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

M.K. Raghavan Vs. M.K. Sarathy

M.K. Raghavan Vs. M.K. Sarathy

SooperKanoon Citation : sooperkanoon.com/825273

Court : Chennai

Decided On : Jul-13-1994

Reported in : (1994)2MLJ619

Appellant : M.K. Raghavan

Respondent : M.K. Sarathy

Judgement :
ORDER

Abdul Hadi, J.

1. The same petitioner in all these revision petitions has come to this Court after committing following several defaults.

1. He was the defendant in O.S. No. 9073 on the file of the 4th Assistant Judge, City Civil Court, Madras and he allowed himself to be set ex parte.

2. Then he allowed the final decree to be passed on the said suit for accounting ex parte against him on 24.2.1990.

3. Then, when he filed I.A. Nos. 6532 and 6533 of 1990 (to set aside the said ex parte disposals) he allowed them to be dismissed for default in about September, 1990.

4. There was delay of 404 days on his part in filing petitions for restoration of the above said I.As.

5. Then when he filed I.A. Nos. 20542 and 20543 of 1991 for condoning the said delay and when the court subsequently passed the conditional order dated 13.4.1993, allowing the said I.As. on condition of his paying Rs. 400 in each of the petitions on or before 26.4.1993, he failed to fulfil the said condition.

6. Then when, those I.As. were taken up on 27.4.1993 he also failed to appear before court and allowed those I.As. to be dismissed on two grounds, viz., (1) for non-payment of the abovesaid Rs. 400 in each of the cases; and (2) for his absence on 27.4.1993 when the I.As. were taken up.

2. Now, against the abovesaid order dated 27.4.1993 in I.A. Nos. 20542 and 20543 of 199l four different applications have been filed whose dismissal by order dated 25.1.1994 have resulted in the present civil revision petitions. Those applications are: (1) I.A. No. 7686 of 1993 to restore I.A. No. 20542 of 1991, (2) I.A. No. 7688 of 1993 under Section 148, C.P.C. to extend the abovesaid time for payment of the abovesaid Rs. 400 granted in I.A. No. 20542 of 1991, (3) I.A. No. 7687 of 1993 to restore I.A. No. 20543 of 1991, and (4) I.A. No. 7689 of 1993 under Section 148, C.P.C. for extending the abovesaid time for payment of the abovesaid Rs. 400, granted in I.A. No. 20543 of 1991.

3. Learned Counsel for the petitioner stated that prior to the passing of the abovesaid order dated 13.4.1993, orders were reserved in the abovesaid I.A. Nos. 20542 and 20543 of 1991 on 15.3.1993.

4. Almost identical allegations have been made in the affidavits in support of these applications, those allegations are as follows:.Thereafter (i.e. after 15.3.1993) I/(petitioner's son) regularly went to our counsel's office and the clerk of the counsel informed that the orders in the above applications have not been passed. In the same way on 29.4.19931 went to our counsels office and enquired the clerk of our counsel and on verification I came to know that the orders were passed on 13.4.1993 and the said applications were dismissed for nonpayment of cost on 27.4.1993...our counsel's clerk informed us that he was regularly asking the court

clerks as to whether any orders has been passed in the above application. Still 29.4.1993 he was informed that no order has been passed in the above application. Therefore, the non-payment of cost is neither wilful nor wanton and it is only a bona fide mistake....

5. But, it is well known that when order is reserved in a petition and subsequently order is pronounced, the court causes a notice to be put up in the notice board of the court to the effect that the order would be pronounced on a particular date. It is for the counsel to look up the said notice board and be present when the order is actually pronounced on the date mentioned in the notice board. While so, there is absolutely no averment in the abovesaid supporting affidavits regarding the above aspect. There is also no affidavit by the counsel in this regard. It is also not averred whether the learned Counsel for the petitioner was present in the court, or not, when the order was pronounced on 13.4.1993. Even if the counsel was not present on 13.4.1993 when the order was pronounced, he could have also subsequently verified, whether order has been pronounced in the abovesaid I.A. Nos. 20542 and 20543 of 1991 by looking into the court diary. Even regarding this, there is no affidavit by the counsel. Assuming that this job is done by the clerk of the counsel there is no averment in the supporting affidavit as to why the said clerk did not verify the said diary to find out whether the order has been passed or not. It is only stated in the affidavit that the said counsel's clerk was only asking the court clerks in this regard. It is not stated as to why he did not look into the court diary in this regard. This is one of the reasons given by the court below passing the abovesaid impugned orders and I am unable to see any error by the court below in giving the abovesaid reason for the abovesaid dismissal orders.

6. Further, there is absolutely no explanation in the abovesaid supporting affidavits as to why learned Counsel for the petitioner was absent on 27.4.1993. Only because of his absence, treating the order dated 27.4.1993 as ex parte order, the petitioner filed I.A. No. 7686of 1993 and I.A. No. 7687of 1993 of restoration of I.A. Nos. 20542 and 20543 of 1991 respectively. When there is no explanation at all for the absence of the petitioner or his counsel on 27.4.1993, the dismissal of I.A. Nos. 7686 and 7687 of 1993 are perfectly justified. All that learned Counsel for the petitioner could submit before me is that there is no necessity for the presence of

the Counsel on 27.4.1993 when the abovesaid I.A. Nos. 20542 and 20543 of 1991 were posted on the alleged ground that only orders were to be pronounced on that day, consequent upon the non-payment of the abovesaid sum of Rs. 400 in each of the two matters. I am unable to agree. When I.A. Nos. 20542 and 20543 of 1991 were posted on 27.4.1993, it is the duty of the counsel to be present before the court and if really there were genuine reasons for the non-payment of Rs. 400 in each of the matters, he could have very well explained to the court. Thus, it is found that there is no scope at all for restoration of I.A. Nos. 20542 and 20543 of 1994 in view of the fact that there is no explanation at all in the supporting affidavit regarding the absence of the petitioner and his counsel on 27.4.1993. Hence, there is no error in the court below having dismissed I.A. Nos. 7686 and 7687 of 1993. At any rate, there is absolutely no error of jurisdiction in the abovesaid dismissal.

7. Coming to I.A. Nos. 7688 and 7689 of 1993, both filed under Section 148, C.P.C. no doubt I have myself held in N.R. Nainar Mohamed v. Khaja Mohideen : (1990)1MLJ185 , that such application under Section 148, C.P.C. even if filed after the period fixed for making the payment has expired, is maintainable. But, the actual question is whether the court below has committed error of jurisdiction in dismissing the said applications also. I have already mentioned that the averments in the affidavit in support of these applications are also same as in the affidavits in support of I.A. Nos. 7686 and 7687 of 1993.1 have already extracted those averments in paragraph 4 above and I have already stated in paragraphs 5 and 6 above how so many other relevant and very material averments have not been made at all in the affidavit. I have also stated therein that the counsel also has not filed necessary affidavit. In view of those reasons given by me there is no scope at all for extending the time under Section 148, C.P.C. Therefore, these applications also have to necessarily fail. No doubt, learned Counsel for the petitioner relies on Collector, Land Acquisition, Ananthag v. Katiji : (1987)ILLJ500SC and two other decisions. No doubt in : (1987)ILLJ500SC , it is held that in condoning the delay under Section 5 of the Limitation Act, the court shall adopt liberal approach. But in the present case, when the supporting affidavits do not make necessary overments as stated above, there is no scope at all for allowing those applications. The facts in the Supreme Court case are different from the present one and hence

the petitioner cannot seek assistance from the said decision. The same comments could be made even with reference to the other two decisions cited by learned Counsel for the petitioner.

8. I may also state that in John Singh v. Sukh Pal Singh : AIR 1989 SC2073 , the Supreme Court, in dealing with Section 148, C.P.C. has also observed thus:

This section empowers the court to extend the time fixed by it even after the expiry of the period originally fixed. It by implication allows the court to enlarge the time before the time originally fixed. The use of the word 'may' shows that the power is discretionary and the court is, therefore, entitled to take into account the conduct of the party praying for such extension.

It is needless to say that in the present case, the conduct of the petitioner also disentitles him from getting any relief under Section 148, C.P.C.

9. The net result is, there is absolutely no error of jurisdiction in the impugned order and accordingly the civil revision petitions are not admitted, but dismissed.

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