

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3143 of 2011
&
M.P.No.1 of 2011

K.A.Kumaresan .. Petitioner

Vs.

P.Shivakumar .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 03.12.2010 in I.A.No.131 of 2010 in O.S.No.90 of 2004 on the file of the Additional Special Court, Krishnagiri.

For Petitioner : Mr.H.Adaikala Arockiaraj

For Respondent : Mr.M.Sriram

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 03.12.2010 in I.A.No.131 of 2010 in O.S.No.90 of 2004 on the file of the Additional Special Court, Krishnagiri.

2. The petitioner is defendant and respondent is the plaintiff in O.S.No.90 of 2004. The respondent filed suit for recovery of sum of Rs.1,51,780/-. The petitioner filed written statement on 17.01.2005 and is contesting the suit. The trial commenced. The respondent let in evidence and filed proof affidavit. The suit was posted for cross-examination of P.W.1. At that stage, the petitioner filed I.A.No.131 of 2010 for rejection of plaint.

3. According to the petitioner, the respondent filed the above suit with deficit Court fee of Rs.11,384/-. The respondent paid Rs.1.00 at the time of presentation of the suit. After delay of 1750 days, the respondent paid Court fee and the suit was numbered and taken on file. As the respondent did not pay the deficit Court fee within the period of limitation, the suit is barred by limitation and prayed for rejection of plaint.

4. The respondent filed counter affidavit and denied all the averments made in the said application and submitted that the respondent had already filed I.A.Nos.214 & 215 of 2004 to condone the delay of 1750 days and to extend the time to pay the deficit Court fee. The learned Judge on being satisfied with the reasons

given by the respondent, allowed the applications for condonation of delay and extension of time. The respondent paid the deficit Court fee and the suit was numbered. The petitioner did not challenge the said order. The present application filed by the petitioner for rejection of plaint is not maintainable.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and the judgments relied on by the counsel for the parties, dismissed the application holding that the Hon'ble Apex Court held that after Court has passed the order in application filed under Section 149 of C.P.C., the application for rejection of plaint is not maintainable.

6. Against the said order of dismissal dated 03.12.2010 in I.A.No.131 of 2010 in O.S.No.90 of 2004, the present civil revision petition is filed by the petitioner.

7. Heard both sides and perused the materials available on record.

8. The learned counsel for the petitioner submitted that when the respondent paid the deficit Court fee, the suit was barred by

limitation. The Court did not have power to condone the delay and extend the time to pay Court fee. The petitioner can seek rejection of plaint for not paying the Court fee before the claim was barred by limitation without seeking to set aside the order condoning delay and extending time to pay deficit Court fee.

9. The contention of the learned counsel for the petitioner is untenable. The learned Judge allowed the application filed by the respondent for condonation of delay in paying the deficit Court fee and extended the time for paying the deficit Court fee. Only after the said order being passed by the learned Judge, the respondent paid the deficit Court fee and the suit was numbered. The learned Judge considering the judgment of the Hon'ble Apex Court reported in **2009 AIR SCW 5385 (P.K.Palanisamy v. N.Arumugam and another)**, wherein it has been held that the application for rejection of plaint is not maintainable, after application filed under Section 149 C.P.C. is allowed, dismissed the application filed under Order VII Rule 11 of C.P.C. Para-20 reads as follows:

"20. Section 149 provides that where the whole or any part of court fee prescribed for any document 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 court fee had been paid in the first instance. Section 4 of the Court Fees Act bars the court from receiving the plaint if it does not bear the proper court fee. Section 149 acts as an exception to the said bar, and enables the court to permit the plaintiff to pay the deficit court fee at a stage subsequent to the filing of the suit and provides that such payment, if permitted by the court, shall have the same effect as if it had been paid in the first instance. Interpreting Section 149, this Court in *Mannan Lal v. Chhotaka Bibi* held that Section 149 CPC mitigates the rigour of Section 4 of the CF Act, and the courts should harmonise the provisions of the CF Act and CPC by reading Section 149 as a proviso to Section 4 of the CF Act, and allowing the deficit to be made good within the period to be fixed by it. This Court further held that if the deficit is made good, no objection could be raised on the ground of bar of limitation, as Section 149 specifically provides that the document is to have validity with retrospective effect."

10. The Court has power to condone the delay in paying

deficit Court fee and has power to extend the time to pay deficit Court fee. The said power is discretionary power and has to be exercised judicially. The Court cannot mechanically condone the delay or extend the time to pay the deficit Court fee. Only after being satisfied with the reason given by the party, the Court can extend the time or condone the delay. If the reasons given by the party are not valid or sufficient to condone delay or extend time, the application has to be dismissed. In the present case, it is submitted that the learned Subordinate Judge had condoned delay and extended time for payment after being satisfied with the reasons given by the respondent. It is not the case of the petitioner that the learned Subordinate Judge did not exercise his discretionary power properly or condoned the delay and extended time without there being any valid and sufficient reason. On the other hand, it is the case of the petitioner that the learned Subordinate Judge without having power condoned the delay and extended time. The petitioner was aware of the condonation of delay and extension of time as is evident from the written statement. In spite of the same, petitioner filed the present application, when the suit was posted for cross-examination of P.W.1. In view of the above facts, the judgment relied on by the learned counsel for the petitioner is not applicable

to the facts of the present case. In the circumstances, there is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 03.12.2010.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

31.08.2017

Index : Yes/No
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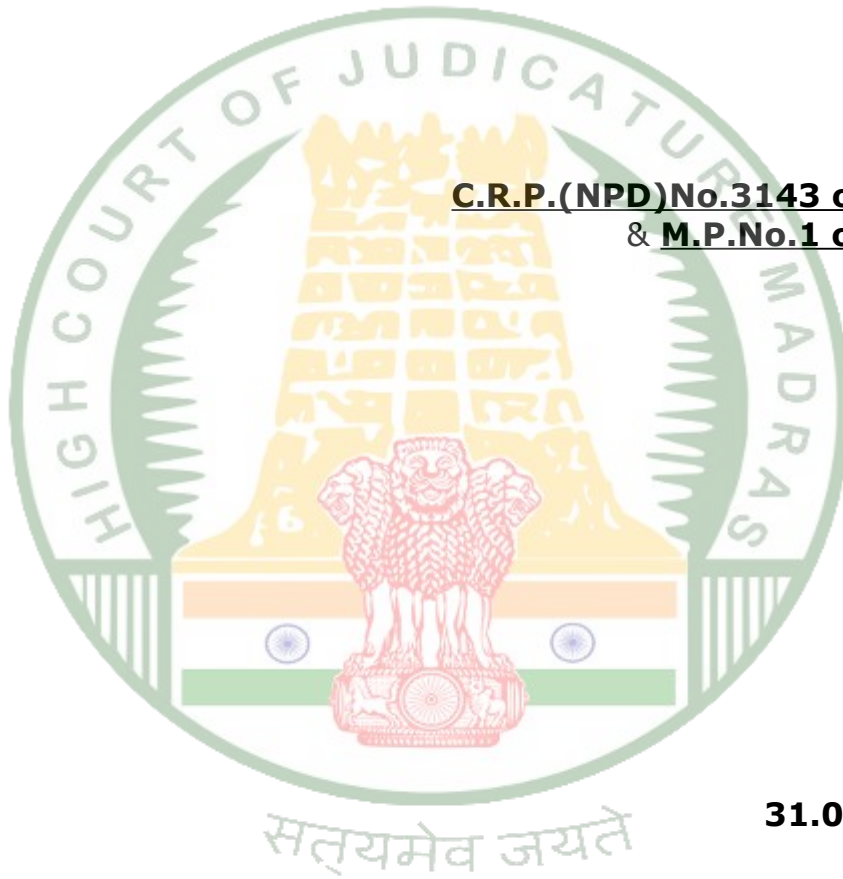
The Additional Special Judge,
Krishnagiri.



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V.M.VELUMANI, J.

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