil revision petition before this Court do not also

contend that delay involved in the present case was with reference to the proper presentation of the appeal and not with reference to the re-

presentation of the papers. Under these circumstances, I proceed only on the basis that the delay involved in the present case is only in re-

presentation.

5. Mr. K.N. Balasubramaniam, contends that Order XLI, Rule 3 of the CPC makes specific provision as to what should, be done when there is a

defect in the Memorandum of appeal that was presented and it gives three alternatives to the Court, namely, to reject the memorandum of appeal

or return to the Appellant the papers for the purpose of being amended within a time to be fixed by the Court or to be amended then and there.

When, pursuant to this power of the Court, the appeal papers are returned for amendment within a time to be fixed, Section 148 of the CPC is

immediately attracted and the power to excuse the delay is traceable to that section and an order passed u/s 148 is revisable u/s 115 of the Code

of Civil Procedure. As against this contention the counsel representing the three bodies referred to above contend that an order passed by the

Court condoning the delay is not a judicial order at all because there was no his at that stage between any two parties and consequently, that order

cannot be the subject-matter of a revision petition at all. In fact Mr. Ratnam, learned Counsel representing the Advocates' Association, Madras drew my attention to a decision of this Court in In Re: Chintapatla Venkatanarasimha Ramchandra Rao and Others, wherein this Court has held that any time that is allowed for re-presentation is only by way of concession and therefore, with reference to such a concession granted by the Court a Respondent, who had not even received the notice of the main case which would be issued only after the main case is admitted, has no locus standi to object to the granting of the said concession. In this particular case, as I pointed out already, notice was given to the Petitioners herein and according to the learned Counsel for the Associations, such notice was unnecessary and the fact that an unnecessary notice was given would not cloth the Petitioners herein with the power to object to the grant of the concession and, if this concession is given overruling the objection, to take up the matter further by way of revision.

6. I am of the opinion that this contention is sound. Section 148 CPC is general in nature and certainly that will come into operation only where the Court fixes a time, the alteration or extension of which will have the effect of affecting the rights of somebody else. But, when there is no delay in the proper presentation of the appeal papers, but there is a delay only in the re-presentation of the appeal papers, there is no question of the interest of anybody else being affected and, therefore, the Court being called upon to give notice.

7. Even assuming the validity of the argument linking Order XLI Rule 3 with Section 148 of the Code of Civil Procedure, it may also be pointed out that when papers filed before a Court are returned for rectifying certain defects, such a return is not always made under Order XLI, Rule 3 of the Code of Civil Procedure. Order XLI, Rule 3 has only a limited application, Order XLI Rule 3(1) states:

Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be... returned to the Appellant, for the purpose of being amended within a time to be fixed by the Court.

Thus this provision is concerned only with the return made on the ground that the memorandum of appeal has not been drawn up in the manner prescribed in Rules 1 and 2 of Order XLI, and all other returns will be outside

Order XLL, Rule 3. Obviously those returns will be only in the exercise of the inherent powers of the court u/s 151 and consequently the condonation if the delay in re-presentation after such return will also be in the exercise of the inherent powers of the court u/s 151 CPC and therefore, Section 148 CPC will not be attracted.

8. I may point out in this context the difference between the condonation of delay in the proper presentation of a particular proceeding pursuant to

Section 5 of the Limitation Act and the condonation of delay in the re-presentation of a particular proceeding obviously under the inherent powers

of the Court u/s 151 of the Code of Civil Procedure. In the former case there is a specific provision in the statute, namely, the Limitation Act which

imposes an obligation on the Court itself suo motu to reject a proceeding, if it is barred by limitation. That Strictness is not available or applicable

to a case of a delay in the re-presentation of the proceeding in question. Consequently the provisions and considerations applicable to excusing the

delay u/s 5 of the Limitation Act will not apply to the question of excusing the delay in re-presenting the papers and therefore, the considerations

relevant to excusing the delay With reference to petitions, disposable under the Limitation Act, will bear no analogy to those relevant to a decision

of the question in the present controversy. When Mr. K.N. Balasubramaniam, relied on Section 148 of the Code of Civil Procedure, I asked him

to bring to my notice any decision of any Court holding that when delay in the re-presentation of papers is excused by a Court, that power is

exercised only u/s 148, CPC so as to justify the party who opposed the condonation of the delay taking up the matter in revision. The learned

Counsel frankly conceded that he is not able to put his finger on any such decision. Under these circumstances, I have proceeded on broad

considerations and in particular with reference to the distinction between the delay in the presentation of a proceeding and the delay in the re-

presentation of the papers with reference thereto. In view of the basic difference between the two, I am of the opinion that the considerations

relevant to the former will not apply to the latter and in an application for excusing the delay in re-presenting the papers in any proceeding whether it

be a suit, a civil revision petition, a first appeal or a second appeal in any Court, notice to the Respondent in the main case is not necessary and

even if such notice is given to the Respondent and he is heard and overruling his objection the delay is condoned, he cannot be said to have been

aggrieved in the sense of there being a judicial determination against him so as to entitle him to approach the High Court u/s 115 Code of Civil

Procedure. In view of this, I hold that this petition is not maintainable and reject the same.

9. I record my appreciation of the assistance rendered by Mr. V. Ratnam, Mr. M. Raghavan, and Mrs. Gomathi, Counsel representing the three

Associations referred to already.