

Supreme Court of India

Nasik Municipal Corp vs M/S R.M. Bhandari & Anr on 26 February, 2016

Author: R Banumathi

Bench: T.S. Thakur, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1856 OF 2016  
(Arising out of SLP (C) No.12330 of 2011)

NASHIK MUNICIPAL CORPORATION

....Appellant

Versus

M/S. R.M. BHANDARI & ANR.

....Respondents

J U D G M E N T

R. BANUMATHI, J.

Leave granted.

2. The present appeal impugns the order of High Court of Judicature at Bombay dismissing Civil Application No.2305 of 2010 in Writ Petition No.1077 of 2010, filed by the appellant declining to extend the time in depositing the cost of Rs.25,000/- in terms of the order dated 03.05.2010 passed by the High Court in the said Writ Petition No.1077 of 2010.

3. There has been a chequered history of litigation between the parties for about two decades leading to filing of the present appeal. The appellant being a municipal corporation had invited public tender for construction and concreting of the area from Gadage Maharaj Bridge to Rokadoba Sandwa, to which the respondents emerged as successful bidders. The respondents were to commence the work on 23.01.1990 and the same was to be completed on or before 22.10.1990. However, the respondents did not show any progress in the work and consequently the appellant-corporation withdrew the work from the respondents and allotted the same to M/s. N.H. Company Pvt. Ltd. for the purpose of getting the work completed, for which the appellant suffered an excess amount of Rs.29,76,740/-.

4. The appellant-corporation filed a suit being Special Civil Suit No.339 of 1991 against the respondents seeking recovery of the said amount before the Civil Judge (Senior Division), Nashik. The respondents also preferred Special Civil Suit No.171 of 1991 against the appellant for a declaration and recovery of amount before the Civil Judge (Senior Division), Nashik. The court disposed of both the suits vide common judgment dated 18.10.1994 thereby decreeing the suit of the

appellant and dismissed the suit filed by the respondents. The court directed the respondents to pay an amount of Rs.29,40,366/- to the appellant alongwith interest at the rate of 18% per annum. Being aggrieved, the respondents filed the appeal being First Appeal No.344 of 1995 challenging the decree dated 18.10.1994 before the High Court of Bombay. Alongwith the appeal, the respondents also filed Civil Application No.2330 of 1995 for stay of the decree. Vide order dated 12.06.1995, the High Court granted stay of the decree on condition that the respondents will deposit the entire decretal amount before the lower court within eight weeks failing which the stay shall stand vacated automatically. The respondents did not deposit the decretal amount. Thereafter, the said First Appeal No.344 of 1995 was dismissed as withdrawn vide order dated 13.01.2009.

5. The appellant had preferred an execution petition in Special Darkhast No.49 of 2002 for execution of the decree dated 18.10.1994. The said execution petition was dismissed for default of the decree holder vide order dated 29.07.2006. The appellant then preferred C.M.A. No.155 of 2006 on 28.08.2006 seeking restoration of the execution petition. Relying upon the judgment in *Mhatarba Laxman Dongare (Dead) thr. L.Rs vs. Central Bank of India and Ors.*, reported in 2005 (2) ALL. M.R. 742, the executing court vide order dated 29.10.2007 declined to restore the execution petition- Special Darkhast No.49 of 2002. The appellant then preferred the second execution petition being Special Darkhast No.40 of 2008 and the same was dismissed as being barred by limitation.

6. The appellant challenged the said order of the executing court in Writ Petition No.6622 of 2009. While the said writ petition was pending, the appellant also filed another Writ Petition No.1077 of 2010 challenging the order dated 29.10.2007 passed by the executing court rejecting the appellant's application for restoration of the earlier Special Darkhast No.49 of 2002. Both the writ petitions were disposed of by the High Court by the common judgment dated 03.05.2010 and the High Court allowed the writ petition No.1077 of 2010 and the order dated 29.10.2007 passed by the executing court was set aside and Special Darkhast No.49 of 2002 was restored. However, the High Court imposed the cost of Rs.25,000/- upon the appellant as a condition precedent for restoration of the execution petition. Challenging the said order dated 03.05.2010, respondents preferred SLP (C) No.21975 of 2010 before this Court and the said SLP was dismissed as withdrawn vide order dated 16.08.2010.

7. Pursuant to the order passed in W.P. No.1077/2010, the appellant-corporation filed applications before the executing court on 30.06.2010 requesting the court to accept the cost of Rs.25,000/- and to restore Special Darkhast No.49 of 2002. Those applications were rejected by the executing court *inter alia* stating that the time limit granted by the High Court was over on 28.06.2010 and that the court had no power to extend the time granted by the High Court. In these circumstances, the appellant preferred Civil Application No.2305 of 2010 in Writ Petition No.1077 of 2010 under Section 148 C.P.C. seeking extension of time for depositing the cost of Rs.25,000/- and the same was dismissed by the impugned order.

8. Learned counsel for the appellant Mr. S.M. Jadhav submitted that the High Court erred in not taking note of the explanation given by the appellant for the delay in depositing the cost and the High Court was not justified in dismissing the application. It was contended that the High Court

failed to consider that the right of the appellant for invoking the jurisdiction of the court under Section 148 C.P.C. is an independent right and the same cannot be curtailed in view of the order passed by this Court in SLP (C) No.21975 of 2010. It was further submitted that the High Court failed to consider that withdrawal of the first appeal by the respondent before the High Court was at their own risk and the appellant's right to restore the execution petition cannot be curtailed on that basis.

9. Per contra, learned counsel for the respondents Mr. Aniruddha P. Mayee submitted that the appellant offered a vague explanation for the delay in depositing the cost and the appellant cannot take advantage of its own wrong. It was further contended that since the execution petition was dismissed, the respondents have withdrawn the first appeal and by restoration of the execution petition at this distant point of time the respondents cannot be rendered remediless and the learned counsel prayed for liberty to restore the first appeal.

10. Upon consideration of the rival contentions, the point falling for consideration is whether or not the court has the discretion to enlarge the time for doing any act prescribed by the Code or allowed by the Code.

11. Section 148 C.P.C. provides for enlargement of the time by the court. Section 148 C.P.C. reads as under:

S.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 not exceeding thirty days in total, even though the period originally fixed or granted may have expired.

A plain reading of the above would show that when any period or time is granted by the court for doing any act, the court has the discretion from time to time to enlarge such period even if the time originally fixed or granted by the court has expired. Previously discretion was given to the court to enlarge the period fixed or granted by the court for any act prescribed or allowed by the Code. The C.P.C. (Amendment) Act, 1999 puts a limit of thirty days on the enlargement of such period. The words "not exceeding thirty days in total" have been inserted with a view to curtail procedural delay caused by any party to the suit or proceeding. Enlargement of time, whether one-time or phased, cannot exceed thirty days.

12. Considering the reason for the delay in depositing the cost, as noticed earlier, the High Court allowed the Writ Petition No.1077 of 2010 vide order dated 03.05.2010 and restored the Special Darkhast No.49 of 2002 subject to the payment of cost of Rs. 25,000/- to the respondents within a period of eight weeks from the date of the order. The appellant stated that the copy of the order dated 03.05.2010 was received in the office of its Legal Department on 12.05.2010 and the Accounts Department gave its approval for the payment of cost on 26.05.2010. The Legal Department thereafter prepared voucher/bill for the amount of Rs.25,000/- for being paid in the name of Civil Judge (Senior Division), Nashik and the same was approved on 03.06.2010 and after completing the procedural formalities, the Accounts Department issued the cheque on 15.06.2010. It is further

averred that the applications were presented before the executing court to accept the cheque on 30.06.2010 and the said applications were dismissed inter alia holding that the time limit granted by the High Court was over on 28.06.2010 and the executing court had no power to extend the time granted by the High Court. The executing court was correct in saying that it could not extend time for depositing the cost as the same had been stipulated by the High Court. The High Court has declined to extend the time mainly on the ground that the SLP(C) No.21975 of 2010 filed by the respondents was dismissed as withdrawn and that the respondents have lost their right to challenge the order passed by the Court in Writ Petition No.1077 of 2010. The High Court while declining to enlarge the time to deposit the cost neither took into consideration the sequence of dates and events stated by the appellant-corporation nor the explanation offered by the appellant- corporation for the delay in depositing the amount. This, in our view, is not correct.

13. In *Chinnamarkathian alias Muthu Gounder and Anr. v. Ayyavoo alias Periana Gounder and Ors.*, (1982) 1 SCC 159, this Court called in the principle of equity and held that the court has the jurisdiction to examine alteration or modification which may necessitate extension of time. In para (15), this Court held as under:-

“....It is a well accepted principle statutorily recognised in Section 148 of the Code of Civil Procedure that where a period is fixed or granted by the court for doing any act prescribed or allowed by the Code, the court may in its discretion from time to time enlarge such period even though the period originally fixed or granted may expire. If a court in exercise of the jurisdiction can grant time to do a thing, in the absence of a specific provision to the contrary curtailing, denying or withholding such jurisdiction, the jurisdiction to grant time would inhere in its ambit the jurisdiction to extend time initially fixed by it. Passing a composite order would be acting in disregard of the jurisdiction in that while granting time simultaneously the court denies to itself the jurisdiction to extend time. The principle of equity is that when some circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken, the court retains to itself the jurisdiction to re-examine the alteration or modification of circumstances which may necessitate extension of time. If the court by its own act denies itself the jurisdiction to do so, it would be denying to itself the jurisdiction which in the absence of a negative provision, it undoubtedly enjoys....”

14. Reference may also be made to the decisions of this Court in *Jogdhayan v. Babu Ram and Ors.*, (1983) 1 SCC 26, *Johri Singh v. Sukh Pal Singh and Ors.*, (1989) 4 SCC 403, *Ganesh Prasad Sah Kesari and Anr. v. Lakshmi Narayan Gupta*, (1985) 3 SCC 53 and *D.V. Paul v. Manisha Lalwani*, (2010) 8 SCC 546.

15. In terms of Section 148 C.P.C. court has the discretion to extend the time. The words “not exceeding thirty days in total” have been inserted by the C.P.C. (Amendment) Act, 1999. Observing that if the act could not be performed within thirty days for the reasons beyond the control of the parties, the time beyond maximum thirty days can be extended under Section 151 C.P.C., in *Salem Advocates Bar Association, T.N. vs. Union of India* (2005) 6 SCC 344, this Court in para (41) held as under:

“41. The amendment made in Section 148 affects the power of the court to enlarge time that may have been fixed or granted by the court for the doing of any act prescribed or allowed by the Code. The amendment provides that the period shall not exceed 30 days in total. Before amendment, there was no such restriction of time. Whether the court has no inherent power to extend the time beyond 30 days is the question. We have no doubt that the upper limit fixed in Section 148 cannot take away the inherent power of the court to pass orders as may be necessary for the ends of justice or to prevent abuse of process of the court. The rigid operation of the section would lead to absurdity. Section 151 has, therefore, to be allowed to operate fully. Extension beyond maximum of 30 days, thus, can be permitted if the act could not be performed within 30 days for reasons beyond the control of the party. We are not dealing with a case where time for doing an act has been prescribed under the provisions of the Limitation Act which cannot be extended either under Section 148 or Section 151. We are dealing with a case where the time is fixed or granted by the court for performance of an act prescribed or allowed by the court.”

16. Coming to the finding of the High Court that the respondents have lost their right to challenge the order passed by the High Court in Writ Petition No.1077 of 2010, it is true that SLP (C) No.21975 of 2010 was dismissed by this Court on the ground that cost was not deposited by the appellant-corporation. But that was not of much significance. In the application before the High Court, what was important was that whether the appellant has made out a case for extension based on which time can be extended. From the sequence of events, in our opinion, the appellant-corporation has explained the reasons for the delay in depositing the cost and the time ought to be extended to deposit the cost.

17. We find substance in the submission of the respondents that since the execution petition was dismissed, the respondents have withdrawn the First Appeal No.344 of 1995 and the respondents cannot be deprived of the opportunity of maintaining a first appeal for challenging the decree passed against them. While extension of time is granted to the appellant to deposit the cost, the respondents cannot be rendered remediless and in our view, the respondents are to be given liberty to have their first appeal restored by making necessary application before the first appellate court.

18. In the result, the impugned order is set aside and this appeal is allowed. The appellant-corporation shall deposit the cost of Rs.25,000/- as directed by the High Court in Writ Petition No.1077 of 2010 within a period of four weeks from today and on such deposit, Special Darkhast No.49 of 2002 shall stand restored and the same shall be proceeded with in accordance with law. The respondents are at liberty to have the first appeal filed by them being Appeal No.344 of 1995 restored by making an application. We make it clear that we have not expressed any opinion on the merits of the matter. In the facts and circumstances of the case, there is no order as to costs.

.....CJI (T.S. THAKUR) .....J (R. BANUMATHI) New Delhi;

February 26, 2016