

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.07.2016

Pronounced on : 05.08.2016

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.1718 of 2011

and

M.P.No.1 of 2011

K.Dhanavelu

... Petitioner

vs.

K.S.M.Venugopal

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 11.02.2011 passed in I.A.No.324 of 2010 in O.S.No.190 of 2006 on the file of the Additional District Munsif, Vandavasi.

For Petitioner : Mr.B.Jawahar

For Respondent : Mr.K.Moorthy

ORDER

The revision petitioner is the defendant in the suit in O.S.No.190 of 2006 on the file of the learned Additional District Munsif Court, Vandavasi. The respondent herein is the plaintiff.

2. The short facts of this case are as follows:- The respondent/plaintiff filed a suit for recovery of a sum of Rs.19,100/- along with interest at the rate of 9% p.a., from the date of petition till the date of realisation, on 1.6.2006, based on the Pro-note dated 20.5.2003. The plaint was returned by the Trial Court on 5.6.2006 pointing out certain defects including deficit court fee in filing the suit. Thereafter, the respondent/plaintiff re-presented the plaint on 24.7.2006 with an application under section 151 of C.P.C. to condone the delay of 34 days in re-presenting the plaint. Again, the plaint was returned on 26.7.2006 for non-compliance of the deficit court fee as pointed out by the Court. The plaint was returned on various dates to rectify the defects in filing the suit. Ultimately, the plaint was re-presented before the Trial Court on 1.9.2006. The Trial Court numbered the suit in O.S.No.190 of 2006 and thereafter, summons has been served on the revision petitioner in the aforesaid suit. On the other hand, the defendant/revision petitioner herein filed an Interlocutory Application in I.A.No.324 of 2010 in O.S.No.190 of 2006 under Order VII Rule 11 (c) C.P.C., to reject the suit on the ground that the respondent/plaintiff had not chosen to file an Application under section 149 C.P.C. seeking to condone the delay in paying the deficit court fee as required under the above said provision placing reliance on the decision of this Court in ***V.N.Subramaniam vs. A.Nawab John and others reported in (2007) 1 MLJ 669 and P.K.Gopalsamy vs. C.Sengapagam reported in (2007) 6 MLJ 1615.*** The respondent/plaintiff opposed the Application on the

ground that the suit was filed within the limitation period and for complying with certain defects, the plaint was returned, and such defects were rectified and re-presented the suit, and therefore, there is merit in the application filed by the revision petitioner/defendant.

3. The Trial Court, upon hearing the arguments advanced by the learned counsel on either side and after considering the issue raised in Application, held that there is no violation of provisions under Order VII Rule 11 (c) C.P.C., and dismissed the Application as devoid of merits.

4. Aggrieved by the aforesaid fair and final order, the revision petitioner/defendant has filed the present Civil Revision petition before this Court under Article 227 of the Constitution of India.

5. Mr.B.Jawahar, learned counsel appearing for the revision petitioner/defendant would submit that the respondent/plaintiff filed the suit for recovery of money against the revision petitioner/defendant on the basis of pro-note executed by the revision petitioner/defendant as stated above. The period of limitation from the date of pro-note expired on 20.5.2006 itself. The suit was filed on 1.6.2006. The plaint was returned by the Trial Court on 5.6.2006 pointing out certain defects including deficit court fee in filing the suit. However, 15 days' time was granted to the plaintiff to comply with the defect. Thereafter, the respondent/plaintiff re-presented the plaint on

24.7.2006 with an application under section 151 of C.P.C. to condone the delay of 34 days in re-presenting the plaint. Again, the plaint was returned on 26.7.2006 for non-compliance of the deficit court fee as pointed out by the Court. The respondent/plaintiff re-presented the plaint on 21.8.2006 with an application under section 151 C.P.C. to condone the delay of 12 days occurred in re-presenting the plaint. The plaint was once again returned on 22.8.2006 for want of delay condonation petition for the period from 5.6.2006 to 24.7.2006 in respect of deficit court fee. The trial Court again granted time to re-present the plaint. Again, the said plaint was re-presented before the Trial Court on 1.9.2006. Eventually, the Trial Court numbered the suit in O.S.No.190 of 2006 and suit summons was served on the revision petitioner. Being aggrieved over entertaining the suit, Interlocutory Application in I.A.No.324 of 2010 in O.S.No.190 of 2006 was filed by the revision petitioner/defendant under Order VII, Rule 11 (c) of C.P.C. to reject the plaint on the reason that the respondent had not chosen to file an Application under section 149 of C.P.C. to condone the delay in payment of deficit court fee as required under the aforesaid provisions. As the respondent herein had filed the Application under section 151 of C.P.C. to condone the delay in re-presentation alone and no Application was filed under section 149 of C.P.C., the Court below ought not to have entertained the aforesaid suit, for non-compliance under section 149 of C.P.C.. The impugned final and fair order of the Court below dismissing the said Interlocutory Application is erroneous and the same is liable to be set aside.

6. In support of his contention, the learned counsel for the revision petitioner/defendant relied on the following decisions:-

(i) ***V.N.Subramaniam vs. A.Nawab John and others reported in (2007) 1 MLJ 669***

(ii) ***B.S.Santhilal (deceased) & 8 others v. J.Samidurai and another reported in 2010-2-L.W.689***

(iii) ***A.Nawab John & Others Vs. V.N.Subramaniam reported in 2012 (4) CTC 206.***

(iv) ***Rafeeqe Ahmed vs. C.Lickmichand Jain and and two others in C.R.P.(PD) No.4013 of 2010, dated 5.2.2014 of this Court.***

7. Per contra, the learned counsel for the respondent/defendant would vehemently oppose the Revision Petition contending that the Application filed by the revision petitioner under Order VII, Rule 11 of C.P.C. is not maintainable either in law or on facts. The contention of the learned counsel for the respondent is that it is only a procedural irregularity in non-filing of the Application under section 149 of the C.P.C.. Therefore, the trial Court has exercised its power under section 151 C.P.C. on the basis of

decision of this Hon'ble Court in C.R.P.(MD) No.1489 of 2007 and C.R.P.(PD)(MD)No.158 of 2008, dated 14.7.2009 reported in MANU/TN/1632/2009 reported in Manupatra/TN/1632/2009 wherein certain guidelines have framed with regard to condoning delay in payment of court fee. As per these guidelines, the trial Court has rightly exercised its power and the delay in payment of court fee can be condoned either with an application or without an application under section 149 C.P.C. when an application under section 151 C.P.C. was filed. It is also contended that under section 151 C.P.C., the Court below has inherent power to condone the delay in payment of deficit court fee. Once the delay in payment of court fee is condoned, it relates back to the original date of payment of the court fee. Therefore, there is no bar in the limitation as contended by the counsel for the revision petitioner. In the light of the aforesaid submissions, there is no warranting interference with the impugned order passed by the Trial Court. Therefore, the Civil Revision Petition is liable to be dismissed.

8. In support of his contention, the learned counsel for the respondent/plaintiff relied on the following decisions:-

(a) ***C.R.P.(MD) No.1489 of 2007
and C.R.P.(PD)(MD)No.158 of 2008, dated
14.7.2009 reported in MANU/TN/1632/2009***
wherein certain guidelines have been formulated in
considering the Application u/s.149 C.P.C.,.

(b) ***V.P.Venkatachalam vs.
N.Venkatachalam reported in 2015 (5) CTC
865 (S.A.No.642 of 2009 dated 16.09.2015).***

(c) ***P.K.Palanisamy vs.
N.Arumugham and another reported in (2009)
9 Supreme Court Cases 173***

9. Heard the learned counsel for the parties and perused the materials.

10. The issue involved in this Civil Revision Petition is whether the plaint can be entertained without complying with the provisions under section 149 of the Civil Procedure Code?

11. It is an admitted fact that the respondent/plaint has not filed any application under section 149 of the C.P.C.. According to the respondent/plaintiff, the deficit court fee is only one Rupee. The payment of insufficient court fee was neither intentional nor deliberate. It occurred due to procedural irregularity.

12. The provision of section 149 of C.P.C. is usefully extracted hereunder:

"149. Power to make up deficiency

of court fees - Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid, the court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court fee, and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

It is lucid from the above extract that where court fee has not been paid fully, the Court may, in its discretion, at any stage, allow the person to pay such deficit court fee and such payment will have the same force and effect as if such fee has been paid in the first instance.

13. Now, it is pertinent to refer to Order VII, Rule 11(c) of C.P.C., which is usefully extracted hereunder:

Order 7 Rule 11(c) Code of Civil Procedure, 1908

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

- (a)
- (b)
- (c) where the relief claimed is properly

valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so?

14. A perusal of the above extract shows that where a plaint is insufficiently stamped and on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, if not complied with such stipulation, the plaint shall be rejected.

15. In the present case, the revision petitioner had filed I.A.No.324 of 2010 in O.S.No.190 of 2006, under Order VII Rule 11 (c) of C.P.C. alleging that the respondent herein has not complied with the provisions of section 149 of the C.P.C.,.

16. In the case of ***Mahalingam and another vs. K.Krishnasamy Naidu and Mary Agnes, C.R.P.(MD) No.1489 of 2007 and C.R.P.(PD) (MD) No.158 of 2008, dated 14.7.2009 reported in MANU/TN/1632/2009, Madurai Bench of this Court,*** has evolved the following guidelines by relying on various judgments with regard to section 149 of C.P.C.,.

(i) The power exercised by a Court under

Section 149 is very wide and the discretion shall be

exercised in favour of the plaintiff in the normal circumstances.

(ii) The power under Section 149 of C.P.C. can be exercised by the Court concerned at any stage of the suit.

(iii) When the Court exercises the power under section 149 of C.P.C. before numbering the plaint, the Court is not required to issue notice to the proposed defendant in the suit since it is a matter between the Court and plaintiff.

(iv) Once the Court exercises the power under Section 149 of C.P.C., the same relates back with the presentation of the plaintiff at the first instance and therefore, the question of limitation does not arise.

(v) When the power is exercised by the Court on an application filed under section 151 of the Code of Civil Procedure, it is deemed to have been in exercise under Section 149 of C.P.C..

(vi) The Court can exercise its power under section 149 of C.P.C. either with or without an application by the party concerned.

(vii) An order passed or deemed to have been passed under Section 149 of the Code of Civil Procedure cannot be challenged and decided in a revision or at the time of final hearing in the normal circumstances, until and unless mala fide is raised and proved.

(viii) The onus of proving lack of bonafides or mala fides is heavily on the person who alleges the

same.

(ix) The power exercised by the Court can also be challenged on the ground that the Court below has not followed the proviso to Order VII, Rule 11 of C.P.C..

17. In ***P.K.Palanisamy vs. N.Arumugham and another reported in (2009) 9 Supreme Court Cases 173***, the Hon'ble Supreme Court has held that once deficit Court Fee is paid under Section 149 of C.P.C., the same would be deemed to have been paid in the first instance and such plaint cannot be rejected under Order 7 Rule 11 (C) on the ground of limitation. More over, the payment of Court fee is between the State and suitor.

18. In ***V.P.Venkatachalam vs. N.Venkatachalam, reported in 2015(5)CTC865 (S.A.No.642 of 2009 dated 16.09.2015)***, this Court has held that the lower appellate Court was incorrect in dismissing the suit without considering the reasons given by the trial Court in accepting the plaint after payment of deficit court fee. In this case, the plaintiff filed the suit with deficit Court Fee and the trial Court has returned the plaint by granting time for payment of the said Court Fee. Subsequently, the deficit Court Fee was paid. The defendant did not raise any objection in respect of payment of deficit Court Fee, written statement was filed by the defendant and no issues were framed. Aggrieved over entertaining suit, the defendant

preferred an appeal before the appellate Court and the appellate Court reversed the finding of the Trial Court and dismissed the suit. Ultimately, the plaintiff preferred the aforesaid Second Appeal before this Court, which was allowed by this Court setting aside the judgment of the lower appellate Court relying on various Apex Court's judgment and the judgment of this Court in ***Mahalingam and another vs. K.Krishnasamy Naidu and Mary Agnes, C.R.P.(MD) No.1489 of 2007 and C.R.P.(PD) (MD) No.158 of 2008, dated 14.7.2009 reported in MANU/TN/1632/2009.***

19. On the contrary, this High Court and the Hon'ble Supreme Court, have also held that if an Application u/s. 149 of C.P.C., is not filed, specifically, to condone the delay in payment of deficit court fee, it is not proper to entertain the suit and the plaint shall be rejected.

20. In the case of ***V.N.Subramaniam v. A.Nawab John and others, reported in (2007) 1 MLJ 669***, this High Court has held that as application for condonation of delay was filed under sections 148 and 151 of C.P.C. and not under section 149 of C.P.C. and no sufficient cause was shown for the delay in payment of deficit court fee and no notice was ordered to the defendant, the plaintiff is not protected and the suit is liable to be rejected. Upon considering the principles of law laid down in various judgments of the Apex Court and this High Court, the following ratio has been laid down by this High Court:-

(i) In the absence of any order under Section 149 of the Code of Civil Procedure, granting time for payment or enlargement of deficit Court-fee, the plaintiff is not protected and the suit itself is liable to be rejected.

(ii) When a specific provision viz., Section 149 of the Code of Civil Procedure is available, the plaintiff cannot invoke Section 151 of the Code of Civil Procedure.

(iii) High Court cannot exercise power under Article 227 of the Constitution of India when there is a failure to exercise judicial discretion in a manner known to law.

(iv) Relief under section 149 of the Code of Civil Procedure is a discretionary one and it has to be exercised in a manner known to law.

21. In the case of ***B.S.Santhilal (deceased) & 8 others vs. J.Samidurai and another reported in 2010-2-L.W.689***, this Court, after considering various decisions of this Court and the Hon'ble Apex Court, has held that if an Application was not filed under section 149 C.P.C. to extend the time for payment of Court fee, the rejection of the plaint by the Trial Court was correct, fair and proper.

22. In the case of **A.Nawab John & Ors. versus V.N.Subramaniam, reported in 2012 (4) CTC 206**, which arises against the decision of this High Court in **V.N.Subramaniam v. A.Nawab John and others, reported in (2007) 1 MLJ 669**, which was confirmed by the Honb'le Supreme Court holding that exercise of the discretion by the Court under section 149 of C.P.C. 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 paragraph 37, it has been held as follows:-

37. It is well settled that the judicial discretion is required to be exercised in accordance with the settled principles of law. It must not be exercised in a manner to confer an unfair advantage on one of the parties to the litigation. In a case where the plaint is filed within the period of limitation prescribed by law but with deficit court fee and the plaintiff seeks to make good the deficit of the court fee beyond the period of limitation, the Court, though has discretion under Section 149 C.P.C., must scrutinise the explanation offered for the delayed payment of the deficit court fee carefully because exercise of such discretion would certainly have some bearing on the rights and obligations of the defendants or persons claiming through the defendants. It necessarily follows from the above that Section 149 C.P.C.

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.

23. In the case of ***Rafeeqe Ahmed vs. Lickmichand Jain, dated 5.2.2014***, this High Court, after following the aforesaid decision of the Hon'ble Supreme Court, viz., ***A.Nawab John & Ors. V.N.Subramaniam, reported in 2012 (4) CTC 206***, dismissed the suit holding that the plaintiff has not offered any acceptable explanation and has not shown 'sufficient cause' for the inordinate delay.

24. In the light of the aforesaid judgments of the Hon'ble Apex Court and this Court, and in view of the provision of Section 149 of C.P.C., I am of the considered view that the respondent/plaintiff ought to have explained the delay in paying the deficit court fee and the Trial Court ought to have recorded its satisfaction with regard to the same. Admittedly, the respondent/plaintiff has not filed any application to condone the delay in payment of deficit Court fee under section 149 of C.P.C.,. Therefore, the

suit is liable to be struck off from the file of the Trial Court.

25. In the result, the impugned order dated 11.2.2011 passed in I.A.No.324 of 2010 in O.S.No.190 of 2006 by the Additional District Munsif, Vandavasi, is set aside and consequently, the suit is struck off from the file of the Additional District Munsif, Vandavasi. Accordingly, the Civil Revision Petition is allowed. No order as to costs. Connected Miscellaneous Petition is closed.

05.08.2016

Index : yes / no

Internet :yes / no

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To
The Additional District Munsif,
Vandavasi.

D.KRISHNAKUMAR, J.

(asvm)

Order
in
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