

**(1968) 08 KL CK 0033**

**High Court Of Kerala**

**Case No:** C.M.P. No. 2598 of 1968 in C. A. No. 10036 of 1967 in C. R. P. 148 of 1967

Kunhali Beary

APPELLANT

Vs

Sathanika Narayanan

RESPONDENT

**Date of Decision:** Aug. 30, 1968

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 151
- Limitation Act, 1963 - Section 12

**Citation:** (1968) KLJ 837

**Hon'ble Judges:** T.S. Krishnamoorthy Iyer, J

**Bench:** Single Bench

**Advocate:** K.T. Harindranath, for the Appellant; T.S. Venkiteswara Iyer, for the Respondent

**Final Decision:** Dismissed

**Judgement**

@JUDGMENTTAG-ORDER

T.S. Krishnamoorthy Iyer J.

1. This is an application to restore the application of the petitioner for obtaining a copy of the judgment which was rejected on 19-1-1968 for non-production of copying papers. The counsel for the petitioner invokes Section 151 C. P. C. for the purpose and relies on the decisions in G. Hari Prasad Vs. Chief Conservator of Forests, Madras and Another, and G. Hari Prasad Vs. Chief Conservator of Forests, Madras and Another, to support the application. In Bermull Sowcar v Velu Gramany1 the facts are that the application for copy was rejected on 30th August 1940 for default to deposit the copy stamps. A fresh application for copies was filed on 2-10-1940 and on 3-10-1940 a petition to restore the original application was filed. The trial court passed an order on 11-10-1940 directing the issue of copies on the original application with a note thereon that they were granted in pursuance of the petition to restore the original application. The appeal was filed on the basis of the

copies thus obtained. A preliminary objection was taken before the court which heard the appeal that it was barred. Patanjali Sastri J, following the decision in Ramanuja Ayyangar v Narayana Ayyangar<sup>3</sup> said

No doubt the judgment does not state under what provision the court has the power to treat a petition for restoration of an application for copies dismissed for default as a continuation of the previous application, but the decision in Ramanuja Ayyangar v Narayana Ayyangar (3)clearly concludes the point in favor of the appellant

2. In Ramanuja Ayyangar v Narayana Ayyangar ILR 18 Mad 374 the application for copies was struck off for non-production of the required stamp papers, and a petition was put in for restoration of the application which was ordered and copies were granted. It was contended that the appeal filed with the copies so obtained was barred by time, but the court held in the decision referred to be a continuation of the previous application for the purpose of computing the time prescribed for filing the appeal. The said decision is no authority for the position that an application for copy dismissed for default can be restored u/s 151 C. P. C. In Hari Prasad v Chief Conservator of Forests, Madras,<sup>2</sup> Rajagopalan, J., was dealing with rule 5 of Order 11 of the Madras Original Side Rules which contains a specific provision for restoration and cannot therefore help the petitioner. There is no specific provision for restoration of such application in the rules framed by the High Court and I do not think it possible to invoke Section 151 C. P. C. The restoration application is only an attempt to get over the period of limitation in filing the appeal which is purely a matter within the jurisdiction of the Court hearing the appeal, especially because of Section 12 of the Limitation Act, 1963. The application is therefore dismissed.