

Pakkiammal Vs. Anaiappan

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Court : Chennai

Decided On : Jul-14-2000

Reported in : 2000(3)CTC228

Judge : V. Kanagaraj, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) -- Sections 148 and 151-- Order 9, Rule 9; [Limitation Act, 1963](#) -- Sections 5

Appeal No. : C.R.P.No. 2828 of 1997

Appellant : Pakkiammal

Respondent : Anaiappan

Advocate for Def. : Mr. V. Girish Kumar, Adv.

Advocate for Pet/Ap. : Mr. V. Ragavachari, Adv.

Judgement :

ORDER

1. The plaintiff in the suit in O.S.No.392 of 1989 on the file of the Court of Principal District Munsif, Ulundurpet is the petitioner in this civil revision petition and he has filed this revision against the fair and decretal order dated 1.4.1997 made in I.A. No.1341 of 1995 in I.A.No.1597 of 1994 in O.S.No.392 of 1989.

2. When the above matter was taken up for consideration, in the presence of both the learned counsel, on perusal of the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that I.A.No.1341 of 1995 had been filed before the lower court under Section 151, CPC praying to restore the petition filed under Order 9, Rule 9 by the petitioner which had been dismissed by the court below on 18.1.1995; that the court below had allowed the petition filed on the part of the petitioner on condition to pay the costs on or before 18.1.1995, but the petitioner would come forward to say that in spite of the same being intimated by his lawyer, on account of ill-health, he was not able to comply with the condition imposed by this Court resulting in the order passed in favour of the petitioner having come to be lapsed.

3. On the part of the other side, it would be argued that the petition had been dismissed on 18.1.1995 and in fact, within 18.2.1995, the petitioner should have filed the petition, but only on 22.2.1995, the petition had been filed without even an application to condone the delay of five days that had occurred in filing the very petition to restore the same under Order 9, Rule 9, CPC. Hence, having filed the said petition without a separate petition filed under Section 5 of the Limitation Act for condonation of delay, the same is not maintainable in law and hence would plead that the petition would become liable only to be dismissed.

4. Based on these pleadings and arguments, the court below rejecting the reasons offered on the part of the petitioner that he was not keeping good health since no materials were placed on record to substantiate the said reason and hence, remarking that only to adopt a delatory tactics, the petitioner had come forward to file the petition to restore the earlier petition and would dismiss the same.

5. It all happened in the petitioner filing the petition under Order 9, Rule 9, CPC before the lower court seeking to restore I.A No.1597 of 1994 which was dismissed for default in payment of costs as fixed by the court on 18.1.1995. It is only to restore the petition filed under Order 9, Rule 9, CPC by the petitioner, he had filed yet another petition under Section 151, CPC and the same having come to be dismissed by the lower court, now the petitioner has come forward to file the above CRP on certain grounds as brought forth in the grounds of the civil revision petition

6. During the arguments, the learned counsel for the petitioner would cite two already decided cases relating to the facts of the case in hand, the first one delivered in Periaswami Asari v. The President. Eluppur Panchayat Board and others, 1972 TLNJ 603 and the second one delivered in M. Ponnaiyyan v. M. Muthayyan and others, 1981 TLNJ 332. So far as the first decision cited above is concerned, it is held:

'The wording of Section 148 allows extension of time even if the original period fixed has expired. It has been held that when the effect of the order, in the event of non-compliance, has to operate automatically without further intervention of the court, Section 148 cannot be applied as the court ceases to be seized of the matter and becomes functus officio. This principle will apply when the suit is finally disposed of. If the order is not final and the court retains control over it and is seized of the matter it will have power to make an appropriate order extending time. The court can grant time, taking note of events and circumstances which happened within the time fixed. It is not necessary that the extension should be asked for before the expiry of the period.'

So far as the second decision of the Full Bench of the Calcutta High Court reported in Bokaro and Ramgur Ltd., v. The State of Bihar, : AIR 1965 Cal 308 is concerned, it is held:

'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 C.P.C. to enlarge the time and the application merely invokes that jurisdiction'. Therefore, in view of the authoritative judicial pronouncement of the Supreme Court in : [1961] 3 SCR 763, which decision, in my view, has been correctly interpreted by the Division Bench of the Calcutta High

Court in Bokaro and Ramgur Ltd., v. The State of Bihar, : AIR1965 Cal308 and by the Full Bench of the Allahabad High Court in : AIR1972 All246 . I am of the view that if sufficient cause is shown to extend the time, even when the application for extension of time is made after the expiry of the time originally fixed, the Court has got ample power under Section 148, CPC, to enlarge the time, and it cannot be said that the Court has lost seisin over the matter merely because the final order has been passed.'

7. Both the above orders are pointed to the ample powers conferred on courts, in enlarging the time even when the application for extension of time is made after the expiry of the time originally fixed. By such arguments, the learned counsellor the petitioner would substantiate his point seating that the lower court instead of dismissing the application filed on his part, should have allowed the same with extension of time already granted even if the condition imposed had not been complied with within the prescribed time.

8. On the part of the other side, it would be argued that the petitions in those decisions have been made under Section 148, CPC wherein the petition filed by the petitioners herein was under Section 151 CPC and hence the proposition evolved in those two decisions are not applicable to the case in hand.

9. Time and again, the upper forums of law have concluded that on account of misquoting the provisions of law by a party would not deny him the proper remedy that is sought for in the petition. Hence, it is the prayer that is to be taken care of and given importance to, and not the provision of law under which the petition is filed. There is no denying of the fact that regarding enlargement of time, Section 148 confers ample discretionary powers and Section 151 also speaks of the inherent powers conferred on Courts to make any order that is necessary for the ends of justice or to prevent abuse of the process of the court. What is relevant at this juncture is, in such matters, neither Section 148 nor Section 151, CPC should be read in isolation of the other. On the contrary, both these Sections should be read along with when the result could be easily arrived at in the circumstance as one that is made in the case in hand. The lower court should have easily allowed the petition filed on the part of the petitioner seeking extension of time. On the

contrary, expecting a very strict standard of proof, it has dismissed the petition which is not correct.

10. On the other hand, even if circumstances favour a little for allowing such a petition, if the parties come forward to realise the fault and seek for extension of time to comply with the order, the courts are expected to be liberal in conceding such requests made on the part of the parties on imposition of cost on the petitioner. In the case in hand, it is only a delay of five days that had occurred and the court could have taken a lenient view and in exercise of its powers conferred by law, such as, Section 148 and 151, CPC, the lower court should have allowed the petition filed by the petitioner.

11. For all the above discussions held, this Court is fully satisfied with the contentions raised on the part of the petitioner to allow the above civil revision petition granting the relief as sought for by the petitioner.

12. In result, the above civil revision petition succeeds and the same is allowed. No costs. The fair and decretal order dated 1.4.1997 made in IA.No. 134.1 of 1995 in I.A.No.1597 of 1994 in O.S.No.392 of 1989 on the file of Principal District Munsif, Ulundurpettai is hereby set aside.

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