

Chandra Goundan and ors. Vs. Palaniappa Goundan and ors.

Chandra Goundan and ors. Vs. Palaniappa Goundan and ors.

SooperKanoon Citation : sooperkanoon.com/816113

Court : Chennai

Decided On : Sep-11-1917

Reported in : AIR1918Mad638(2); 42Ind.Cas.961

Judge : Krishnan, J.

Appellant : Chandra Goundan and ors.

Respondent : Palaniappa Goundan and ors.

Judgement :

1. A decree was passed ex parte against the parties in Original Suit No. 533 of 1915 by the District Munsif, Erode, and they applied to get it set aside under Order IX, rule 13. The Munsif, after hearing the parties, passed an order stating, ' I shall restore the suit if the defendants pay into Court the entire costs of the plaintiff except the institution fee, and also the respondents' costs of this application on or before the 7th April 1916.' The costs were not so paid, but on the 1st April petitioners applied again to have the suit restored to the file and reheard on the merits, stating that they were ready and willing to pay the costs into Court as ordered and that their failure to do so in time was due to their not having known of the order in time. The Munsif has treated this application as in substance one for extension of time and though he found that the case was one eminently fit for granting an extension, he held he had no power in law to grant any extension and dismissed the petition. The revision petition to this Court is against this dismissal.

2. Even under the old Code their Lordships of the Privy Council held in a case under Section 549 of that Code that the Court had power, apparently an inherent one, to grant extension of time to furnish security on application made for it, whether after or before the expiry of the time first fixed. See *Badri Narain v. Sheo Koer* 17 C. 512. They held that the power existed in spite of the words in the section, 'the Court shall reject the appeal.' The Allahabad High Court has applied this view to Section 10, Clause (1897) A. W. N. 40 of the Court Fees Act in *Chunni Lal v. Ajudhia Prasad* 19 A. 240 and this Court has followed that ruling in *Subrahmanyam v. Ramasawmy* 9 M. L. J. 348. It follows, therefore, that even if Order IX, rule 13, stood by itself, applying the same principle it must be held the Court had power to grant the extension in the present case; and Section 151 of the Code expressly saves such inherent powers.

3. The new Code has, however, enacted Section 148, which expressly gives powers to Courts to enlarge from time to time the period originally fixed for the doing of any act prescribed or allowed by the Code. There can be no doubt that the act that the defendants had been directed to do in the present case, viz., to pay the costs into Court, is an act allowed by the Code, for rule 13 says that the Court may impose such terms as to costs, payment into Court or otherwise as it thinks fit. I am of opinion that the words of rule 13 should not be construed too narrowly and that they are wide enough to cover the present case. The same view was taken in the case of *Jagarnath Sahi v. Kamta Prashad* 23 Ind. Cas. 138, in similar circumstances. The case in *Moideen Kuppai v. Ponnuswamy Pillai* 26 Ind. Cas. 63 cited for the respondents is an entirely different one, as the time sought to be extended there was the time fixed in a conditional decree for delivery of property on payment of a sum of money within a certain time. The condition or the act required was one which had nothing to do with the old Code but was prescribed purely by the decree and their Lordships held that Section 148 did not apply. The present case is in no way analogous to it. A similar case in *Suranjan Singh v. Rambahal Lal* (6) was distinguished in the same way by the learned Judges in *Jagarnath Sahi v. Kamta Prashad* 23 Ind. Cas. 138, the case above cited.

4. If the Court had passed final orders rejecting the application under rule 13 for non-compliance with the terms imposed it may be that an application by way of review will be required to enable the Court to put it on the file again and pass fresh orders thereon. If it were necessary to do so, I think the application of the petitioners of the 18th April may well be treated as an application for review. But I am of opinion that in the present case it is not necessary to do so, as I consider that their first application was still pending when they applied again on the 18th. The wording of the first order of the Munsif, viz., 'I shall restore' seems to contemplate a further order even for the purpose of setting aside the decree. The order did not go on to say that if the condition was not complied with, the application was to stand dismissed. Though dismissal may be the natural result of the failure to comply with the condition imposed, if no other orders are passed before the petition is finally rejected, it does not follow that the petition had been disposed of by the mere noncompliance without final order of rejection being passed. No such order was passed in this case. The petition, therefore, may well be treated as pending on the 18th of April when the second application was made and that the Court was still seized of it.

5. I am, therefore, of opinion that the lower Court was wrong in thinking that it had no power to grant further time. Respondents' Vakil has urged that even if that be so, I should not interfere in revision and correct the mistake, because he says the order sought to be revised should be treated as one finally rejecting the application to set aside the ex parte decree and is appealable as such to the District Court under Order XLIII, rule 1, Clause (d), and he relies upon the same case above cited in *Jagarnath Sahi v. Kamta Prashad* 23 Ind. Cas. 138. In that case, the matter was taken up to the High Court by way of appeal against the formal order which was finally passed rejecting the petition under Order IX, rule 13. Against that order, an appeal duly lay. In the present case, the revision is against the order which refused in terms only the extension asked for and admittedly there is no appeal against such order. At the time this revision petition was filed no final order rejecting the original application had been passed; it does not appear that any such order has been passed even since then. In these circumstances, I do not think I should refuse to act in revision on the ground that petitioners should have obtained a formal order of dismissal of their original petition and appealed against

that to the District Court. They were not bound to get such an order. I am unable to treat the order refusing the extension as an order of dismissal of their original petition for the purpose of getting rid of a revision petition which is clearly well founded. I overrule the objection.

6. In the result, I set aside the order of the lower Court in I. A. No. 689 of 1916 and direct that Court to pass fresh orders on it according to law, giving a reasonable time to the petitioners for the payment into Court of the costs ordered. The respondents will pay the petitioners their costs in this Court. The lower Court will itself dispose of the costs in that Court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com