

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.2266 AND 2378 OF 2016

COMMON ORDER

By order dated 01.02.2016 passed in I.A.No.58 of 2016 in O.S.No.1078 of 2008 and upon Memo dated 04.01.2016 filed therein by the plaintiff, the learned XI Additional District Judge (FTC), Ranga Reddy District, allowed amendment of the prayer and valuation portions of the plaint and accepted payment of the deficit Court fee as per the Calculation Memo attached to the Memo dated 04.01.2016. Aggrieved thereby, the defendants in the suit are before this Court by way of these revisions filed under Article 227 of the Constitution.

C.R.P.No.2266 of 2016 relates to the allowing of I.A.No.58 of 2016 filed in O.S.No.1078 of 2008 under Order 6 Rule 17 CPC and C.R.P.No.2378 of 2016 is against the order in relation to the Memo dated 04.01.2016.

Parties shall be referred to hereinafter as arrayed before the trial Court.

The suit, O.S.No.1078 of 2008, was filed for specific performance in relation to execution and registration of a lease deed with lock-in period of six years commencing from 16.07.2008 and for enhanced rentals. This prayer was under Clause (a) of the prayer portion in the plaint. Clause (b) pertained to the prayer for a direction to the defendants to pay monthly rental from 16.07.2008 at the rate of Rs.72/- per square foot and to continue to pay the same up to 15.07.2014 with enhancement at the rate of 30% after the expiry of the initial three year period. Clause (c) prayer in the plaint was in the alternative, whereby a direction was sought to the defendants to pay a sum of Rs.9,24,88,094/- with interest at 24% per annum from 16.07.2008 till the date of realization. This amount was sought towards unilateral termination of the lease lock-in period agreed to at the enhanced rate of Rs.72/- per square foot with 30% enhancement after expiry of three years. The plaintiff admittedly paid

Court fee only in relation to Clause (a) prayer and not the other two.

Perusal of the order under revision reflects that no objection had been raised by the office or the defendants as to the valuation of the suit prayers or the Court fee paid thereon. It was only when the suit was posted for judgment that the trial Court noticed that the Court fee had not been paid correctly and accordingly reopened the suit proceedings *suo motu* to look into the correctness of the Court fee paid on the prayers under Clauses(b) and (c). The matter was posted on 30.12.2015 and due to the absence of the plaintiff; it was again posted on 04.01.2016. On that day, it appears that the trial Court questioned the plaintiff's counsel about the issue of the Court fee and on the very same day, a Memo was filed evidencing payment of part of the Court fee along with the calculation and the balance Court fee was paid on the next day. I.A.No.58 of 2016 was filed in the suit by the plaintiff on 05.01.2016.

Though the Memo mentioned that the Court fee had been paid upon the direction of the Court, the trial Court noted that this was factually incorrect as the docket reflected that the matter had been reopened to look into the correctness of the Court fee paid on Clauses (b) and (c) and no such direction had been given. The trial Court however noted that the counsel for the plaintiff had realized the mistake in payment of the Court fee and made good the same without any direction from the Court. The trial Court observed that the suit had been numbered without taking an objection as to this aspect and even thereafter, no objection had been raised whereby an issue could have been framed. The learned trial Judge recorded that it was only upon his own reading of the record that the issue came to light and the suit proceedings were reopened to look into the correctness of the Court fee paid on Clauses (b) and (c). The trial Court further observed that even at this stage, Court fee had been paid by the plaintiff only on Clause (b) and no Court fee was paid upon the alternative relief sought under Clause (c). The trial Court further noted that as the defect in respect of payment of Court fee was neither found by the office nor pointed out by the defendants, the plaintiff could not be

found fault with on this count and therefore, payment of the deficit Court fee on Clause (b) could not be objected to. The trial Court rejected the contention of the defendants that without a direction from the Court under Section 149 CPC, the plaintiff could not pay the deficit Court fee. However, as the plaintiff had not paid any Court fee as regards the alternative relief sought under Clause (c), the trial Court opined that time had to be given to it to make good this shortfall, failing which it would not be entitled to press for the said relief. In effect, the trial Court accepted the plea of the plaintiff for amendment of the plaint in so far as it related to the valuation and relief portions and also accepted the Court fee paid by it in terms of the Calculation Memo filed along with the Memo dated 04.01.2016.

Heard Sri P.Venkat Reddy, learned counsel for the petitioners/defendants, and Sri B.Chandrasen Reddy, learned counsel for the respondent/plaintiff.

Sri P.Venkat Reddy, learned counsel, would contend that Section 149 CPC makes it clear that the Court is required to permit the plaintiff to make good any deficit Court fee payable and that without such a direction, the plaintiff ought not to have been permitted to pay the deficit Court fee at the fag end of the suit proceedings. The learned counsel would place reliance on case law.

Per contra, Sri B.Chandrasen Reddy, learned counsel, would contend that Section 149 CPC has no application to the case on hand and that the discretion exercised by the trial Court in favour of his client does not warrant interference. The learned counsel would also press into service case law to support his contention.

In **SARDAR TAJENDER SINGH GHAMBHIR V/s. SARDAR GURPREET SINGH**^[1], the Supreme Court observed that in the scheme of the Court Fees Act, 1870 (*hereinafter*, 'the Act of 1870') as applicable to the State of Uttar Pradesh, the Court has to determine as to whether or not the Court fee paid on the plaint is deficient and if found to be so, give an opportunity to the plaintiff to make up such deficiency within the time

that may be fixed by the Court. It is only if the deficit Court fee is not paid despite time being granted under the order of the Court, consequences as provided in Sections 6(2) and (3) of the Act of 1870 would follow.

In so far as the States of Telangana and Andhra Pradesh are concerned, the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 (*hereinafter*, 'the Act of 1956'), would govern the field. Section 10 thereof deals with determination of fee payable on a plaint based upon the valuation of the suit claim. Section 11 details the procedure as to the decision upon the proper fee to be paid upon a plaint. Thereunder, the Court is required, before ordering the plaint to be rejected, to decide as to whether proper fee has been paid thereon. Under Section 11(2), a defendant is entitled to raise an objection as to the valuation of the suit claim and the Court fee paid thereon. In the event, the Court decides upon such objection that the Court fee paid on the suit claim is not sufficient, a date may be fixed for making good the deficit in the Court fee. If within the time allowed, the suit claim is not valued properly and if the deficit fee is not paid, the plaint is liable to be rejected.

Section 51 of the Act of 1956 states to the effect that an objection as to undervaluation of the suit must be taken in the Court of first instance at or before the hearing at which issues are first framed. In the present case, it is not in dispute that no objection was raised by the defendants as to valuation of the suit claims or the Court fee paid thereon and it was only after the suit was posted for judgment that this issue came to light owing to the exercise by the trial Court itself.

In **SIVISHI ASSOCIATES, VISAKHAPATNAM V/s. JAGADEESHWARI AGENCIES, VIZIANAGARAM**^[2], this Court dealt with a case involving more than 13 extensions of time within 15 months for payment of the deficit Court fee. It was in these circumstances that it was held that the Court had not exercised powers under Section 149 CPC judiciously. This judgment has no application on facts to the case on hand.

In **A.NAWAB JOHN V/s. V.N.SUBRAMANIAM**^[3], the Supreme Court affirmed that jurisdiction under Section 149 CPC was discretionary in nature, relying upon its earlier judgments in **P.K.PALANISAMY V/s. N.ARUMUGHAM**^[4] and **GANAPATHY HEGDE V/s. KRISHNAKUDVA**^[5]. It was further pointed out that such judicial discretion has to be exercised in accordance with settled principles of law and not to confer an unfair advantage on one of the parties to the litigation. It was further elaborated that in a case where the plaint was filed within limitation prescribed by law but with deficit Court fee and the plaintiff seeks to make good such deficit beyond the period of limitation, the Court must exercise its discretion under Section 149 CPC scrutinizing the explanation offered for the delayed payment. The Supreme Court therefore concluded that Section 149 CPC does not confer an absolute right in favour of the plaintiff to pay the Court fee as and when it pleases him and only enables him to seek the indulgence of the Court to permit payment of Court fee at a later point of time after presentation of the plaint.

In **S.WAJID ALI V/s. MT.ISAR BANO URF ISAR FATMA**^[6], a Full Bench of five Judges of the Allahabad High Court opined that Section 149 CPC is in the nature of a proviso to Section 4 of the Act of 1870 which dealt with Court fee payable on documents filed in High Courts in exercise of their extraordinary original civil jurisdiction or extraordinary original criminal jurisdiction or in exercise of their appellate jurisdiction or as Courts of reference and revision. As a result of reading Section 149 CPC and Section 4 of the Act of 1870 together, it was observed that ordinarily a document insufficiently stamped is not to be received, filed, exhibited or recorded in a Court but when such an insufficiently stamped document is presented to the Court, it has to decide whether it will exercise its discretion in allowing time to the party presenting the document to make good the deficiency and if such

deficiency is made good within the time fixed, the document would be deemed to have been presented and received on the date it was originally filed. Section 149 CPC was held to empower the Court to grant time to make good the deficiency and the discretion of the Court must be a judicial discretion and not arbitrary.

Though Sri B.Chandrasen Reddy, learned counsel, would contend that Section 149 CPC has no application after institution of the suit, the provision itself demonstrates that this contention has no foundation as the language used therein indicates that the Court may at any stage allow the person by whom the Court fee is payable to pay the same.

In ***K.C.SKARIA V/s. STATE OF KERALA***^[7], the Supreme Court observed that if the Court fee due on the plaint is not paid wholly or partly at the time of institution of the suit, the Court may, in its judicial discretion, allow the plaintiff to pay the Court fee or deficit Court fee within the period fixed by it. Section 149 CPC was held to have no application where the Court fee due on the plaint as per the valuation of the suit was fully paid but subsequently it is found that a larger amount is due to the plaintiff.

In ***P.K.PALANISAMY***⁴, the Supreme Court observed that payment of Court fee is a matter between the State and the suitor but if a plaint is rejected on this ground, the defendant would be benefited thereby. If an objection is to be raised in this behalf or an application is to be entertained by the Court at the behest of a defendant for rejection of the plaint, the Supreme Court observed that several aspects would have to be considered. It was further observed that the Code of Civil Procedure, 1908, does not envisage a situation where a civil Court would hear a defendant before registering a plaint but upon appearing, the defendant may question the entertainment of the plaint by the Court at a later stage. Assuming that a defendant would be entitled upon notice before registration of the plaint to question an order under Section 149 CPC, if the validity of such order is not challenged before the appropriate

Court and the plaint was therefore accepted on payment of the deficit Court fee, it would amount to the defendant waiving his right by his subsequent conduct.

In the light of the aforestated case law, the issue for consideration before this Court is whether the order of the trial Court under revision is legally sustainable. One significant factor which requires to be kept in mind is that the defendants never raised an objection as to any deficit Court fee having been paid in terms of the suit prayers under Clauses (a), (b) and (c). Further, they allowed the suit proceedings to go on up to the stage where the case was posted for judgment. In effect, the law laid down in ***P.K.PALANISAMY***⁴ would apply on all fours and they must be deemed to have waived any objection that they could have had in this regard, in terms of Section 51 of the Act of 1956. That apart, it is an admitted fact that payment of deficit Court fee by the plaintiff came to light only due to the exercise of the trial Court itself. No objection had been raised in this regard even by the office at the time of registration of the plaint. Upon *suo motu* reopening of the suit proceedings and the matter being posted for looking into the correctness of the Court fee paid, it appears that the plaintiff realized the lapse committed in this regard and immediately made good the same by paying the deficit Court fee along with a calculation memo. No doubt, such a step ought not to have been taken without first seeking the leave of the Court. Though the plaintiff seems to have stated that it did so upon the direction of the Court, the trial Court recorded in the order under revision that this was factually incorrect. Having stated so, the trial Court was however inclined to accept the payment of deficit Court fee in so far as the suit relief claimed under Clause (b) is concerned as no objection had been taken all through on this count, be it by the office or by the defendants. In effect, the trial Court exercised its discretion under Section 149 CPC in accepting the payment of the deficit Court fee by the plaintiff, albeit without any order permitting it to do so.

Given the peculiar circumstances of the case, when the

defendants are deemed to have waived their objection in this regard and payment of Court fee is essentially a matter between the State and the suitor, this Court finds no irregularity tainting the exercise of discretion by the trial Court in accepting Court fee upon the prayer in Clause (b). As rightly pointed out by the trial Court, once the plaintiff failed to pay the Court fee on the alternative relief sought under Clause (c) and as this aspect of the matter came to light only due to the trial Court's own efforts, permitting the plaintiff some time to make good such deficiency also does not warrant interference.

This Court therefore finds no grounds to interfere with the order under revision. The civil revision petitions are accordingly dismissed.

Pending miscellaneous petitions in the CRPs. shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

22nd JULY, 2016

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[\[1\]](#) Civil Appeal No.8660 of 2014 dated 12.09.2014

[\[2\]](#) 2006 (3) ALD 135

[\[3\]](#) (2012) 7 SCC 738

[\[4\]](#) (2009) 9 SCC 173

[\[5\]](#) (2005) 13 SCC 539

[\[6\]](#) AIR 1951 ALLAHABAD 64

[\[7\]](#) (2006) 2 SCC 285