

KANAGAVALLIAMMAL AND ORS.

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v.

R. BALASUBRAMANIAN  
(Civil Appeal No. 2106 of 2008)

MARCH 26, 2008

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[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

*Execution – Limitation – Execution Petition (EP) filed beyond prescribed period of limitation – Maintainability of – Held: Not maintainable – Contention that it was continuation of earlier EPs not tenable, as one EP filed earlier was dismissed for default and another was dismissed as not pressed and as such no application for recalling or restoration of any EP was pending on the date of commencement of the Act – Pondicherry Limitation (Repeal of Local Laws) Act, 1994 – s.4(b)(i).*

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On 22.4.1983, a decree was passed. In 1984, Execution Petition was filed which was dismissed as not pressed. In 1986, another EP was filed but the same was dismissed for default on 28.3.1994. EA was filed on 29.4.1994 to restore the E.P. The said EA was dismissed as not pressed on 31.10.1994. Subsequently EP No.177 was filed on 10.11.1995. The appellant-Judgment debtor took stand that EP was barred by limitation.

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The respondent's contention that the EP was within time permitted under Pondicherry Limitation (Repeal of Local Laws) Act, 1994 was accepted by the Executing Courts. Appellant filed revision before the High Court.

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The High Court took the view that the E.P. No. 177 which was filed on 10.11.1995 was continuation of earlier E.P. filed in 1986 and other Execution Petitions. Therefore s.4 of the Act is not applicable to EP No. 177 of 1995.

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In appeal to this Court, appellant contended that the

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A date of commencement of the Act was 1.3.1995 and 90 days time was permitted to file the Execution Petition. E.P. No. 177 of 1995 was filed on 10.11.1995 which was beyond the period of 90 days.

B Allowing the appeal, the Court

C HELD: The High Court is not correct in its view that E.P. No. 177 of 1995 was a continuation of earlier EP No. 369 of 1986 and other Execution Petitions. In fact EP No.369 of 1986 was dismissed for default on 28.3.1994 and the E.P. No. 238 of 1994, filed to restore it, was dismissed as not pressed. Therefore, there was no Execution Petition. For that matter no application for recalling, or restoration of any EP was pending on the date of commencement of the Act. E.P. No. 177 of 1995 D having been filed beyond the prescribed period of limitation was not maintainable and deserves to be dismissed. [Paras 9,10] [514-H; 515-A-B]

CIVIL APPELLATE JURISDICITON : Civil Appeal No. 2106 of 2008.

E From the final Judgment and Order dated 15.11.2006 of the High Court of Judicature at Madras in CRP No. 1110 of 2003.

V. Krishnamurthy, Senthil Jagadeesan for the Appellants.

F The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J. 1.** Leave granted.

G 2. Challenge in this appeal is to the order passed by a learned Single Judge of the Madras High Court dismissing the Revision Petition filed by the appellants under Section 115 of the Code of Civil Procedure, 1908 (in short the 'CPC'). Challenge in the Revision Petition was to the order of learned Additional Sub Judge, Pondicherry dated 7.7.2003 in Execution Petition No. 177 of 1995 in OS No. 40 of 1981 ordering H attachment of Execution Petition schedule mentioned properties.

Appellants, who were the petitioners before the High Court, are the judgment debtors. A

3. Background facts in a nutshell are as follows:

Decree was passed on 22.4.1983 in OS No. 40 of 1981. EP No. 19 of 1984 was filed which was dismissed as not pressed on 16.4.1984. E.P.No. 101 of 1984 was closed on 10.8.1984. E.P. No. 369 of 1986 was filed on 24.10.1986 but the same was dismissed for default on 28.3.1994. E.A. No. 238 of 1994 was filed on 29.4.1994 to restore the E.P. The said E.A. was dismissed as not pressed on 31.10.1994. Subsequently, EP No. 177 of 1995 was filed on 10.11.1995. Appellants took the stand that the Execution Petition is barred by limitation. The respondent took the stand that the petition was within time permitted under Pondicherry Limitation (Repeal of Local Law) Act, 1994 (in short the 'Act'). Reference was made under Section 4(b)(i) of the Act. The executing court accepted the stand. The Revision Petition as noted above was filed before the High Court which dismissed the same. B  
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The High Court took the view that the E.P. No. 177 of 1995 which was filed on 10.11.1995 was continuation of earlier E.P. No. 369 of 1986 and other Execution Petitions. Therefore Section 4 of the Act is not applicable to EP No. 177 of 1995. E

4. Learned counsel for the appellants submitted that the date of commencement of the Act was 1.3.1995 and 90 days time was permitted to file the Execution Petition. E.P. No. 177 of 1995 was filed on 10.11.1995 which is beyond the period of 90 days. F

5. The controversy lies within a very narrow compass.

6. Section 4(b)(i) reads as follows: G

"(4) Notwithstanding anything contained in this Savings Act-

(b) any appeal or application for which the period of limitation prescribed under the Limitation Act is shorter H

A than the period of limitation prescribed by the local laws may be preferred or made,

- (i) within such shorter period or within a period of ninety days next after the commencement of this Act, whichever is longer”

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7. Section 5(b) of the Act also has relevance and reads as follows:

“(5) Nothing in this Act shall,

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(a) x x x x

- (b) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the local laws expired before the commencement of this Act”

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8. The High Court itself has noted in para 10 as follows:

“10. It is appropriate to refer to the following dates:

Longer Limitation French Law = 30 years

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Shorter Limitation in Indian Limitation Act = 12 years

As per the amended Act, time limit under French Law (22.4.1983 + 30 years)

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= 22.4.2013

Shorter Limitation of Indian Limitation Act

(22.4.1983 + 12 years) = 22.4.1995

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90 days from 1.3.95 or 3 months application ought to have been filed

= 01.6.1995”

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9. The High Court is not correct in its view that E.P. No. 177 of 1995 was a continuation of earlier EP No. 369 of 1986 and other Execution Petitions. In fact EP No.369 of 1986 was

dismissed for default on 28.3.1994 and the E.P. No. 238 of 1994, filed to restore it, was dismissed as not pressed. Therefore, there was no Execution Petition. For that matter no application for recalling, or restoration of any EP was pending on the date of commencement of the Act.

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10. That being so, the High Court was not justified in its view. The impugned order of the High Court is set aside. The E.P. No. 177 of 1995 having been filed beyond the prescribed period of limitation was not maintainable and deserves to be dismissed.

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11. The appeal is allowed without any order as to costs.

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Appeal allowed.