Smt. Shamavathi, Hindu W/O Vishwanath Rai, Vs. Smt. Appi S. Pergade W/O Late Shantharama Pergade, Hindu,

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Court : Karnataka

Decided On : Aug-18-2009

Judge : Ashok B. Hinchigeri, J.

Acts : Limitation Act, 1963 - Sections 5 - Schedule - Articles 120, 121 and 171; Code of Civil Procedure (CPC) - Sections 151 - Order 22, Rules 4, 4(5), 9 and 11; Code of Civil Procedure (CPC) (Amendment) Act, 1976; Karnataka Civil Practice Rules, 1967 - Rule 23; Constitution of India - Article 227

Appeal No. : Writ Petition No. 19350 of 2009

Appellant : Smt. Shamavathi, Hindu W/O Vishwanath Rai, ;smt. Somakke Shedthi W/O Shantha Shetty, Hindu and ;smt.

Respondent : Smt. Appi S. Pergade W/O Late Shantharama Pergade, Hindu, ;tharanath Pergade S/O Late Shantharama Pe

Advocate for Def. : B.L. Acharya, Adv.

Advocate for Pet/Ap. : Sanathkumar Shetty K., Adv.

Disposition : Petition allowed

Judgement :
ORDER

Ashok B. Hinchigeri, J.

1. The petitioners have challenged the order, dated 18.6.2009 passed by the III Addl. District Judge, D.K., Mangalore in M.A. No. 9/2008 and the order, dated 14.9.2007 passed by the I Addl. Civil Judge (Sr.Dn.), Mangalore on I.A. Nos. 6 and 7 in O.S. No. 40/1996.

2. The facts of the case in brief are that the petitioners filed the suit for partition, separate possession, etc. During the pendency of the suit, the defendant No. 1, Shantharama Pergade died on 10.5.2000. The petitioners filed two I.As. - I.A. No. 6 for substituting the legal representatives of the deceased defendant No. 1 and I.A. No. 7 for setting aside the abatement. The said I.A.s were rejected by the Trial Court, by its common order, dated 14.9.2007.

3. Feeling aggrieved by the same, the petitioners preferred M.A. No. 9/2008. The learned Appellate Judge dismissed the said appeal by confirming the orders of the Trial Court. On suffering the concurrent orders, this petition is presented.

4. Sri Sanath Kumar Shetty, the learned Counsel appearing for the petitioners submits that both the Courts below have taken a pedantic and hypertechnical view of the matter. He submits that the first defendant died on 10.5.2000 and the necessary applications came to be filed on 11.10.2000. According to him, 90 days' period prescribed for making these applications for bringing the legal representatives of the deceased first defendant on record expired on 9.8.2000. In this regard, he has brought to my notice Article 120 of the Limitation Act, 1963, which prescribes 90 days as the period of limitation for bringing the legal representatives of a deceased party on record, from the date of his death. He further submits that under Article 121, the application for setting aside the abatement has to be made within 60 days from the date of the abatement. The date of abatement in this case being 9.8.2000, 60 days' period expired on 8.10.2000. Thus, there is a delay of few days in making the two applications is the submission of Sri Sanath Kumar Shetty.

5. Sri Shetty also relies on a judgment passed by the Hon'ble Supreme Court in the case of Bhagwan Swaroop and Ors. v. Mool Chand and Ors. reported in : AIR

1983 SC 355 and contends that technical rules of procedure can not be given precedence over doing substantial justice. The Hon'ble Supreme Court has taken the considered view that abatement can be set aside at any time, if sufficient cause is shown.

6. Sri Shetty sought to draw the support form the Hon'ble Supreme Court's decision in the case of S.B. Noronah v. Prem Kumari reported in : AIR 1980 SC 193. The relevant paragraph of the judgment is extracted below:

6. Pleadings are not statutes and legalism is not verbalism. Common sense should not be kept in cold storage when pleadings are construed. It is too plain for words that the petition for eviction referred to the lease between the parties which undoubtedly was in writing. The application, read as a whole, did imply that and we are clear that law should not be stultified by courts by sanctifying little omissions as fatal flaws. The application for vacant possession suffered from no verbal lacunae and there was no need to amend at all. Parties win or lose on substantial questions, not 'technical tortures' and courts cannot be 'abettors'.

7. Mr. Shetty also brings to my notice the decision of the Hon'ble Supreme Court in the case of Ramnath Sao Alias Ram Nath Sahu and Ors. v. Gobardhan Sao and Ors. reported in ILR 2003 Kar 514, wherein it is held that the expression 'sufficient cause' within the meaning of Section 5 of the Limitation Act, 1963 has to be given a liberal consideration so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. The refusal to condone the delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. Just because there is some lapse in every case of delay on the part of the litigant concerned, the door should not be shut against him. The relevant paragraph of the said judgment is extracted below:

12. Thus it becomes plain that the expression 'sufficient cause' within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code of any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute 'sufficient cause' or

not will be dependent upon facts of each case. There cannot be a straiijacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the Courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.

8. Sri Shetty submits that this Court, in its judgment in the case of Karnataka Bank Limited v. Nazeer Ahmed Siddiqui and Ors. reported in 1989(2) Kar LJ 471 has held that non-filing of the application for the condonation of delay along with the applications for setting aside the abatement and for bringing the legal representatives of the deceased party on record, is not fatal to the two said applications.

9. Per contra, Smt. Pushpalatha, the learned Counsel appearing for B.L. Acharya for the respondent Nos. l to 4 submits that the petitioners have not even filed the application for the condonation of delay. She brings to my notice that it is the case of the petitioners that one Sri Sadananda Shetty, son of the second defendant, was instructing the Counsel for the plaintiffs; on account of his going to Dubai, the said advocate could not be instructed to file the L.R. application within the prescribed period of limitation. She submits that no documents whatsoever are produced as to when he left for Dubai.

10. She also submits that the deceased first defendant, Shantaram is none other than the maternal uncle of Ashok Shetty. It is Ashok Shetty who has sworn to the affidavit filed in support of I.A.s on behalf of the petitioners plaintiffs. She also brings to my notice that the death of the first defendant cannot go unnoticed by the plaintiffs. They are none but the sisters of the deceased defendants No. 1. She submits that the invitation card for the observance of the obsequies ceremony (Exhibit Dl) was sent to the relatives and friends of the deceased first defendant. She submits that Exhibit D-2 is the photo of the deceased defendant published in a daily, namely, Udaya Vani, informing the general public of his death. Even in the wake of all this circumstantial and documentary evidence, Sri Ashok Shetty, the third plaintiffs son (PW1) has deposed that he has come to know of the death of the first defendant for the first time only after one month of his passing away. The portion of his cross-examination, which is relied upon by the learned advocate is extracted herein below:.None of the applicants hove participated in the said 11th day ceremony, I came to know the death of 1st defendant for the first time, after one month from the date of his death through the neighbours of the deceased. One Baby Alva has informed me about the death. We informed our Advocate regarding the death in the 2nd week of September 2000. There is telephone facility in the house of 2nd applicant Somakke. My advocate has also got telephone in his office.

Sadananda Shetty is the son of Somakke Shetty, He has left his, village without informing his family. I do not have any documents to show that Sadananda Shetty has left for Dubai. But he telephoned to us from Dubai. It is false to suggest that we have come to know about the death of 1st defendant on the date of his death itself.

11. The learned Counsel for the respondents, Smt. Puahpalatha brtngs to my notice the provisions contained in Order 22 Rule 4(5)(b) of the Code of Civil Procedure to contend that an application for the condonation of delay has to accompany the application for setting aside the abatement, if it is filed after 150 days of the death of the party. The said provision is extracted herein below:

(5) where-

(a) xxx xxx xxx xx xx(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under Section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

the Court shall, in considering the application under the said Section 5 have due regard to the fact of such ignorance, if proved.

12. She also brings to my notice that both the Courts below have also proceeded on the fallacy that no application for the condonation of delay is required to be filed. She submits that this Court in the case of Alphonso Nazarath v. Kavieer Dias and Ors. reported in 1970(2) Mys. L.J. 553. The relevant paragraph is extracted herein below:

Mr. Holla urged that the learned Civil Judge fell into an error in thinking that an application under Section 5 of the Limitation Act was necessary for condoning the delay in making the application for setting aside the abatement Elaborating his contention, Mr. Holla submitted that respondent 1 before the Civil Judge, died on 7-2-1967, that the appellant fled the applications on 05-06-1967, within 150 days from the date of the death, that hence all that was necessary was an application for setting aside the abatement and that the appellant's application under Section 5 of the Limitation Act was misconceived. Mr. Holla added that the learned Civil Judge erred in taking up, in the first instance, the application under Section 5 of the Limitation Act which was wholly unnecessary.

*** *** *** ***I think Mr.Holla is right in contending that the learned Civil Judge fell into an error by over-looking that the application made under Section 5 of the Limitation Act did not arise for consideration at all....

13. She also brings to my notice the decision of the Allahabad High Court, which is also on the lines of this Court decision in Alphonso's case (supra). The Allahabad High Court in the case of Jatav Pachayat Committee and Anr. v. VIIth Additional District Judge, Etawah and Ors. reported in AIR 2000 All 253. The portion immediately below Head Note on which the learned Counsel has relied upon, is

extracted herein below:

An application made after 90 days from the date of death, is an application for substitution upon setting aside abatement The prayer for abatement being made within the period of limitation, the substitution would be made only after setting aside the abatement, and, therefore, no application explaining the delay would be necessary if such application is made with a prayer for setting aside abatement within 150 days from the date of death. But at the same time the said application cannot be maintained without the prayer for setting aside abatement. If such application for setting aside abatement is made after 150 days in that event definitely an application under Section 5 of the Limitation Act would be necessary....

14. Relying on the Division Bench decision of the Kerala High Court in the case of State of Kerala v. Madhavakurup Ramachandran Pillai reported in AIR 1999 Ker 359, she submits that the period of limitation runs from the date of death and not from the date of knowledge of the death. She has relied upon the same judgment for advancing another contention that two applications for bringing the L.R.s of the deceased party on record and for setting aside the abatement do not deserve any consideration in the absence of an application for the condonation of delay. The relevant portion is extracted herein below:

5. Order XXII, inter alia, contains the procedure to be adopted in the case of death of parties to the suit. In view of Rule 11 thereof the provisions contained in this Order will apply to appeals. Rule 4(5) deals with an application for substitution of the legal representative of the defendant. In the present context, this sub-rule may be read as this : Where the appellant was ignorant of the death of a respondent and could not, for that reason, makes an application for substitution of the legal representatives of the respondent under the rule within the period prescribed in the Limitation Act, 1963 and the suit has in consequence abated and appellant applies after the expiry of the period specified therefor in the Limitation Act, 1963 for setting aside abatement and also for the admission of that application under Section 5 of that Act on the ground that he had by reason of such ignorance sufficient cause for not making the application within the specified period in the

said Act, the court shall in considering the application under the said Section 5, have due regard to the fact of such ignorance if proved. This sub rule inserted by the Code of Civil Procedure Amendment Act 104 of 1976 applies only in a case where the appellant was ignorant of the death of the respondent and hence he could not apply for the substitution in time. However the application seeking to set aside abatement and to condone the delay under Section 5 of the Limitation Act is necessary in such cases. The application under Section 5 shall contain 'sufficient cause' for not making the application within the time by reason of such ignorance. If such ignorance is proved, the courts shall have due regard while considering the said application.

6....

7....

8. ...The period of limitation runs from the date of death and not from the date of knowledge of the death.

15. The learned Counsel also sought to draw the support from the decision of the Hon'ble Apex Court in the case of Ragho Singh v. Mohan Singn and Ors. reported in : 2001(9) SCC 717, wherein it is held that in the absence of an application for the condonation of delay, time-barred appeal is liable to be dismissed.

16. The learned Counsel submits that even assuming, without admitting, that the petitioners have a good case on merits, the same does not constitute a ground for the condonation of delay. While canvassing this point, she relied upon the decision of the Hon'ble Supreme Court in the case of State of Gujarat v. Syed Mohd. Bakir EI Edross reported in : AIR 1981 SC 1921.

3. Mr. Phadke also contended that he had strong case for the acceptance of the appeal on merits and that the same should be regarded as a very good reason for the condonation of the delay. The contention is wholly without substance. The abatement stands in the way of the appeal being heard on merits which cannot, therefore, be looked into.

17. Taking support from the Hon'ble Supreme Court decision in the case of D. Gopinath Pillai v. State of Kerala and Anr. reported in : 2007(2) SCC 322, she submits that the delay cannot be condoned merely on sympathetic ground, when mandatory provisions are not complied with. It is held in the said decision that delay cannot be condoned unless the delay is properly, satisfactorily and convincingly explained.

18. She brings to my notice that the objection that the petitioners' two applications cannot be considered in the absence of application for the condonation of delay is raised by the respondent at the earliest point of time i.e., in their counter filed on 13.12.2001.

19. Her last submission is that this Court's interference in exercise of power under Article 227 of Constitution of India is not warranted, when the two Courts below have passed the justificatory concurrent orders.

20. In the course of his rejoinder, Sri Shetty submits that the application for setting aside the abatement itself has to be treated as the composite application for both, the setting aside the abatement and for the condonation of delay. He further submits that at the most, if this Court comes to a conclusion that the application for the condonation of delay is a must in this case, then liberty be reserved to the petitioners to make one such application before the Trial Court now. He submits that the judgments of other High Courts are not binding upon this Court.

21. Smt. Pushpalatha submits that the law does not permit making of two prayers in one application. She brings to my notice Rule 23 of the Karnataka Civil Rules of Practice, 1967, which reads as follows:

23. There shall be a separate application in respect of each distinct prayer. When several prayers are combined in one application, the Court may direct the applicant to confine the application only to one of such prayers and to file a separate application in respect of each of the others.

22. On hearing these marathon arguments, the following questions fall for my consideration:

(1) Whether the period of limitation for bringing the L.Rs. of the deceased party runs from the actual date of death or from the date of knowledge of the death?

(2) If the answer to the above question is that the period of limitation starts from the actual date of death and if the proceedings have abated, whether the application for setting aside the abatement has to be accompanied by an application for the condonation of delay under Section 5 of the Limitation Act?

(3) If the second question is answered in the affirmative, whether the Trial Court was justified in entertaining I.A. Nos. 6 and 7 in the absence of the I.A. for the condonation of delay?

23. In Re-question No (1) - the Division Bench of Kerala High Court in the case of State of Kerala (supra) has taken the considered view that the period of limitation runs from the date of death and not from the date of knowledge of the death. Sri Sanath Kumar Shetty, the learned Counsel for the petitioners may be right in contending that the decisions of other High Courts are not binding on this Court; but the decisions of other High Courts have atleast the persuasive value. It is also profitable to refer to the Hon'ble Supreme Court's judgment in the case of Union of India v. Ram Charan reported in : AIR 1964 SC 215. In the said reported case, the appellant took the stand that the limitation for making the application for bringing the L.R.s. on record would run from the date of the knowledge of the death of a party. In that case, the respondent had died on 21.07.1957 and the appellant made the application on 17.03.1958 contending that he came to know of the former's death only on 03.02.1958. The said application was not accompanied by an application for setting aside the abatement. The Hon'ble Supreme Court held that the limitation starts from the date of the death of the deceased respondent. The relevant provisions contained in para-14 of the said judgment are extracted hereinbelow:

14. ...It appears to be due to such an attitude of the appellant that the application dated March 17, (sic) 1958 purported to be simply under Rule 4 of Order XXII and did not purport to be under Rule 9 of the said Order as well and that no specific prayer was made for setting aside the abatement. The limitation for an application to set aside abatement of a suit does start on the death of the deceased

respondent. Article 171, First Schedule to the Limitation Act provides that It does not provide the limitation to start from the date of the appellant's knowledge thereof The stand taken by the appellant was absolutely unjustified and betrayed complete lack of knowledge of the simple provision of the Limitation Act. In these circumstances, the High Court cannot be said to have taken an erroneous view about the appellant's not establishing sufficient ground for not making an application to bring on record the representatives of the deceased respondent within time or for not making an application to set aside the abatement within time. We, therefore, see no force in this appeal and dismiss it with costs.

24. Following the aforesaid judgment, the Madras High Court in the case of Velayutham v. Venugopal reported in (2006) 1 CTC 468 has held that the knowledge of date of death is not relevant and that the application ought to have been filed within 90 days from the actual date of death failing which the suit will abate as against the deceased defendant.

25. Considering the unmistakable interpretation of Article 120 of the Limitation Act received at the hands of the Hon'ble Supreme Court, Kerala High Court and the Madras High Court, I answer question No. 1 by holding that the period of limitation of for brining the legal representatives of the deceased party on record is 90 days from the date of his death. Knowledge of death has no relevancy in regard to the operation of Article 120.

26. In Re-question No (2) - The plain reading of the provisions contained in Order 22 Rule 4(5)(b) of C.P.C shows that an application for setting aside the abatement has to be accompanied by an application for the condonation of delay under Section 5 of the Limitation Act. The issue is no more res integra. It is covered by the Allahabad High Court judgment in Jatav Panchayat Committee's case (supra), wherein it is held that, if an application for setting aside the abatement is made after 150 days of the death of a party, definitely an application under Section 5 of the Limitation Act is necessary. Similarly, the Division Bench of Kerala High Court in the case of State of Karala (supra) has held that an application for the substitution of the legal representatives of the deceased defendant filed beyond the period of prescribed limitation has to be accompanied by two applications -

one application for setting aside the abatement and another application for the condonation of delay under Section 5 of the Limitation Act.

27. My reasoned perusal of this Court's judgment in Karnataka Bank Limited case (supra) reveals that the provisions contained in Sub-rule (5)(b) of Rule 4 of Order 22 of C.P.C were not considered at all. Hence, with utmost respect to this Court, I would say that the said judgment is to be treated as the one passed per incurrium. Total period of limitation taken together under Article 120 and 121 is 150 days. Hence after lapse of 150 days from the date of death, the plaintiffs or the petitioners have to necessarily invoke Section 5 of the Limitation Act. Thus, I answer the second question by holding that an application for the condonation of delay under Section 5 of the Limitation Act is certainly necessary when the application for setting aside the abatement is filed beyond 150 days from the date of death of the defendant. If no such application is made, the abatement stands. If no application under Section 5 of the Limitation Act is filed, mere filing of applications to set aside the abatement and impleading the legal representatives are not sufficient. An application to condone the delay explaining the reasons for delay must also be filed.

28. In Re-question No (3) - in view of my answering questions Nos. l and 2 as hereinabove, I find that the entire exercise carried out by the Trial Court is a nullity. The Trial Court ought to have rejected I.A.VI and VII without embarking upon any enquiry as to whether the petitioner - plaintiffs were prevented by sufficient cause from making the said I.A.S.

29. Though justice is more important than the law itself, but justice has to be administered according to law only, as held by the Supreme Court in the case of Life Insurance Corporation of India v. Asha Ramachandra Ambekar reported in : AIR 1994 SC 2148. Justice according to law is a principle as old as hills. The Courts are to administer law, however inconvenient it may be. But on whether sympathetic consideration has to weigh with the Courts, the Supreme Court has this to say in para 13 in Life Insurance Corporation case:

13. The Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law.

Dtsregardful of law, however hard the case may be, it should never be done....

14....

15. It is true that there may be pitiable situations, but on that score, the statutory provisions cannot be put aside.

30. It is also profitable to refer to the judgment of the Hon'ble Supreme Court in the case of Raghunath Rai Bareja and Anr. v. Punjab National Bank and Ors. reported in : (2007) 2 SCC 230, wherein it is held that in case of conflict between the law and equity, it is the law which has to prevail. The relevant portion is at para 29 of the judgment, which is extracted below:

29. Learned Counsel for the respondent Bank submitted that it will be very unfair if the appellant who is a guarantor of the loan, and Director of the Company which took the loan, avoids paying the debt While we fully agree with the learned Counsel that equity is wholly in favour of the respondent Bank, since obviously a bank should be allowed to recover its debts, we must, however, state that it is well settled that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim 'dura lex sed lex', which means 'the law is hard, but it is the law'. Equity can only supplement the law, but it cannot supplant or override it.

31. The very framing of the point for consideration by the Trial Court is erroneous. It has framed the following point:

Whether the interim application filed on behalf of the plaintiffs-applicants under Order 22 Rule 9 and Order 22 Rule 4 r/w Section 151 of CPC to bring the L.Rs of the deceased defendant No. 1 by condoning the delay is maintainable?

32. The point calling for consideration by the Trial Court ought to have been whether I.A. Nos. VI and VII are entertainable in the absence of an I.A for the condonation of delay

33. The Trial Court does not appear to have paid attention to the specific objections taken by the respondents in their counter filed on 13.12.2001. The Trial

Court does indeed observe that it is not known why the petitioners have not filed application under Section 5 of the Limitation Act. But it has proceeded to consider the case of the petitioners on the presumption that the application under Section 5 of the Limitation Act is not a strict necessity.

34. The Appellate Court has gone one step ahead and has held that the petitioners need not file any application under Section 5 of the Limitation Act. The Appellate Court thereafter holds that no sufficient grounds are made out for condoning the delay. Thus both the Courts have overlooked the material aspect of the matter by considering I.A. Nos. VI and VII, even when there was no application for the condonation of delay. Their orders are therefore liable to be set aside and accordingly they are set aside.

35. The lapse in the observance of the procedural law can not be ignored or excused or overlooked. I.A. No. VI and VII ought not to have been taken up on merits routinely or mechanically. The filing of I.A. No. 6 and 7 without filing the I.A. for the condonation of delay has to only meet the consequences of non-compliance of the law of procedure.

36. If the petitioners now make an application for the condonation of delay in filing the application for setting aside the abatement, then the delay has to be explained from the date of expiry of 150 days from the date of the death of the 1st defendant till the date of filing the application for the condonation of delay. If the petitioners make an application for the condonation of delay, it is for the Trial Court to satisfy itself of the cause for the petitioners' failure to apply for the impleadment of the legal representatives of the deceased first defendant and for setting aside the abatement within the time prescribed. It is worthwhile to refer to para-9 of the Hon'ble Supreme Court's judgment in the case of Union of India v. Ram Charan (supra). It runs as follows:

9. It is true, as contended, that it is no duty of the appellant to make regular enquiries from time to time about the health or existence of the opposite party, but it does not mean that the mere fact of the appellant's coming to know of the respondent's death belatedly will, by itself, justify his application for setting aside the abatement. That is not the law. Rule 9 of Order XXII of the Code requires and

plaintiff to prove that he was prevented by any sufficient cause from continuing the suit. The mere allegation about his not coming to know of the death of the opposite party is not sufficient. He had to state reasons which, according to him, led to his not knowing of the death of the defendant within reasonable time and to establish those reasons to the satisfaction of the Court, specially when the correctness of those reasons is challenged by the legal representatives of the deceased who have secured a valuable right on the abatement of the suit.

37. The applicant - parties have to show that the delay in taking certain steps as not for the reasons which indicates their negligence in the matter. However, what would be such steps would depend upon the facts and circumstances of each case.

38. With the liberties reserved and the observations made in the preceding paragraphs hereinabove, this petition is allowed setting aside both the orders. While allowing this petition, it is also the Court's anxiety that the respondents should not be put to any inconvenience for the lapse on the part of the petitioners. Unnecessarily they are subjected to the prolongation of the suit proceedings, the filing of the M.A.No.9/2008 and thereafter the presenting of this writ petition. All these are on account of the petitioners' filing applications which were not maintainable in the absence of the application for the condonation of delay. I therefore deem it just and necessary to impose cost of Rs. 10,000/- which shall be paid by the petitioners' side to the respondents within 2 weeks from today.