

C.M.P.No.8593 of 2019

in

A.S.No.sr14005 of 2019

N.KIRUBAKARAN, J.

and

ABDUL QUDDHOSE, J.

(Order of the Court was made by N.Kirubakaran, J)

This petition has been filed to condone the delay of 146 days in filing the above appeal. The intended Appeal Suit is against the dismissal of application filed under Order VII Rule 11 (d) of CPC to reject the plaint. Heard the learned counsel appearing on both sides. This Court is convinced with the reasons stated in the affidavit filed in support of this petition. Therefore, the delay is condoned as prayed for.

2.It is brought to the notice of this Court that the Registry has insisted for payment of court fee as that of the value of the original suit. However, as stated above, the appeal is only against the petition to reject the plaint. The proposed appellant is compelled to pay a sum of Rs.1,02,816/- as Court fee, whereas as per the judgment of this Court in *L.Rathanchand Sarma Vs. Vinayaka Exports & Imports* reported in 2017 (5) CTC 498, where similar issue arose before the learned Single Judge, when the appeal was filed against the dismissal of petition to reject the plaint, the appellant therein paid only a sum of Rs.5/- as the appeal was incapable of valuation. However, the Registry has returned the Appeal Suit as proper

court fee has not been paid. When the matter was posted before the learned Single Judge, the learned Single Judge after discussing the law and issues, finally held in paragraph 24 as follows:

“24. In find the objections raised by the Registry regarding the Court Fee payable could be answered as follows:

- (i) It is Article 1 Schedule I that would apply for deciding the Court-Fee payable in an Appeal against an order rejecting a Plaintiff.*
- (ii) The Subject matter of the appeal filed against an Order rejecting the Plaintiff is not the same as the subject matter in the main suit*
- (iii) The subject matter in the Appeal against an Order rejecting the Plaintiff is only if the right of the Plaintiff to maintain the Suit and nothing more.*
- (iv) Such a right to maintain a Suit being incapable of valuation the Court-fee that is payable would be the minimum Court-fee that is paid on the Application for rejection of Plaintiff before the Trial Court.*
- (v) The fact that an Appeal against an Order rejecting the Plaintiff is numbered as Regular Appeal cannot be a deciding factor for the purposes of Court-fee payable in such appeals.”*

3. In the above said order the learned single Judge discussed various judgments including the Full Bench Judgment of the Andhra Pradesh High Court in *Sri Maharaj Kumarika Subarna Rekha Mani Devi and others v. Sri Ramakrishna Deo and others*, reported in AIR 1968 AP 239. This Court approves the decision of the learned single Judge.

4. Even though the said judgment was passed on 29.08.2017, the

Registry is not following the same. Therefore, a direction is given to the

Registry that whenever an appeal is filed against an I.A., filed under Order VII Rule 11 (a) or (d) of CPC, the Appeal Suit is incapable of valuation and only a fixed court fee for application has to be collected from the party and the suit valuation cannot be a criteria to insist upon the payment of court fee and therefore, Registry is directed to number the appeal.

5.The excess court fee paid by the proposed appellant has to be refunded to the proposed appellant under Section 70 of the Court fees and Suits Valuation Act 1955, which reads as follows:

“70.Refund of fee paid by mistake or inadvertence. - The fee paid by mistake or inadvertence shall be ordered to be refunded.”

6.In fine, the Registry is directed to number the Appeal Suit on payment of fixed Court fee. The Registry is further directed to return the excess court fee collected from the proposed appellant.

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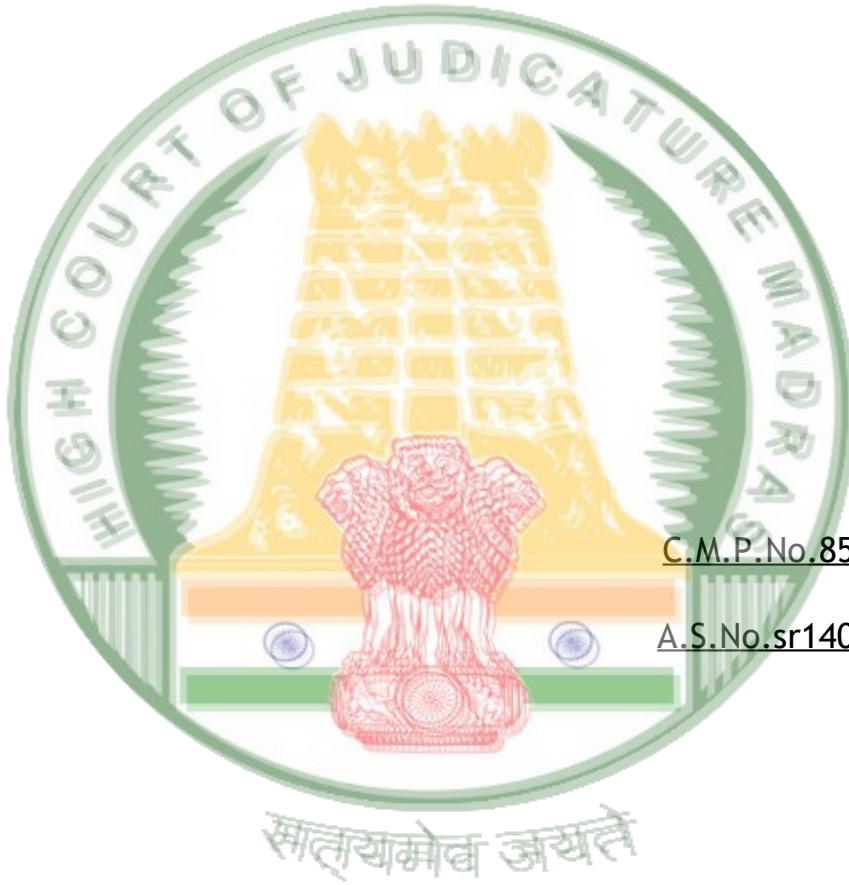
(NKKJ) (AQJ)
05.07.2019

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Note: Registry is directed to number the appeal and post the matter before the appropriate Court.

N.KIRUBAKARAN, J.
and
ABDUL QUDDHOSE, J.

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Dated: 05.07.2019