

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.1096 of 2011
and
M.P.No.1 of 2011**

Mani

... Petitioner

Vs.

Sampoornammal

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 21.02.2011 made in I.A.No.11 of 2011 in A.S.No.36 of 2010, on the file of the Subordinate Judge, Gudiyatham, Vellore District.

For Petitioner : Mr.V.M.G.Ramakkannan

For Respondent : Mr.P.Vasanth

ORDER

The revision petitioner / plaintiff filed a suit in O.S.No.87 of 2004 before the learned District Munsif Court, Gudiyatham, for specific performance against the respondent/defendant herein.

2.The said suit was decreed by judgment and decree dated 31.12.2004 as against the same, the respondent filed an appeal on 15.04.2005. According to the revision petitioner, the copy was delivered to the defendant/respondent herein on 18.03.2005 and the last date for filing the appeal was on 18.04.2005. The respondent herein allowed to pay Court fee of Rs.6,038/-, but he presented the appeal with the Court fee of Rs.50/- only. The appeal filed by the respondent herein was returned on 20.04.2005 for payment of deficit Court fee. The lower Court has granted one month time for re-presenting the appeal with proper Court fee. In the meantime, the revision petitioner has filed the Execution Petition in E.P.No.135 of 2015 for execution of sale deed as per the decree granted in his favour on 15.07.2005 before the trial Court. The respondent herein has participated in the execution proceedings and the trial Court also executed sale deed and the same was registered on 18.11.2006 in

favour of the revision petitioner. Hence, the execution petition was closed on 09.10.2007.

3. When the facts are being so, the appeal filed by the respondent herein was re-presented on 01.06.2010 without payment of Court fee and no condone delay petition was filed to re-present the appeal. Hence, it was returned on 10.06.2010 for complying with the previous return. Thereafter, the respondent herein again re-presented the appeal on 25.06.2010 with payment of Court fee (with faked Court fee stamps). Along with the appeal, he filed an affidavit for delay of 16 days in re-presenting the appeal. The said appeal was condoned mechanically without ordering any notice to the revision petitioner. Further, the appeal was mentioned by the respondent herein is not correct. However, the lower Appellate Court namely the learned Subordinate Court, Gudiyatham has numbered the appeal in A.S.No.36 of 2010.

4. While so, the revision petitioner has filed an application under Section 151 of C.P.C., seeking for a direction to recall the order dated 22.10.2010 passed in I.A.No. of 2010 and reject the appeal, on the ground that the respondent herein has filed the appeal without Court

fee and the subsequent Court fee paid also with faked Court fee stamps. Further, the learned Judge has condoned the delay without ordering notice to the revision petitioner and the endorsement made by the bench clerk was also accepted by the learned Subordinate Judge. Therefore, the revision petitioner contended that there is an apparent error on the face of the record and the same is require interference by this Court seeking under Article 227 of the Constitution of India.

5.I heard Mr.V.M.G.Ramakannan, learned counsel appearing for the petitioner and Mr.P.Vasanth, learned counsel appearing for the respondent and perused all the relevant records.

6.It is seen from the records that as contended by the learned counsel appearing for the revision petitioner, the revision petitioner has filed the suit for specific performance, which was decreed in his favour, against which the respondent herein has filed an appeal by affixing Court fee stamps of Rs.50/-. Though, the requisition Court fee stamp is Rs.6,038/-. When the appeal was returned for want of Court fee, but the respondent herein has not paid the Court fee once again. While considering the above said facts, the learned Subordinate Judge

ought to have ordered notice to the revision petitioner before condoning the delay of 16 days. Even then when the revision petitioner has filed an application seeking to recall the order passed by the learned Subordinate Judge, Gudiyatham, dated 22.10.2010, the learned Judge ought to have number the application and issue notice to the respondent herein and should have passed orders, after hearing both sides. The learned Subordinate Judge has not followed the above said principles and thereby violated the principles of natural justice as citizen of India under Article 14 of the Constitution of India.

7. In this context, the learned counsel appearing for the revision petitioner also placed reliance on a judgment in the case of ***K.Natarajan v. P.K.Rajasekaran*** reported in ***2003 3 L.W. 803*** wherein the Division Bench of this Court has held as follows:

“When plaint is presented to the Court on the verge of limitation, without requisite court fee, court should not blindly grant time to rectify the defect or reject it mechanically for want of requisite court fee.

When no notice is given and court exercises its discretion in favour of the plaintiff, a revision under S.151 CPC or alternatively under Art.227, is the remedy for

defendant.

In the present case, it is crystal clear that plaintiff thought of harassing the defendants – Decree and judgment of Subordinate Judge affirmed.”

8. When the revision petitioner has made serious allegation against the respondent herein and also the Registry of the Court, therefore, this Court sitting in a supervisory power under Article 227 of the Constitution of India to have every power and right to rectify the mistake, error committed by the Subordinate Courts. This is the clear case, the learned Subordinate Judge has returned the application filed by the revision petitioner simply on the grounds saying that “other side stated as not maintainable. Hence returned.” The return endorsement made by the bench clerk was accepted by the learned Subordinate Judge and signed the said attitude of the learned Judge is not proper and wanted interference by this Court.

9. For the foregoing reason and in the light of the above said decision rendered by the Hon'ble Division Bench of this Court, I am of the considered view that the civil revision petition is liable to be allowed. Accordingly, this civil revision petition is allowed.

10.In the result:

(a) this Civil Revision Petition is allowed;

(b) the learned Subordinate Judge, Gudiyatham, is hereby directed to number the application filed by the revision petitioner under Section 151 of C.P.C. to recall the order passed in I.A.No.Nil of 2010, dated 22.10.2010 and to pass orders, after issuing notice to both the parties on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

09.02.2017

Note:Issue order copy on 03.07.2017
vs

Index:Yes
Internet:Yes

To

The Subordinate Judge,
Gudiyatham, Vellore District.

M.V.MURALIDARAN,J.

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