

M.A. Mukheed Vs. C. Pandurangam

M.A. Mukheed Vs. C. Pandurangam

SooperKanoon Citation : sooperkanoon.com/431171

Court : Andhra Pradesh

Decided On : Apr-01-2005

Reported in : 2005(3)ALD764; 2005(3)ALT424

Judge : L. Narasimha Reddy, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 148 and 149 - Order 7, Rule 11 - Order 9, Rule 13

Appeal No. : C.R.P. No. 6810 of 2004

Appellant : M.A. Mukheed

Respondent : C. Pandurangam

Advocate for Def. : L. Prabhakar Reddy, Adv.

Advocate for Pet/Ap. : P.B. Vijay Kumar, Adv.

Disposition : Petition allowed

Judgement :

L. Narasimha Reddy, J.

1. The petitioner is the defendant in O.S. No. 74 of 2002, filed for recovery of certain amount, in the Court of Senior Civil Judge, Mahaboobnagar. He was set ex parte, and ultimately, an ex parte decree was passed on 23-1-2003. The petitioner

filed I.A. No. 416 of 2003, under Order 9 Rule 13 C.P.C. That petition was ordered, on condition that he shall pay costs of Rs. 200/-, on or before 15-6-2004. The petitioner did not comply with that condition. He filed I.A.SR. No. 2026 of 2004, for enlargement of the time for compliance with the condition imposed in I.A. No. 416 of 2003. The trial Court dismissed the I.A.SR., through its order dated 2-12-2004, on the ground that it is not maintainable.

2. Heard the learned counsel for petitioner and the learned counsel for respondent.

3. When the petitioner committed default in responding to the summons received by him in the suit, an ex parte decree came to be passed. The trial Court has shown indulgence and set aside the ex parte decree, dated 23-1-2003, imposing a condition that he shall pay costs of Rs. 200/-, on or before 15-6-2004. The present I.A. is filed for enlargement of the time. The trial Court took the view that since the order passed in I.A. No. 416 of 2003 worked itself out, on account of non-compliance with the condition, the I.A. is not maintainable. It also was of the view that unless an application for enlargement is filed before the expiry of the time stipulated by the court, it is not maintainable. The same is not correct. The exercise of powers of the court under Section 148 C.P.C. cannot be denied on such ground. An application under Section 148 C.P.C. can be filed even after the expiry of the time stipulated by the court, and even in cases where a default clause, or a stipulation that no further extension would be granted, are incorporated. Reference in this regard may be made to the judgment of the Supreme Court in Ganesh Prasad v. Laxshmi Narayan, : [1985]3SCR825 and Full Bench judgments of the Kerala and Allahabad High Courts, respectively, in Kathyee Cotton Mills v. R.P. Pillai, : AIR1958 Ker88 (F.B.)- and Gobardhan v. Barsati, : AIR1972 All246 (F.B.). In Ganesh Prasad's case, : [1985]3SCR825 the Supreme Court held as under:

'.... Section 148 of the Code of Civil Procedure provides that where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by the 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. The principle of

this section must govern in not whittling down the discretion conferred on the court.'

4. In *Kathyee Cotton Mills v. R.P. Pillai*, : AIR1958 Ker88 (F.B.) Vaidialingam, J., as he then was, speaking for the Full Bench of the Kerala High Court held that the power under Sections 148 and 149 of C.P.C. is absolute. It was observed that the proviso to Rule 11 of Order VII C.P.C., does not in any way, restrict the power of a Court, to enlarge the time, in exercise of discretion under Section 148 C.P.C. The facts of the instant case are comparable with those in the case decided by the Full Bench of the Allahabad High Court in *Gobardhan v. Barsati*, : AIR1972 All246 (F.B.), as is evident from the following paragraph:

'Para 8: In the case before us, the Munsif has dismissed the application for extension of time only on the ground that there was a peremptory order providing that the application shall stand rejected in case the amounts were not paid by 11-12-1968 and that the application for extension of time was made after the time had expired.

The Munsif was in error in dismissing the application on this ground....'

It was held that an application for enlargement of time under Section 148, can be filed even after the expiry of the time initially fixed, and that the time can be enlarged, notwithstanding any default clause incorporated, while granting time, initially. In arriving at this conclusion, the Full Bench took the support of the judgment of the Supreme Court in *Mahanth Ram Das v. Ganga Das*, : [1961]3SCR763 . It overruled the judgment of that High Court, and disagreed with the judgments of the other High Courts, which took a different view, and held as under:

'Para 7: Even in cases where an order is made by the Court for doing a thing within a particular time and the order further provides that the application, suit or appeal shall stand dismissed if the thing is not done within the time fixed, the Court has jurisdiction, if sufficient cause is made out to extend the time even when the application for extension of time is made after the expiry of the time fixed. It is not the application for grant of further time, whether made before or after the expiry of

the time granted, which confers jurisdiction on the Court. The Court possesses the jurisdiction under Section 148 Civil P.C. to enlarge the time and the application merely invokes that jurisdiction.'

5. Therefore, the order passed by the trial Court cannot be sustained in law.

6. At the initial stage, this court directed the petitioner to pay a sum of Rs. 30,0007-, through its order dated 31-12-2004. The condition is said to have been complied with. The respondent needs to be compensated for the inconvenience suffered by him.

7. Hence, the civil revision petition is allowed, and the order under revision is set aside, subject to the following conditions:

(a) The petitioner shall file the written statement, within three weeks from to-day. He shall not be entitled to file the same, thereafter.

(b) The plaintiff/respondent shall be entitled to withdraw the amount of Rs. 30,0007-, deposited by the petitioner herein, without furnishing any security.

(c) The trial Court shall dispose of the suit within six months from today.

(d) There shall be no order as to costs.