**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Civil Revision No.5866 of 2013 (O&M)**
Date of decision: 10.09.2015

Sukhpreet Kaur ... Petitioner

versus

Shamsher Singh .... Respondent

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Mr. J.K. Singla, Advocate,
for the petitioner.

Mr. A.S. Kakkar, Advocate,
for the respondent.

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1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

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***K.Kannan, J.*** *(Oral)*

1. The suit which was filed for specific performance of an agreement which was executed on 02.01.2007 provided for a period for performance before 30.06.2007. The suit had been instituted on 16.07.2010, paying the court fee of ₹26,650/-. The defendant took a plea that the suit was barred by limitation and the institution was not competent. He wanted the plea to be taken as a preliminary issue and when the trial court did not accede to the defendant, the order was brought on challenge upto this court when this court directed that the issue of adequacy of court fee on the point of limitation will

be taken up as a preliminary issue. The plaintiff explained that the last date of limitation which was on 30.06.2010 fell on a holiday and the court had been closed for summer recess upto 15.07.2010 and on the date of its opening on 16.07.2010, the suit had been filed. This, according to him, was an explanation that the suit was in time.

2. The defendant still had an objection that the plaintiff had presented the plaint with inadequate stamp and the file which had been put up before the Presiding Officer on 17.07.2010 directed the matter for further orders on 19.07.2010. On 19.07.2010, the Presiding Officer was on leave and the Officer on duty directed to be called on 24.07.2010. The court recorded that the requisite court fee had not been furnished and directed the matter to come up on 28.07.2010. On 28.07.2010 again requisite court fee had not been furnished and the case was adjourned to 31.07.2010. On 31.07.2010, it appears that the plaintiff made good the court fee which was three times more than what was originally paid. The objection was that if the court fee had not been paid and there had been no application in court seeking for extension of time for payment of court fee, the institution cannot be taken as done on the day when the suit was presented and if on the day when the full court fee was paid that should be taken to be the day when the suit was instituted. If 31.07.2010 were to be taken as the date when the suit was instituted, the suit was admittedly barred by limitation as violative of

Article 54 of the Limitation Act. The court rejected the plea in defence and found that when the court allowed for the court fee to be received, the same must be taken as legitimizing the delay and the suit cannot taken as barred.

3. The learned counsel for the petitioner-defendant relies on several judgments to say that if the court fee had not been adequately fixed on the last day of limitation when the plaint was presented, it cannot be taken a due presentation and the suit will be taken as barred. When I confronted the judgments to the counsel for the respondent, the counsel responded to the plea by only pointing out that Section 149 ought not to be taken as repository for consideration of a point of limitation or for when the suit is to be taken as instituted. Even if the application under Section 149 was not filed, the court allowing the petition to pay the deficit court fee on 31.07.2010 must be taken as having been done on exercise of inherent power under Section 151. He would, therefore, maintain that there was no bar of limitation.

4. The contention in defence is fallacious for the following reasons: (i) if there is an express provision under the Civil Procedure Code about the manner of exercise of a power, a resort to Section 151 shall not be made.( see:***<u>Ramji Gupta and another Versus Gopi Krishan Aggarwal (D) and others-2013(2) RCR (Civil) 898</u>***). The discretion under Section 149 can be invoked to save the insufficient

of payment of court fee to operate against the law of limitation only if there was a sufficient cause for non-payment of adequate court fee. An example of payment of inadequacy of court fee could be non-availability of requisite stamps. A bona fide error in calculation of the court fee payable could be another ground. An unexplained non-affixation of court fee of more than ₹50,000/- cannot avail to a plaintiff to contend that when the court accepted the court fee belatedly, it has also legitimized the institution as valid and condoned the date of payment of balance of court fee as to operate retrospectively to the date of institution of suit. In the judgment in ***A. Nawab John and others Versus V.N. Subramaniyam-2012(7) SCC 738***, the Supreme Court held that Section 149 of the Civil Procedure Code does not confer an absolute right in favour of a plaintiff to pay the court fee as and when it pleases the plaintiff. It only enables a plaintiff to seek the indulgence of the court to permit the payment of court fee at a point of time later than the presentation of the plaint. The exercise of the discretion by the court is conditional upon the satisfaction of the court that the plaintiff offered a legally acceptable explanation for not paying the court fee within the period of limitation. In this case, there was no explanation given by the plaintiff nor any application of mind to condone the delay in payment of deficit court fee. In a case where the court fee payable was in the tune of about ₹75,000 and odd and the plaintiff was paying ₹26,650/-, it cannot be stated that there was any accidental error or slip for a court to be treating the original institution as the date when it was properly instituted. The court's power to extend the time for paying the court fee will have in such situations no bearing on an issue of limitation at all.

5. The suit shall always be taken as instituted on the day when it is filed in the manner required under Order VI and Order VII CPC, as per the provisions of Order 4 Rule 1 CPC. The said provision reads as under:-

> **“Suit to be commenced by plaint.-**(1) Every suit shall be instituted by presenting a plaint in duplicate to the court or such officer as it appoints in this behalf.
>
> (2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.
>
> (3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).”

The date of institution when the plaint is presented in its form shall be the plaint which is presented with the requisite court fee. If the plaintiff had taken his time to land in the court on the last date of limitation, he literally exposes himself to a risk of being thrown out if there was any defect as regards its institution, save for clerical or accidental omissions which could still not affect the plaint. Order 7

Rule 1 (i) CPC refers to a statement of value of subject matter in the payment of court fee as required to be made in the plaint and Order 4 CPC deals with a situation when a plaint shall be deemed to be instituted. The requirements in law underwent a change by Act 46 of 1999 that took effect on 01.07.2002. It says in clear words through clause (3) that the plaint shall not be deemed to be instituted unless it complies with the requirements specified under sub-rules (1) and (2). Sub Rule (2) states that every plaint shall comply with the rules contained under Orders VI and VII CPC, so far as they are applicable.

6. A suit filed with insufficient court fee by 1/3rd of what was required on the last date of limitation cannot be taken as a due institution to save the suit from the bar of limitation when no explanation at all had been given for non-payment of court fee. The decision taken on a preliminary objection by the court below is erroneous and it is set aside. The plain is ordered to be rejected and the civil revision is allowed.

**(K.KANNAN)**
**JUDGE**

10.09.2015
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