

(2009) 04 J&K CK 0043

Jammu & Kashmir High Court

Case No: None

Om Prakash

APPELLANT

Vs

Mata Vaishno Devi Shrine Board

RESPONDENT

Date of Decision: April 20, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 148

Citation: AIR 2010 J&K 29 : (2009) 2 JKJ 382 : (2010) 1 RCR(Civil) 291

Hon'ble Judges: Mansoor Ahmad Mir, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mansoor Ahmad Mir, J.

Petitioner-plaintiff, Om Prakash, filed a suit for declaration and injunction in the Court of Sub-Judge, Katra.

During the pendency, he filed an application for permitting him to amend the plaint, came to be granted with the direction to file the amended plaint

within the time frame but failed to do so within the time frame. He filed an application in terms of Section 148 of the CPC (for short "Code""") for

extension of time for doing the needful.

2. Defendant-non-applicant-respondent resisted the petition on the grounds taken in the objections.

3. The trial Court dismissed the application and held that tight of filing amended plaint within the time frame had come to an end and time cannot be

extended in terms of Order 6 Rule 18 of the Code or Section 148 of the Code. Feeling aggrieved, petitioner-plaintiff by the medium of this petition has challenged the order dated 29th May, 2006 whereunder the application came to be dismissed (for short ""impugned order"").

4. The core question involved in this petition is whether the time frame fixed in terms of Order 6 Rule 18 of the Code can be extended while invoking the provisions of Section 148 of the Code?

5. It is apt to reproduce Section 148 of the Code hereunder:

148. Enlargement of time:

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may in its discretion,

from time to time enlarge such period, even though the period originally fixed or granted may have expired.

6. This provision provides that the period fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, may be

enlarged from time to time by the Court in its discretion, even though the period originally fixed or granted may have expired.

7. It is also apt to reproduce Order 6 Rule 18 of the Code hereunder:

Order 6, Rule 18 CPC- Failure to amend after order:

If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order of if no

time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited

time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

8. while going through this provision of law, one comes to an inescapable conclusion that the time frame can be extended by the Court.

9. Now question arises whether application is to be filed in terms of Order 6 Rule 18 of the Code or Section 148 of the Code?

10. The words used in Section 148 of the Code are ""period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code"".

11. While going through Order 6 Rule 18 of the Code (supra), it permits to amend the petition within the time frame fixed by the Court or if not

fixed by the Court then within fourteen days as allowed by the said provision.

12. Viewed thus, the answer is that application can be filed in terms of Section 148 of the Code read with Order 6 Rule 18 of the Code.

13. The provisions/rules contained in the CPC are intended to advance the cause of justice and not to obstruct the course of substantive justice.

14. In Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, , the Hon'ble Supreme Court observed as under:

5: The order passed by the High Court cannot be sustained. Rules of procedure are intended to be a handmaid to the administration of justice. A

party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The

Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder,

he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the

first omission, and, however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side, In

Amulakchand Mewaram Vs. Babulal Kanalal Taliwala, , Beaumont, C.J., in delivering the judgment of the Bombay High Court set out the

principles applicable to cases like the present and observed.

15. Similar view was taken by the Apex Court in a case titled Ganesh Trading Co. Vs. Moji Ram, . Same view was reiterated by the Apex Court

in another case titled as Harcharan Vs. State of Haryana, .

16. Viewed thus, the provisions of Order 6 Rules 17 and 18 of the Code are to be read with the provisions of Section 148 of the Code, which

empowers the Court to enlarge the time fixed or allowed by itself.

17. Apex Court in Mahanth Ram Das Vs. Ganga Das, , while considering the provisions of Sections 148, 149 and 151 of the Code held that

Section 148 of the Code permits extension of time even if the period fixed or granted has expired. Further held that Section 149 of the Code is equally liberal.

18. Apex Court in case titled Chinnamarkathian alias Muthu Gounder and Anr. in (C.A. No. 2197 of 1969), Chinna Gounder and Anr. in (C.A.

No. 2198 of 1969) and Raja Gounder and Anr. in (C.A. No. 2199 of 1969) Chinnamarkathian alias Muthu Gounder and Others Vs. Ayyavoo

alias Periana Gounder and others, held that Court is within its jurisdiction to extend time fixed or granted even after its expiry.

19. Apex Court has also laid-down the same principle in the cases titled as Smt. Jodhayan Vs. Babu Ram and Others, , Smt. Periyakkal and

Others Vs. Smt. Dakshyani, and Konkan Trading Company Vs. Suresh Govind Kamat Tarkar and Others, .

20. Rajasthan High Court in a case titled Mohammed Yousuf Vs. Bharat Singh, laid-down that the Court can extend time frame.

21. Apex Court in a case titled Prem Narain Vs. Vishnu Exchange Charitable Trust and Others, also held that the trial Court should be liberal

while extending time in order to advance the cause of justice.

22. The same view was taken by various Hon'ble High Courts in the cases reported as Jagjit Singh and Others Vs. Sankatha Singh and Another, ,

Nand Lal Vs. Mt. Siddiquan and Others, , Kathyee Cotton Mills Ltd. Vs. R. Padmanabha Pillai and Others, , Shajahan Vs. Mrs. Kamala

Narayanan, , Bool Chand Vs. Ayodhyalal, , Pahali Raut Vs. Khulana Bewa and Others, and AIR 1977 Guj 109.

23. Division Bench of our Court in a case titled Krishan Dutt v. Mohinder Nath reported as AIR 1975 Jammu and Kashmir 18 held that the Court

has no power to extend time when lis has come to an end because the Court becomes functus officio.

24. Full Bench of this Court in case titled Bindru Vs. Kikru and Others, held that when the lis is pending, the Court can in its discretion extend time

while keeping in view the provisions of Section 148 of the Code read with Section 151 of the Code and has also held that when the lis has come

to an end the provision of Section 148 of the Code cannot be pressed into service.

25. Apex Court in a case titled Johri Singh Vs. Sukh Pal Singh and Others, held that it is immaterial whether lis is pending or not and further held

that Section 148 of the Code provides that Court in its discretion can extend time fixed or granted even after its expiry.

26. The judgement reported as Bindru Vs. Kikru and Others, , lays down that when a lis has come to an end Section 148 of the Code cannot be invoked in order to seek extension of time, but the Apex Court in a judgment reported as Johri Singh Vs. Sukh Pal Singh and Others, provides rather lays down the law that even if the lis has come to an end the time fixed or granted by the Court can be extended. However, in the present case the lis has not come to an end but is still pending.

27. Keeping in view the discussion made hereinabove and the law laid-down by the Apex Court and the other Hon'ble High Courts and by this Court, I hold that the trial Court has fallen in an error by holding that Section 148 of the Code was not applicable. It is accordingly held that the plaintiff was within its power and rights to file a petition u/s 148 of the Code for extension of time and the trial Court was within its jurisdiction to grant it subject to the condition that petitioner had to carve out a sufficient cause.

28. It is averred in the application moved by the plaintiff in terms of Section 148 of the Code before the trial Court that there was communication gap for the reason that the other proceedings arising out of the same dispute, were pending in higher Courts and that was the reason the plaintiff could not file an amended plaint in time fixed by the Court.

29. Apex Court in cases titled State of Punjab and others Vs. Renuka Singla and others, , Surinder Singh Sibia Vs. Vijay Kumar Sood, , Madanlal Vs. Shyamlal, , Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others, , Ram Nath Sao v. Goverdhan Sao AIR 2002 SC 1201, Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, , The State of West Bengal Vs. The Administrator, Howrah Municipality and Others, , Shakuntala Devi Jain Vs. Kuntal Kumari and Others, , Arjun Singh Vs. Mohindra Kumar and Others, , Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., , AIR 1937 276 (Privy Council) held that the Court(s) should be generous/liberal while exercising direction and must interpret sufficient cause in such a way which would advance cause of justice.

30. While going through the judgments (supra), I am of the considered view that the petitioner-plaintiff has carved out a sufficient cause for seeking

extension of time. Even otherwise, as discussed hereinabove, procedural law/rules are meant for achieving justice. The mystic maybe's have no role to play. The Court should not succumb to the procedural wrangles, tangles, technicalities and niceties. The effort should be to advance the cause of justice and settle the dispute once for all and not to adopt short cuts.

31. In the given circumstances, I hereby hold that the petition merits to be allowed and the impugned order merits to be set aside. Accordingly, petition is allowed and impugned order is set aside. The application of the plaintiff is granted and two months' time is granted, to the petitioner plaintiff to file the amended petition before the trial Court, from today.

32. Parties are directed to cause their appearance before the trial Court on 11th May, 2009.