IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **13.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D.) Nos.4162 and 4163 of 2012

J.Paulraj ...Petitioner in both CRPs

versus

1.R.Jayaraman
2.A.Ramanujam ...Respondents in both CRPs

PRAYER: Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 08.08.2011 made in I.A.Nos.705 and 706 of 2010 in O.S.S.R.No.7835 of 2006 (PDJ, CPT) on the file of Sub-Judge, Tambaram.

For Petitioner : Mr.S.Balasubramanian (in both CRPs)

For Respondents : Mr.D.Krishna Pradeep for Mr.N.Damodaran (in both CRPs)

COMMON ORDER

The petitioner filed a suit in O.S.S.R.No.7835 of 2006 before the Principal District Court at Chengalpet. The suit was returned for representation after compliance. It was later transferred to the court of Subordinate Judge at Tambaram. The petitioner failed to represent the plaint along with deficit court fee within the specified period.

2. The petitioner, thereafter, filed two applications in I.A.Nos.705 and 706 of 2010 to condone the delay in representing the plaint and to receive the balance court fee. The applications were dismissed by the learned Subordinate Judge, Tambaram. The common order is under challenge in these Civil Revision Petitions.

3. The learned counsel for the petitioner contended that the petitioner filed an application under Section 148 of the Code of Civil Procedure to condone the delay in representing the plaint. Similarly, another application was filed to receive the balance court fee. The applications were dismissed by the learned Judge on the mistaken impression that along with the application under Section 149 of CPC, separate application was not filed under Section 148 of CPC either to condone the delay in representing the plaint or to enlarge the time. The common order is therefore bad in law.

4. The learned counsel for the respondents justified the order passed by the learned Trial Judge. According to the learned counsel, Section 149 of CPC would not apply to the facts of the case and as such, the Trial Court was correct in dismissing the applications.

5. The petitioner filed the suit before the Principal District Court, Chengalpattu, claiming a money decree. The plaint was not accompanied by sufficient court fee. The Trial Court, therefore returned the plaint for representation after compliance of the defect pointed out by the Registry. The petitioner failed to represent the plaint within the stipulated period.

6. The petitioner filed two applications before the transferee court. The application in I.A.No.705 of 2010 was filed under Section 148 of CPC to condone the delay in representing the plaint. The connected application in I.A.No.706 of 200 was filed under Section 149 of CPC to receive the balance court fee after condoning the delay.

7. The applications in I.A.Nos.705 and 706 were accompanied by affidavits filed by the petitioner, wherein, a contention was taken that the erstwhile counsel was responsible for the delay. The learned Judge appears to be under the impression that the counsel, who filed the applications was the counsel who earlier filed the plaint. The said finding appears to be incorrect.

8. The question is as to whether the petitioner has made out a case for condoning the delay in representing the plaint and to receive the balance court fee.

9. The affidavit filed in support of the interlocutory applications contained sufficient reasons to condone the delay in filing the applications under Sections 148 and 149 CPC. Since a separate application was filed to extend the time for representing the plaint, the application under Section 149 of CPC is legally maintainable.

10. A similar question came up for consideration before the Hon'ble Supreme Court in **P.K.Palanisamy v. N.Arumugham and another [(2009) 9 SCC 173]**. The appellant in the said appeal submitted before the Supreme Court that the court fee was not available in the Sub-Treasury and that was the reason for filing the plaint without sufficient court fee. The Supreme Court accepted the said reason by quoting the maxim '*lex non cogit and impossibilia*'. In the subject case also, it was the contention of the petitioner that sufficient Court fee was not available in the Sub-treasury and that was the reason for paying insufficient court fee.

11. The Trial Court took a very strict view of the matter and dismissed the applications. I am therefore of the view that the common order is liable to be set aside.

12. In the result, the common order dated 8 August, 2011 is set aside. The interlocutory applications in I.A.Nos.705 and 706 of 2010 are allowed. However, I make it clear that in case a decree is passed by the Trial Court, the respondents would not be liable for interest for the period from 07.09.2006 to 13.06.2017.

13. The Civil Revision Petitions are allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

13.06.2017

svki

To

The Sub-Court, Tambaram

K.K.SASIDHARAN, J.

(svki)

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