

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.334 OF 2012

Ms. Supriya Rahul Kulkarni.] ... Petitioner/
(Original Defendant)

Versus

Mrs. Sunita Ramesh Kulkarni.] ... Respondent/
(Original Plaintiff)

Mr. Rahul D. Motkari for Petitioner.
Mr. Abhijit Sarwate for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- MARCH 20, 2015

P. C. :-

1. This petition was admitted on 04/05/2012.
2. Heard the learned Advocates for parties and perused the record.
3. This petition impugns Orders dated 03/09/2011 and 30/03/2012 made by 9th Joint Civil Judge, Junior Division, Pune.
4. The Petitioner, who is the original Defendant, applied under Order 7 Rule 11 of the CPC for rejection of the Respondent's plaint on the grounds that the reliefs therein were under-valued and

appropriate Court-fee was not paid thereon. The learned trial Court, by order dated 28/03/2011, substantially accepted the Petitioner's plea and directed the Respondent-Plaintiff to correct valuation and pay necessary Court-fee within a period of one month, without fail.

5. On 30/04/2011, the Respondent-Plaintiff applied to the learned trial Judge for extension of time to pay Court-fee, *inter alia*, on the ground that certain additional properties were to be included in the plaint the the Respondent-Plaintiff wishes to pay the maximum Court-fee in the matter. Upon hearing the learned Advocate for Petitioner, learned trial Court made an Order dated 30/04/2011 extending time limit for payment of Court-fee up to 10/06/2011.

6. The Respondent-Plaintiff, did not comply with the Order made on 30/04/2011, but on 04/08/2011 applied for setting aside of such Order, on the ground that the Government Notification exempted her from payment of Court-fee. This application came to be described as Ex.35.

7. The learned trial Court, upon hearing both the parties, by a detailed Order dated 29/08/2011, rejected the application at Ex.35 and further proceeded to reject the plaint as well. In the Order dated 29/08/2011, the learned trial Court has given reasons as to why the exemption from payment of Court-fee, would not apply to the Respondent-Plaintiff.

8. It is the case of the Respondent-Plaintiff that no sooner the Order dated 29/08/2011 was pronounced, the Respondent-Plaintiff, through her Advocate, did make a request that some time be granted to pay the Court-fee. It is further the case of the Respondent-Plaintiff that her lawyer was advised to make a detained application.

9. On 03/09/2011, an application was made on behalf of the Respondent-Plaintiff seeking the following reliefs -

- i) The order of rejection of plaint be set aside.
- ii) The Plaintiff be given permission to deposit the requisite court fee.
- iii) Any other just and equitable order may be passed.

10. On the same day i.e on 03/09/2011, the learned trial Court, without either issuance of notice to the Petitioner or without affording any opportunity of hearing to the Petitioner, allowed the Respondent's application dated 03/09/2011 and directed the Respondent-Plaintiff to deposit the Court-fee.

11. The Petitioner, thereafter instituted a Review Petition, seeking review/recall of the Order datd 03/09/2011, *inter alia*, on the ground that the same was made without applying the principle of *audi alteram partem*. The Petitioner also contended that there was an error apparent on the face of record in making an Order dated 03/09/2011, inasmuch as, more than adequate opportunity had been afforded to the Respondent-Plaintiff to make good the deficiency in payment of

Court-fee.

12. The learned trial Judge, by Order dated 30/03/2012, has however dismissed the Review Petition, holding, *inter alia*, that the Order dated 29/08/2011, inasmuch as, it did not afford an opportunity to the Respondent-Plaintiff to make good the deficiency in payment of Court-fee, was itself vitiated by an error apparent on the face of record.

13. Mr. Rahul D. Motkari, learned Advocate for Petitioner, made the following submissions in respect of this Civil Revision Application :-

- a) that the impugned order dated 03/09/2011 was made in total violation of the principles of natural justice and fair play;
- b) that in terms of Section 2 (2) of the CPC, the rejection of a plaint is also a Decree. Accordingly, the only remedy open to the Respondent-Plaintiff, as against the Order dated 29/08/2011, was to either prefer a Review Petition or an Appeal. There was no question of impugning the Order dated 29/08/2011 by resorting to the provisions contained in Section 151 of the CPC. Reliance was placed upon the decision in the case of ***Ramji Gupta and Anr. V. Gopi Krishan Agrawal (D) & Ors.***¹ to submit that the provisions contained in Section 151 of CPC are not

¹ AIR 2013 SUPREME COURT 3099

substantive provisions which can be used in contravention of or by ignoring specific provisions contained in the Code;

- c) that the Order dated 03/09/2011 was vitiated by error apparent on the face of record, inasmuch as, the learned trial Judge consequent upon the rejection of the plaint, has become *functus officio* and in any case, the Order dated 29/08/2011 had been passed, after noting that ample opportunity had been granted to the Respondent-Plaintiff in the past, for the payment of deficient Court-fee.

14. Mr. Abhijit Sarwate, learned Advocat for Respondent-Plaintiff, defended the impugned order, by submitting that procedure is only the handmaid of justice and that if substantial justice is a by-product of even the adoption of erroneous procedure, the revisional Court exercising equitable jurisdiction, ought not to upset such substantial justice at the altar of procedural compliances. Mr. Sarwate pointed out that the Respondent-Plaintiff was under bonafide impression that she was entitled to exemption in the matter of payment of Court-fee and therefore the application at Ex.35 was moved. The learned trial Court, at the stage of dismissal of application at Ex.35, was obliged to afford the Respondent-Plaintiff some reasonable time to make good the deficiency in payment of Court-fee. The rejection of the plaint, simultaneous with rejection of application at Ex.35, was an error apparent on the face of record, particularly in a situation where the provisions contained in Order 7

Rule 11 (c) provides for rejection of plaint only where the Plaintiff fails to supply requisite stamp-paper, despite being called upon to do so, within a time to be fixed by the Court. Mr. Sarwate placed reliance upon the decision of the Hon'ble Apex Court in the case of ***Sardar Tajender Singh Ghambhir Vs. Sardar Gurpreet Singh***² in respect of the proposition the even an Appellate Court is empowered to afford an opportunity to a Plaintiff to make good the deficiency in payment of Court-fee, as an appeal is nothing but the continuation of a suit.

15. The rival contentions now call for determination.

16. Mr. Rahul D. Motkari, learned Advocate for Petitioner, is right in his criticism of the procedure adopted by the learned trial Court, particularly, in the matter is disposal of the application dated 03/09/2011 without notice to the Petitioner or her Advocate. The compliance with principles of natural justice and fair play, is not merely a matter of procedure in every case. Therefore, it was necessary for the learned trial Judge to have noticed the Petitioner and afforded the Petitioner with opportunity for hearing, before the order dated 03/09/2011 was made.

17. Notwithstanding aforesaid however, looking to the facts and circumstances of the present case and the controversy involved, there is no warrant to interfere with the impugned order, which has ultimately afforded the Respondent-Plaintiff with an additional

² AIR 2015 Supreme Court 242

opportunity to make good the deficiency in payment of Court-fee and on the said basis held that suit was validly instituted. In compliance with the Order 03/09/2011, the Respondent-Plaintiff has already deposited Court-fee in an amount of Rs.90,030/- way back in the year 2011 itself. The provisions contained in Order 7 Rule 11 of the CPC provide that where the relief claimed is under-valued and the Plaintiff on being required by the Court to show correct the valuation within the time to be fixed by the Court, fails to do so or where relief claimed that properly valued, but the plaint is written upon paper unsufficiently stamped, and the Plaintiff, upon being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so, the Court shall reject the plaint.

18. Therefore, implicit in the provisions contained in Order 7 Rule 11 of the CPC is requirement to afford an opportunity to the Plaintiff to correct and valuation and to pay the requisite Court-fee within time to be fixed by the Court. In this case, to a certain extent, the Respondent-Plaintiff had been recalcitrant. This is evident by reference to the Orders made on 28/03/2011 and thereafter on 30/04/2011. Despite opportunity, the Respondent-Plaintiff failed to pay the Court-fee within the time prescribed. Nevertheless, the Respondent-Plaintiff did file an application dated 04/08/2011 claiming for exemption from the payment of Court-fees, by relying upon a Government Resolution, which according to the Respondent-Plaintiff entitled her to such exemption.

19. The learned trial Court, upon considering such application at Ex.35, rejected the same. However, simultaneous with such rejection, the learned trial Judge proceeded to straight away reject the plaint without affording any further time to the Respondent-Plaintiff for making good the deficiency in payment of Court-fees. This order was made in the application instituted by the Respondent-Plaintiff on 03/09/2011. There is a statement that no sooner the Order dated 29/08/2011 was pronounced, the Respondent-Plaintiff, through her Advocate, did make a request for permission to pay the Court-fee. However, the Respondent-Plaintiff was advised to make a detailed application for the said purpose. If such circumstances are taken into consideration, then there is no real warrant to interfere with the impugned order.

20. The revisional jurisdiction of this Court is essentially an equitable jurisdiction. Though there is undoubtedly irregularity in the adoption of proper procedure by the learned trial Judge, the irregularity can neither be described as a material one nor can it be said that the Petitioner has suffered from grave prejudice on account of such exercise. Accordingly, although the procedure adopted by the learned trial Judge is by no means approved, that by itself, is not sufficient to upset the impugned order. Ultimately, it must be appreciated that even the provisions contained in Order 7 Rule 13 of the CPC do not preclude the Plaintiff from instituting a fresh plaint in respect of the same cause of action consequent upon rejection of a plaint on any of the grounds mentioned in Order 7 Rule 11 of the

CPC. Further, even the Petitioner concedes that it was open to the Respondent-Plaintiff to institute an appeal against the Order dated 29/08/2011. In such appeal, which would have to be regarded as continuation of a suit, Appellate Court would also have the power to permit the deficiency in the matter of payment of deficit Court-fee to be cured. Therefore, consequent upon correct procedure being followed, the end result would not have been substantially different. For all these reasons, it is not necessary to interfere with the impugned order.

21. Although the impugned orders are not being interfered with, this is a fit case where the Respondent-Plaintiff should be saddled with some costs. This is because the Respondent-Plaintiff, vide Order dated 28/03/2011, was granted one month's time to carry out the correct valuation and to pay the deficit Court-fees which expired on 28/04/2011. Without payment of deficit Court-fees, on 30/04/2011, the Respondent-Plaintiff applied for additional time, which was granted by the order dated 30/04/2011, up to 10/06/2011. Even by 10/06/2011, the Respondent-Plaintiff failed to pay the deficit Court-fees but only on 04/08/2011 filed Ex.35 seeking exemption. For all these reasons, it is only proper that the Respondent-Plaintiff pays costs of Rs.15,000/- to the Petitioner herein. Such costs should be paid within a period of four weeks from today.

22. Accordingly, the present Revision Application is dismissed. However, the Respondent is directed to pay costs of Rs.15,000/-

(Rupees Fifteen Thousand Only) to the Petitioner within a period of four weeks from today.

23. All parties to act on the basis of authenticated copy of this order.

24. The learned Advocate for Petitioner seeks for continuation of interim relief granted on 04/05/2012 by further period of 8 weeks from today. Accordingly, interim order is continued for a period of 8 weeks from today. Consequently, the time limit for payment of costs is also proportionately extended.

25.

(M. S. SONAK, J.)