

In The Court Of I Additional District Judge, Tiruvallur

Present: Thiru.S.GANAPATHISAMY, B.A., B.L.,

I Additional District Judge, Tiruvallur

Monday, the 17th day of October 2022

I.A.No.4 of 2022 in O.S.No.25 of 2016

1. V.G.Dhanasekaran

2. R.S.Thangavelu

3. J.Bharathi (died)

4. N.Sekar

5. K.M.Ravi

... Petitioners / 1st to 5th defendants

Vs.

1. Thiyagarajan

2. P.Nagaraj

3. S.Kannan

... Respondents / Plaintiffs

4. The Sub-Registrar, R.K.Pet

5. The District Collector, Tiruvallur

... Respondents / 6th and 7th Defendants

This Petition coming on 17.10.2022 before me for final hearing in the presence of Mr.N.S.Gopinath, learned counsel for the Petitioners / 1st to 5th defendants; M/s T.Surendran and V.Anuradha, learned counsels for the Respondents / Plaintiffs and upon hearing both side arguments; perusing the related records, and having stood over for consideration till this day, this Court delivers the following:-

ORDER

The petitioners / 1st to 5th defendants have filed this application to restore I.A.No1/2019 dismissed for default on 03.03.2020 inter alia alleging that since the 2nd defendant was affected with viral fever on 03.09.2019 when the case posted for cross examination of PW1, he could not instruct his counsel to cross examine the witness as a result of which the defendants were set exparte and when the I.A.No.1/2019 filed

by the defendants to set aside the exparte order was pending, in the meantime, the 3rd defendant died and when the case was posted on 03.03.2020 to bring the legal representatives of the 3rd defendant, he could not appear before this court as per the order of this court due to viral fever as a result of which it was dismissed.

2. The petitioners have further stated in their affidavit that our Hon'ble Supreme Court suspended the limitation period from 15.03.2020 till 28.02.2022 stating that all persons have limitation period of 90 days from 01.03.2022 and in the event the actual balance period of limitation with effect from 01.03.2022 is greater than 90 days, the longer period shall apply.

3. The only contention raised by the 1st to 3rd respondents / plaintiffs that the petitioners have filed this application beyond the period of limitation and without filing an application u/s 5 of the Limitation Act, the petition is not maintainable and without impleading the legal representatives of the deceased 3rd defendant, this petition is not maintainable.

4. Both side heard.

5. On the side of the 1st to 5th defendants, their counsel has filed written argument reiterating the averments of the affidavit. In addition to that the defendants have relied on two decisions reported in CDJ 2010 MHC 3585 and CDJ 1988 Calcutta High Court 154 for the proposition that the prescribed period of limitation for an application under Order 9 Rule 7 of CPC and under Order 9 Rule 9 of CPC is three years. The learned counsel has also relied on the order of our Hon'ble Supreme Court in *Suo Motto* case suspending the period of limitation.

6. The 1st to 5th defendants were set exparte on 03.09.2019 for their failure to cross examine the PW1. There are contra judgments with regard to limitation applicable for filing of an application under Order 9 Rule 7 of CPC to set aside the exparte order. The latest decision in this regard is there is no limitation for filing of application under Order 9 Rule 7 of CPC and such application shall not be entertained if it is being filed when the case is posted for argument after recording evidence of both side. Therefore, the application filed in I.A.No.1/2019 is well within time. The above application was dismissed on 03.03.2020. The petitioners ought to have filed this application within 30 days from the date of dismissal of above application. In the judgment of the Calcutta High Court, it has been stated that Article 137 of the Limitation Act would apply to the application filed under Order 9 Rule 9 of CPC to restore the dismissed interlocutory application.

7. The Full Bench of the Hon'ble Calcutta High Court has specifically formulated a question as to the applicability of the Limitation for filing of an application under Order 9 Rule 9 of CPC to restore the interlocutory application dismissed for default. The Full Bench having considered the provisions of Order 9 r/w section 141 of CPC and the provisions of the Limitation Act has held that when an application is filed under Order 9 Rule 7 of CPC to restore the interlocutory application which was dismissed for default, the period of limitation for making such application for restoration is governed by Article 137 of the Limitation Act.

8. This application has been filed within a period of three years. Furthermore, technicalities would not stand in the way of justice. Though the reason is not

plausible, this court thinks fit to give an opportunity to the defendant to contest the suit.

9. Considering the facts and circumstances of the case, this application will be allowed on payment of cost of Rs.3,000/- by the 1st to 5th defendants to the Plaintiff on or before 07.11.2022 at 11.00 a.m., failing which the application will stand dismissed. Call on 07.11.2022.

Dictated by me to the Steno-Typist and transcribed by her in the computer, corrected and pronounced by me in the open Court on this the 17th day of October 2022.

Sd/S.GANAPATHISAMY
**I Additional District and Sessions Judge,
Tiruvallur**

Both side Witness & Exhibits:-

Sd/S.GANAPATHISAMY
**I Additional District and Sessions Judge,
Tiruvallur**

Fair/Draft Order

I.A.No.4/2022

in O.S.No.25/2016 in

DD : 17/10/2022