

Nana @ Namdeo Kokya Patil Vs. Vishnu Mahadeo Mhatre and others	...	Petitioner Respondents
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CORAM : R. G. KETKAR, J.
DATE : 6TH AUGUST, 2015

Heard Mr. Sabrad, learned Counsel for petitioner at length.

3. In support of this Petition, Mr. Sabrad strenuously contended that by order dated 15.04.2014 below exhibit-43, the learned trial Judge directed the plaintiff to properly value the suit considering the market value of his share in the suit property under Section 6(vii) of the Maharashtra Court Fees Act. The plaintiff was directed to pay deficit Court fees of his share within a period of 30 days from the date of the order.

4. Mr. Sabrad submitted that on the same day, the learned trial Judge passed order below exhibit-54 filed by the plaintiff for temporary injunction. Aggrieved by that order, plaintiff preferred Miscellaneous Civil Appeal in the District Court. Plaintiff did not challenge the order passed below exhibit-43. Plaintiff however, represented that he has challenged the orders dated 15.04.2014 passed below exhibits-43 as also 54 when in fact he did not challenge the order passed below exhibit-43. Plaintiff also did not comply order below exhibit-43 by paying the deficit Court fee within 30 days. In view of Order VII, Rule 11(b) of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the learned trial Judge ought to have rejected the plaint as the plaintiff failed to correct the valuation and pay the deficit Court fee within 30 days fixed by the trial Court. He further submitted that the plaintiff also did not make out a case covered by proviso to Order VII, Rule 11 C.P.C. In fact, no prayer for condonation of delay was made. Mr. Sabrad further submitted that under Section 148 C.P.C., the Court can enlarge the period from time to time, not extending 30 days in total. Thus, even as per Section 148, plaintiff cannot get extension more than 30 days in total. He submitted that even the plaint is not amended.

5. I have considered the submissions advanced by Mr. Sabrad. I have also perused the material on record. Defendant No.1 had filed application under Order VII, Rule 11 C.P.C. for rejection of the plaint on the ground that the plaintiff has valued the Suit under Section 6(iv)(j) incorrectly. By order dated 15.04.2014 below exhibit-43, the learned trial Judge directed the plaintiff to correctly value the Suit considering the market value of his share in the property under Section 6(vii) of the Maharashtra Court Fees Act. The operative part of the order reads thus,

ORDER

1. The plaintiff is directed to do proper valuation considering the market value of his share in the suit property under Section 6(vii)

of the Bombay Court Fees Act, 1959.

2. The plaintiff is directed to pay deficit court fee of his share within a period of 30 days from today.”

6. Perusal of the order extracted hereinabove shows that plaintiff was directed to pay Court fees of his share within a period of 30 days from the date of the order. Order VII, Rule 11(b) and proviso thereof reads thus,

“11. Rejection of plaint.- The plaint shall be rejected in the following cases.-

(a) ...

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

...

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

7. Perusal of the above extracted portion shows that plaint is liable to be rejected where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so. Proviso thereto lays down that the time fixed by the Court for the correction of the valuation or supplying requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

8. In the present case, plaintiff came with the case that on 15.04.2014, the learned trial Judge disposed of two applications namely application at exhibit-43 filed by the defendant No.1 under Order VII, Rule 11 and application at exhibit-54 filed by the plaintiff for injunction. Aggrieved by these orders, he intended to prefer appeal and accordingly handed over papers to the Advocate at Alibaug. In paragraph 3 of the application at exhibit-66, it is asserted that Advocate at Alibaug informed the plaintiff that he has filed appeals challenging the orders below exhibits-43 and 54. Accordingly, on behalf of the plaintiff, application exhibit-65 was filed on 14.07.2014 in the trial Court to the effect that plaintiff has challenged the order passed below exhibit-43. In paragraph 4, plaintiff asserted that after going through the papers filed in the appeal, plaintiff's Advocate realized that appeal is preferred only against the order passed below exhibit-54 and not against the order passed below exhibit-43. After getting this information, the application exhibit-66 is filed. In paragraph 6, it is asserted that as papers were forwarded to the Advocate in the District Court for challenging the orders below exhibits-43 and 54, plaintiff was under bonafide impression that appeals are in fact filed against both the orders. It is because of that misunderstanding, application dated 14.07.2014 was filed in the trial Court at exhibit-65. The plaintiff never intended to mislead the Court. In paragraph 7, it is asserted that since the order passed below exhibit-43 is not challenged, he is paying the Court fee as per the order passed by the trial Court.

9. By the impugned order, the learned trial Judge has allowed the application. In paragraph 5, the learned trial Judge held that it is in the interests of justice to enlarge the time as also in order to ensure that substantial justice is done between the parties, this is a fit case for invoking Section 151 C.P.C. In paragraph 6, the learned trial Judge has

also considered the affidavit filed by the plaintiff for not supplying deficit Court fee. The learned trial Judge observed that the Suit cannot be dismissed on a technical ground and it has to be decided on merits. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. It is not in dispute and rather is evident from record that on 15.04.2014, the learned trial Judge disposed of both the applications, namely, exhibits-43 and 54. The explanation given by the plaintiff is plausible, and therefore, no case is made out for invocation of powers under Section 227 of the Constitution of India. The impugned order is purely discretionary. The petitioner has not shown that the learned trial Judge has exercised discretion arbitrarily, perversely and capriciously. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) C.P.C.

(R. G. KETKAR, J.)

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