

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) Nos.301 and 302 of 2009
and M.P.No.1 of 2009

E.K.Sundaram

...Petitioner in
both CRPs

Vs

1.M/s.Radha Chemicals,
rep. By its Proprietor,
G.Radha Krishnan.

2.Kovai Chemicals Manufacturing
Company a registered Partnership Firm
represented by its Partnership
M.R.Shanmugasundaram.

3.M.R.Shanmuga Sundaram

...Respondents in
CRP.No.301/2009

1.M/s.Radha Chemicals,
rep. By its Proprietor,
G.Radha Krishnan.

2.M.R.Shanmuga Sundaram

...Respondents in
CRP.No.302/2009

COMMON PRAYER:- Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal Orders dated 11.07.2008 made in I.A.Nos.169 of 2008 and 742 of 2007 in O.S.No.69 of 2007, on the file of the Fast Track Court – I, Erode.

For Petitioner : Mr.R.Shankar
(in both CRPs)

For R1 : Mrs.Chitra Sampath, Senior Counsel
(in both CRPs) for Mr.T.S.Baskaran

For R2 and R3 : Not ready in notice
(in CRP.No.301/2009)

For R2 : Not ready in notice
(in CRP.No.302/2009)

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the fair and decreetal Orders dated 11.07.2008 made in I.A.Nos.169 of 2008 and 742 of 2007 in O.S.No.69 of 2007, on the file of the Fast Track Court – I, Erode.

2. The petitioner is the third defendant, first respondent is the plaintiff and respondents 2 and 3 are the defendants 1 and 2 in O.S.No.613 of 2001 on the file of Sub Court, Erode and subsequently, it was transferred to the Fast Track Court – I, Erode and re-numbered as O.S.No.69 of 2007. The first respondent filed the said suit for recovery of a sum of Rs.8,22,243/- together with interest being the value of chemicals supplied. The first respondent presented the said plaint on 09.04.2001 with Court Fee of Rs.10/-, instead of

Rs.61,669.25 paise. According to the first respondent, the Court fee was not available at the time of filing of the suit and therefore he has presented the suit along with Court fee of Rs.10/-. The plaint was returned by the Court on 17.04.2001, granting one month time to represent the plaint with deficit Court fee. After summer vacation, the first respondent represented the said plaint on 30.07.2001 with payment of deficit Court fee of a sum of Rs.61,669.25 paise with an application to condone the delay of 24 days.

3. The learned Judge condoned the delay and the suit was numbered as O.S.No.613 of 2001. The petitioner and the respondents 2 and 3 filed the written statement on 01.07.2003 and are contesting the suit. The trial commenced. The first respondent let in evidence and closed his side. The petitioner was examined as D.W.1 and when the suit was posted for examination of D.W.2, the petitioner and respondents 2 and 3 took objection that the first respondent did not pay the Court fee within the time limit granted by the Court and therefore, the suit is barred by limitation, as the first respondent did not file any application under Section 149 of CPC for extension of time. The first respondent filed I.A.No.169 of 2008 to condone the delay and extend the time for payment of Court fee from 09.04.2001 to 30.07.2001. The first respondent has stated that the plaint was

represented on 30.07.2001 with payment of deficit Court fee and application was filed to condone the delay of 24 days in representing the plaint. The Court exercised their discretion and condoned the delay. In view of the stand taken by the petitioner and respondents 2 and 3, the first respondent has filed application to condone the delay.

4. The petitioner and the respondents 2 and 3 filed counter affidavit and contended that the said application is not maintainable, as the first respondent has filed an application after 7 years of expiry of time to pay Court fee.

5. The learned Judge, considering the facts that the Court has power to extend the time under Section 149 of CPC, even after expiry of time limit and delay of 24 days in representing the plaint was condoned by the Court and the suit is at the part-heard stage, allowed the application.

6. The petitioner filed I.A.No.742 of 2007 for rejection of plaint on the ground that the first respondent did not pay the Court fee within the time limit fixed by the Court for payment of Court fee. The first respondent did not file application under Section 149 C.P.C for extension of time and no notice was issued to the first respondent

when the first respondent paid deficit Court fee. The first respondent did not pay the deficit Court fee within the time limit granted and paid deficit Court fee without obtaining extension of time. In the circumstances, the claim of the first respondent is barred by limitation and is liable to be rejected.

7.The first respondent filed counter affidavit and submitted that first respondent paid deficit Court fee and filed application to condone the delay in representation and the said application was allowed, condoning the delay. In view of the same, the Court has exercised its discretion and condoned the delay in paying the deficit Court fee and numbered the plaint. The petitioner participated in the trial and when the suit was posted for evidence of D.W.2, after conclusion of evidence of first respondent and D.W.1, the petitioner has come out with the present petition. The petitioner has not raised this issue for more than 5 years after numbering the plaint. The Court has power to extend the time to pay deficit Court fee at any time, even after the claim is barred by limitation.

8.The second respondent filed counter affidavit supporting the contentions of the petitioner.

9.The learned Judge, considering the fact that the Court condoned the delay in representing the plaint after deficit Court fee was paid and first respondent has filed application under Section 149 C.P.C for condoning the delay and extension of time, dismissed the application.

10.Against the order allowing I.A.No.169 of 2008 and the order dismissing the I.A.No.742 of 2007 in O.S.No.69 of 2007, the petitioner has filed the present two Civil Revision Petitions.

11.Heard the learned counsel for the petitioner and the learned Senior Counsel appearing for the first respondent and perused the materials available on record.

12.The Court has discretion under section 149 of CPC to enlarge the time for payment of deficit Court fee, even though the period originally fixed has expired. This power is discretionary power and Court has to exercise the same judicially. Court can extend the time for payment of deficit Court fee only when the plaintiff proves that due to bonafide reason, the plaintiff could not pay the proper Court fee. The Court can extend the time for payment of deficit Court fee even after the claim is barred by limitation. When the Court extends the time for

payment, it has retrospective effect as the plaintiff has paid proper Court fee at the time of presentation of plaint itself. In the present case, the first respondent was granted one month time for payment of deficit Court fee. The first respondent paid Court fee and represented the plaint on 30.07.2001 with application to condone the delay of 24 days for representation. The said I.A. was allowed and the plaint was taken on file. At the time of part-heard stage, the petitioner and the respondents 2 and 3 raised an objection that Court fee paid by the petitioner after the expiry of time limit granted by the Court is not valid and the suit is barred by limitation. They filed I.A.No.742 of 2007 for rejection of plaint as barred by limitation. The Hon'ble Apex Court in the judgment reported in **2009 AIR SCW 5385 in the case of P.K.Palanisamy Vs. N.Arumugham and another**, has held as follows:

"8. Appellant while presenting the plaint inter alia contended that sufficient court fee stamps were not available in the sub-treasury. The Presiding Officers of the local Civil Courts in a given situation would be aware thereof. It may, therefore, consider the prayers made in that behalf by a suitor liberally. If court fees are not available in a sub-treasury for one reason or the other, the court having regard to the maxim "lex non cogit ad impossibilia" would not reject such a prayer.

Payment of court fees furthermore is a matter between the State and the suitor. Indisputably, in the event a plaint is rejected, the defendant would be benefited thereby, but if an objection is to be raised in that behalf or an application is to be entertained by the court at the behest of a defendant for rejection of the plaint in terms of Order VII, Rule 11(c) of the Code, several aspects of the matter are required to be considered.

Once an application under Section 149 is allowed, Order VII, Rule 11 (c) of Code will have no application.

It is for that additional reason, the orders extending the time to deposit deficit court fee should have been challenged.

Filing of an application for rejection of plaint in a case of this nature as also having regard to the events which have taken place subsequent to registration of the suit appears to us to be a mala fide...."

.....

"10. We have, however, serious reservations as to whether the civil court could hear a defendant before registering a plaint. The Code does not envisage such a situation. When a suit is filed, the Civil Court is bound by the procedures laid down in the Code. The defendant upon appearing, however, in certain situations, may question the orders passed

by the Civil Court at a later stage."

"11. We would assume that the respondents were entitled to a notice before registration of plaint under Section 149 of the Code. Indisputably, the courts were required to assign reasons in support of their orders. Had the validity and/or legality of those orders been challenged before an appropriate court, it would have been possible by the plaintiffs to contend that the defendants had waived their right by their subsequent conduct and they would be deemed to have accepted the same. Even on later occasion, the courts would assign reasons upon satisfying itself once over again. If an order has been passed without hearing the one side, he may be heard but by reason thereof, the plaint would not be rejected outrightly. Before doing so, the applications of the plaintiff under Section 149 of the Code have to be rejected.

In Buta Singh (Dead) By LRs. v. Union of India[(1995) 5 SCC 284], it was held:

"The aid of Section 149 could be taken only when the party was not able to pay court fee in circumstances beyond his control or under unavoidable circumstances and the court would be justified in an appropriate case to exercise the discretionary power under Section 149, after giving due notice to the affected party....."

13. The learned Judge, considering the contention of the learned counsel for the first respondent and the petitioner, allowed the application on the ground that the Court has power to extend the time at any time for payment of Court fee. The petitioner and respondents 2 and 3 did not produce any material to disprove the contention of first respondent that sufficient Court fee stamps was not available at the time of presenting the plaint. The learned Judge also took note of the fact that the petitioner and respondents 2 and 3 have raised this objection after 7 years of admission of the plaint and in part-heard stage. The learned Judge has considered all the aspects in proper perspective and allowed the I.A.No.1697 of 2008 and dismissed the I.A.No.742 of 2003, by giving cogent and valid reasons.

14. In the result, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

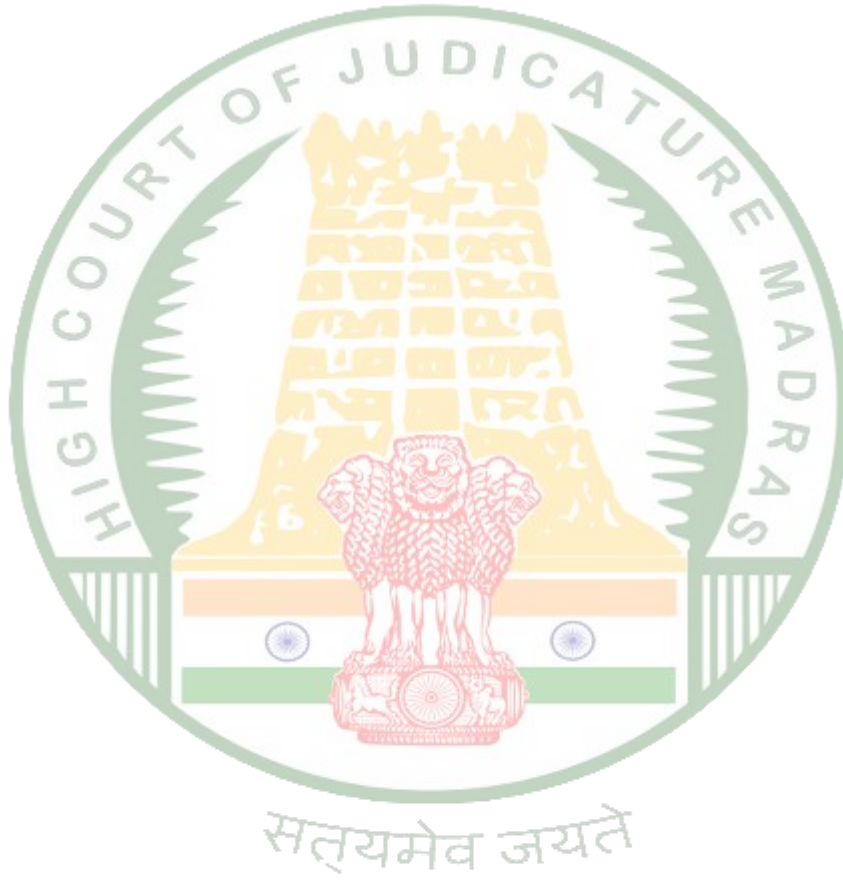
WEB COPY

24.10.2017

Index: Yes/No
rna/gsa

To

The Judge,
Fast Track Court – I,
Erode.



WEB COPY

V.M.VELUMANI, J.

rna



C.R.P.(PD) Nos.301 & 302 of 2009
and M.P.No.1 of 2009

WEB COPY

24.10.2017