

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.06.2019

PRONOUNCED ON : 24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)Nos.3598 and 3599 of 2014
and
M.P. No.1 of 2014

1. R. Mallika
2. V.P.R. Ramesh

....

Petitioners in
both CRPs

versus

Expeditors International India Pvt. Ltd.
Represented by its
Supervisor in Accounts department
Mr.Bharanidharan

...

Respondent in
both CRPs

Prayer in CRP(PD)Nos.3598 of 2014 Civil Revision Petition filed under Article 227 of Constitution of India to allow the Civil Revision Petition by setting aside the order dated 13.02.2014 made in I.A. No.18726 of 2013 in O.S.S.R. No.46217 of 2008 by the V Assistant Judge, City Civil Court, Madras

Prayer in CRP(PD)Nos.3599 of 2014 Civil Revision Petition filed under Article 227 of Constitution of India to allow the Civil Revision Petition by setting aside the order dated 13.02.2014 made in I.A. No.2471 of 2014 in O.S.S.R. No.46217 of 2008 by the V Assistant Judge, City Civil Court, Madras

For Petitioners in both the writ petitions : Mr.C.Ramesh

For respondent in both the writ petitions : Mr.T.V.Sekar

COMMON ORDER

The issues for consideration involved in these revisions are as follows:

A) Whether this Court under Article 227 of the Constitution of India has got supervisory powers in a case where the Trial Court has allowed the applications filed to condone the inordinate delay of 1874 days in re-presenting the plaint and has also permitted the respondent / plaintiff to pay the deficit court fee under Section 149 of the Code of Civil Procedure.

B) Whether without notice to defendant, the trial Court has got powers to permit the plaintiff to pay the deficit Court fee under Section 149 CPC after the limitation period for the suit.

C) Whether reasons are necessary to be given by the plaintiff for payment of deficit court fee under Section 149 of the Code of Civil Procedure.

These Civil Revision Petitions have been filed under Article 227 of the Constitution of India challenging the orders, passed by the learned V Assistant Judge, City Civil Court, Madras on 13.02.2014 in I.A. No.18726 of 2013 and I.A. No.2471 of 2014 in O.S.S.R. No.46217 of 2008.

Brief facts leading to the filing of these Civil Revision Petitions are as follows :-

2.The petitioners are the defendants in the suit O.S. No.1064 of 2014, which was numbered subsequent to the allowing of the applications filed by the respondent to condone the delay of 1874 days in re-presenting the plaint in

O.S. SR No.46217 of 2008 and also permitting the respondent to pay the deficit court fee under Section 149 of the Code of Civil Procedure (hereinafter referred to as CPC).

3.The suit was filed by the respondent/plaintiff against the petitioners herein for the recovery of a sum of Rs.5,61,736/- together with interests and costs on the ground that the petitioners herein failed to refund the advance amount under a lease agreement, dated 01.10.2005. In the plaint filed in O.S. SR No.46217 of 2008 before the City Civil Court at Chennai, the respondent valued the suit at Rs.5,61,736/- and has also disclosed that the correct Court fee payable under Section 22 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, is Rs.42,130/-. But at the time of filing the suit on 29.09.2008, the entire Court fee of Rs.42,130/- was not paid by the respondent, instead they paid only a meagre court fee of Rs.300 and therefore, the suit was not numbered at the inception. The Registry of the City Civil Court at Chennai returned the plaint to the respondent / plaintiff for compliance of the defects in filing the suit and granted 10 days time. The respondent / plaintiff did not comply with the return on time, but instead re-presented the plaint in O.S. SR 46217 of 2008 along with a condone delay application I.A. No.18276 of 2013 in O.S. SR No.46217 of 2008 to condone the inordinate delay of 1874 days in re-presenting the suit in O.S. SR No.46217 of 2008. Along with the condone delay application, the respondent / plaintiff also filed another application viz., I.A. No.2471 of 2014 in O.S. SR No.46217 of 2008 seeking permission of the Court to pay the deficit court fee of Rs.41,831/- in the above referred suit in

O.S. SR No.46217 of 2008 under Section 149 CPC. The reasons given by the respondent/plaintiff for not re-presenting the suit within 10 days from the date of the original return i.e. on 20.10.2008 was that after taking return of the bundle from the Registry, the bundle got misplaced with other disposed bundles at the time of renovation of the respondent/plaintiff counsel's office. According to the respondent / plaintiff, the bundle of the returned papers were found only during the second week of December 2013 along with other office bundles. With the aforesaid reasons, the respondent / plaintiff had sought for condonation of 1874 days in re-presenting the plaint and had also sought permission of the Court under Section 149 CPC to pay the deficit court fee.

4.The Trial Court by its order dated 13.02.2014 allowed I.A. No.18726 of 2013 without notice to the petitioners / defendants and condoned the delay of 1874 days in re-presenting the suit in O.S. SR No.46217 of 2008 on payment of costs of Rs.3,000/- by the respondent / plaintiff to the District Legal Services Authority to be paid on or before 12.02.2014. Thereafter, the respondent / plaintiff complied with the conditional order and I.A. No.18726 of 2013 came to be allowed.

5.The Trial Court by a consequential order also allowed I.A. No.2471 of 2014 in O.S.SR No.46217 of 2008 on 13.02.2014, permitting the respondent / plaintiff to pay the deficit court fee of Rs.41,831/-. Aggrieved by the separate orders, both dated 13.02.2014 passed in I.A. No.18726 of 2013 and I.A. No.2471 of 2014 in O.S.SR No.46217 of 2008, the instant revision petitions have been filed under Article 227 of the Constitution of India.

6.Heard Mr.C.Ramesh, learned counsel for the petitioners and Mr.T.V.Sekar, learned counsel for the respondent.

Submission of the learned counsel for the petitioners :-

7.The learned counsel for the petitioners submitted that the Trial Court has condoned the inordinate delay in re-presentation of the plaint as well as permitted the respondent / plaintiff to pay the deficit court fee without notice to the petitioners / defendants. The learned counsel further submitted that even though the Trial Court was not satisfied with the reasons given in the affidavit for condonation of delay, has condoned the inordinate delay on payment of costs of Rs.3,000/- to District Legal Services Authority. He drew the attention of this Court to the order dated 13.02.2014 passed in I.A. No.18726 of 2013 in O.S. SR No.46217 of 2008, wherein the Trial Court has passed the following order :

For Appearance of Plaintiff. Plaintiff Co's Supervisor appeared in person and explained the delay. Though it is not satisfactorily explained, delay will be condoned on payment of Rs.3000 to DLSA to be paid on or before 12.02.2014, otherwise Petition stands dismissed. Call on 13.2.2014.

8.He also drew the attention of this Court to the common affidavit filed in support of I.A. No.18726 of 2013 and I.A. No.2471 of 2014 . According to him, no sufficient reasons have been given by the petitioners to condone the inordinate delay in representation of the plaint as well as the inordinate delay

in payment of the deficit court fee. According to him, the petitioner is not liable to pay any amount to the respondent and in fact the revision petitioners have got a counter claim against the respondent / plaintiff.

9. In support of his submissions, the learned counsel for the petitioner drew the attention of this Court to the following authorities :

(a)(2003) - 3 LW 803 in the case of K.Natarajan vs. P.K.Rajasekaran.

Referring to the said Division Bench Judgment of this Court, the learned counsel for the petitioner submitted, that reasons will have to be given for not paying the requisite court fee at the time of filing the suit. Further, he submitted that as per the Division Bench judgment, in cases where the plaint is presented well within the period of limitation with deficit court fee and the Court returns the plaint to rectify the defect, which also falls within the period of limitation, but the plaint is re-presented by paying the deficit court fee after the period of limitation, the Court is bound to hear the defendant, notwithstanding the fact that the plaintiff had paid substantial Court fee at the first instance, before condoning the delay in paying the deficit court fee. According to him, in the instant case, the respondent / plaintiff has paid the deficit court fee beyond the period of limitation and hence, the Trial Court ought to have issued notice to the petitioners/defendants before passing final orders in the application filed under Section 149 CPC seeking permission to pay the deficit court fee. The learned counsel further submitted that after referring

to the same Division Bench Judgment that objections can be raised at the trial or even at the appellate stage, since the failure to exercise judicial discretion in a manner known to law amounts to Court applying wrong provision of law.

(b)The learned counsel for the petitioner then drew the attention of this Court to a Judgment of the Hon'ble Supreme Court in the case of ***Buta Singh (Dead) by LRs versus Union of India*** reported in ***(1995) 5 SCC 284***. Relying upon the said judgment, the learned counsel submitted that judicial discretion under Section 149 CPC for payment of deficit court fee will have to be exercised by keeping the facts and circumstances in each case and not by showing undue indulgence. According to him, in the instant case, the Trial Court despite the inordinate delay in payment of the deficit court fee has, without notice to the petitioner and without any reason has allowed the application.

(c)The learned counsel for the petitioner then drew the attention of this Court to a Single Bench Judgment of the Madras High Court in the case of ***V.N. Subramaniam versus A.Nawab John and 5 others*** reported in ***(2007) 3 CTC 144*** and pointed out that as per the said judgment, the Courts must be satisfied about the bonafide mistake or some happenings beyond the control of the plaintiff for allowing the application under Section 149 CPC for payment of deficit court fee.

(d)The next authority relied upon by the learned counsel for the petitioner is the judgment of the Hon'ble Supreme Court in the case of

A. Nawab John and others vs. V.N.Subramaniyam reported in **(2012) 7SCC 738**. Referring to the said judgment, the learned counsel for the petitioner would point out that Section 149 CPC does not confer an absolute right in favour of the plaintiff to pay the Court fee as and when it pleases. It only enables the plaintiff to seek the indulgence of the Court to permit payment of the Court fee at a point of time, later than the presentation of the plaint. According to him, the exercise of the discretion by the Court is conditional upon the satisfaction of the Court that the plaintiff offered legally acceptable explanation for not paying the Court fee within the period of limitation.

(e) The learned counsel for the petitioner then drew the attention of this Court to a Single Bench judgment of the Madras High Court in the case of **Vellaithai and two others versus V. Duraisami** reported in **(2009) 5 LW 880**. Relying upon the said judgment, the learned counsel for the petitioner would submit that the explanation given by the respondent that papers have been mixed up with other bundles in the lawyer's office and could be traced only after a long period of time cannot by no stretch of imagination be considered to be a sufficient cause for condoning the inordinate delay. According to him, the explanation given in the affidavit for condoning the inordinate delay should cover the whole period. But in the instant case, according to him, excepting for stating that the papers have got mixed up, no reasons have been given by the respondent / plaintiff for condonation of an inordinate delay in representation of the suit as well as for payment of deficit court fee.

10. Per contra, the learned counsel for the respondent would submit that the Interlocutory Application filed by the respondent relates only to the re-presentation of the plaint and hence no notice need be issued to the petitioner as it is solely the discretion of the Court, whether to condone the said delay or not. According to him, it is well settled that in an application to condone the delay in re-presentation, it is not mandatory to give notice to the petitioner / defendant. Further, he would contend that the order passed by the Trial Court condoning the delay in representation as well as permitting the respondent to pay the deficit Court fee is only an administrative order and not a judicial order and therefore, the impugned orders cannot be challenged by the petitioners / defendants.

11. The learned counsel for the respondent drew the attention of the following authorities in support of his submissions :

(a) A Single Bench judgment of the Madras High Court reported in **2000 (3) CTC 11 (S.Saravanan (Minor) Represented by mother and next friend A. Latha Versus The Chief Judge court of Small Causes Court (Motor Accident Claims Tribunal), Chennai.** Referring to the said judgment, the learned counsel for the respondent would submit that in case of delay in representation, hypertechnicalities should not sway the mind of the Court nor such rigid stand is called for. Further, he would contend that hypertechnicalities will only put shackles upon the cause of justice.

b) **2002 (3) CTC 22 in the case of Bhuvaneswari vs. R. Elumalai.**

Referring to the said judgment, the learned counsel for the respondent would

submit that the impugned orders are only administrative orders and it is between the respondent / plaintiff and the Court and therefore, the petitioners do not have any locus-standi to challenge the said orders.

(c) **Indian Kanoon Judgment, dated 4.12.2014** in the case of **Arul Mighu Meenakshi Sundareswarar Devathasanam, Madurai vs. E.M.G. Soundarajan deceased) and others.** Referring to the said judgment, the learned counsel for the respondent would contend that it is settled law that in an application to condone the delay in re-presentation, it is not mandatory to give notice to the petitioner / defendant.

Discussion : -

12.It is an admitted fact that there is an inordinate delay of 1874 days in re-presenting the suit, which was filed in the year 2008. The suit was filed for the recovery of a sum of Rs.5,61,736/- together with interests and costs by the respondent against the petitioners for alleged non refund of advance amount under a lease agreement, dated 01.10.2005. The plaint filed in O.S. SR No.46217 of 2008 discloses the correct Court fee of Rs.42,130/- payable by the respondent / plaintiff for the institution of the suit. But while filing the suit in September 2008, the respondent / plaintiff paid only a sum of Rs.300/- as Court fees, even though he had disclosed the correct court fee payable in paragraph No.15 of the plaint. The Registry of the City Civil Court returned the plaint and other connected papers on 20.10.2008, calling upon the respondent / plaintiff to rectify the defects indicated therein and pay the deficit court fee and 10 days time was granted for carrying out the compliances required by

the Registry of the Court. But instead of carrying out the compliances within the stipulated time indicated by the Registry, the respondent / plaintiff remained silent for a long number of years and only thereafter, in December 2013, filed an application in I.A. No.18726 of 2013 in O.S. SR No.46217 of 2008 to condone the inordinate delay of 1874 days in representation of the suit and simultaneously on the same date, they also filed an application in I.A. No.2471 of 2014 in O.S. SR No.46217 of 2008 under Section 149 CPC seeking permission of the Court to pay the deficit court fee of Rs.41,830.50. In the common affidavit filed in support of both the applications, the reasons given for the delay by the respondent / plaintiff is that after obtaining return of the suit bundle from the Registry, it got misplaced with other disposed bundles, at the time of renovation of their counsels office. According to the respondent, the suit bundle could be traced only in the 2nd week of December 2013 and immediately, the said bundle was represented after carrying out the compliances required by the Court registry, which resulted in a delay of 1874 days in re-presenting the plaint, which according to the respondent / plaintiff, is neither wilful nor wanton, but only due to the reasons stated in the affidavit. In the said affidavit no reasons have been given by the respondent / plaintiff for the delay in payment of the deficit court fee, even though they had disclosed the correct Court fee payable in the plaint filed in the year 2008 at the time of filing the suit in OS. SR No.46217 of 2008. Admittedly, no notice was issued to the petitioners by the Trial Court before allowing both the applications, viz., I.A. No.18726 of 2013 and IA. No.2471 of 2014.

13. In the instant case, the respondent has disclosed the correct court fee payable at the time of filing of the suit, but for reasons best known to him, he has chosen not to pay the full court fees of Rs.42,130/- at the time of filing the suit, but instead paid only a meagre court fees of Rs.300/-. Therefore, it can be construed that only to suit their convenience, the respondent deliberately chose not to pay the full Court fee of Rs.42,130/- but paid only a meagre Court fee at the time of filing the suit. The Judgment referred to by the learned counsel for the petitioner in the case of **Buta Singh (Dead) by Lrs versus Union of India** reported in **(1995) 5 SCC 284** is squarely applicable to the facts of the instant case. In the said reported decision, also, an application under Section 149 CPC was filed for payment of deficit court fee and the Hon'ble Supreme Court held that if the party deliberately chose to file the suit with insufficient court fee to suit his convenience at the time of filing of the suit, the mistake is not a bonafide one. Further, the Hon'ble Supreme Court held in the same decision that the discretion conferred on the Court under Section 149 CPC is a judicial discretion and the Court is not bound to exercise the discretion unless the applicant shows sufficient cause for the failure to pay the deficit court fee or he was under bonafide mistake in payment thereafter. The relevant paragraph of the said judgment referred to supra is extracted hereunder:

9. Having given anxious consideration to the respective contentions, question arises whether the claimants would be allowed to pay the deficit court fee. It is true that Section 149 CPC gives powers to the court to give time to the appellant to make up deficiency of court fee

when the whole or any part of the fee prescribed under the Court Fees Act to pay court fee on the Memorandum of Appeal (MOA) but had not been paid while presenting the same, but the power of the court is one of discretion and not as of right. Generally, before the appeal is admitted under Order 41, Rule 9, the court would exercise the discretion on showing sufficient cause for not making the required fee on the MOA. The discretion conferred on the court by Section 149 is a judicial discretion. The court is not bound to exercise the discretion unless the applicant shows sufficient cause for the failure to pay deficit court fee or he was under bonafide mistake in payment thereof. Mere poverty or ignorance or inability to pay the court fee at the time of presenting the appeal is not always a good ground for indulgence under Section 149. Bonafide mistake on the part of the appellant or applicant in making the deficit court fee may be a ground to exercise discretion in favour of the appellant. It is the duty of the Registry before admitting the appeal to point out to the appellant or his counsel that deficit court fee is payable on the MOA and some reasonable time may be given for payment of the court fee. The MOA would be returned to do the needful. If the deficit court fee is not made up and presented within the time enlarged under Section 148 CPC, there would be no appeal in the eye of law unless the delay is condoned. If the party deliberately to suit his convenience paid insufficient court fee, the mistake is not a bonafide but one of choice made by the party in making the deficit court fee. In that situation, even after pointing out the need to make the court fee and given time, it would be open to the court either to reject the MOA or refuse to condone the delay for not showing sufficient cause thereon. Therefore, the court is required to exercise its judicial discretion keeping the facts and circumstances in each case and not automatically for mere asking that indulgence be shown to the party to make good the deficit court fee. In the latter event, it is not the exercise of the judicial discretion but showing undue indulgence"

14. The Hon'ble Supreme Court in the judgment relied upon by the

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learned counsel for the petitioner reported in **(2012) 7 SCC 738 (A. Nawab**

Johan and others) versus V.N.Subramaniam also held that a judicial discretion is required to be exercised by the court in accordance with the settled principles of law and must not be exercised in a manner to confer an unfair advantage on one of the parties to the litigation. In a case, where the plaint was filed within the period of limitation prescribed by law but with deficit court fee and the plaintiff seeks to make good the deficit of the court fee beyond the period of limitation, the Hon'ble Supreme Court held that the Court though had discretion under Section 149 CPC, must scrutinise the explanation offered for the delayed payment of the deficit court fee carefully before exercising its discretion to grant the said relief for payment of deficit court fee. The relevant paragraph of the judgment referred to supra is extracted hereunder:

"44. It is well settled that the judicial discretion is required to be exercised in accordance with the settled principles of law. It must not be exercised in a manner to confer an unfair advantage on one of the parties to the litigation. In a case where the plaint is filed within the period of limitation prescribed by law but with deficit court fee and the plaintiff seeks to make good the deficit of the court fee beyond the period of limitation, the court, though has discretion under Section 149 CPC, must scrutinise the explanation offered for the delayed payment of the deficit court fee carefully because exercise of such discretion would certainly have some bearing on the rights and obligations on the defendants or persons claiming through the defendants. (The case on hand is a classic example of such a situation). It necessarily follows from the above that Section 149 CPC does not confer an absolute right in favour of a plaintiff to pay the court fee as and when it pleases the plaintiff. It only enables a plaintiff to seek the indulgence of the court to permit the payment of court fee at a point of time later than the presentation of the plaint. The exercise of the discretion by the court is

conditional upon the satisfaction of the court that the plaintiff offered a legally acceptable explanation for not paying the court fee within the period of limitation "

15. In the case on hand, admittedly, no reasons have been given by the respondent / plaintiff for delay in payment of deficit court fee. Further the suit was filed in the year 2008, but the application under Section 149 CPC for payment of deficit court fee was filed only in December 2013 beyond the period of limitation for filing the said suit. Applying the principles laid down by the Hon'ble Supreme Court in the decision referred to supra, the Trial Court ought to have issued notice to the petitioner and heard the petitioner before disposing of the application under Section 149 CPC. But in the instant case, the application has been allowed without issuance of notice to the petitioner and further without any reasons whatsoever. The common affidavit filed in support of the application under Section 149 CPC also does not disclose any reasons for non payment of entire court fee at the time of filing the suit even though the plaint discloses the correct court fee payable. Further in the instant case at the time of filing the suit, the respondent/plaintiff though disclosing the correct court fee of Rs.42,130 has paid only a meagre court fee of Rs.300. This will clearly indicate that the respondent deliberately avoided payment of the entire court fees at the time of filing of the suit and there is no bonafides on their part for paying the deficit court fee belatedly.

16. The Division Bench of the Madras High Court in its Judgment reported in **(2003) - 3 LW 803 in the case of K.Natarajan vs.**

P.K.Rajasekaran cited by the learned counsel for the petitioner also supports the stand of the petitioner that when the plaint is re-presented without paying the court fee after the period of limitation, the court is bound to hear the defendant. The Division Bench has summarised the procedure to be followed under Section 149 CPC in paragraph 21 of the said judgment, which is extracted hereunder :

"21. We deem it necessary to clarify the legal position and lay down the procedures to be followed as under :

(1) Section 149 of Code of Civil Procedure is a proviso to Section 4 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

(2) The word 'document' employed in Section 149 of Code of Civil Procedure would include plaint also.

(3) Whenever a plaint is received, the same shall be verified and if found to be not in order, the same shall be returned at least on the third day (excluding the date of presentation so also the intervening holidays).

(4) If the suit is presented on the last date of limitation affixing less Court fee, than the one mentioned in the details of valuation in the plaint, an affidavit shall be filed by the plaintiff giving reasons for not paying the requisite Court fee.

(5) In such cases, the Court shall before exercising its discretion and granting time to pay the deficit Court fee, shall order notice to the defendants and consider their objections, if any. However, such notice is not necessary in cases where the plaintiff has paid almost the entirety of the requisite court fee and the Court is satisfied on affidavit by the party that the mistake happened due to some bona fide

reasons such as calculation mistake or the alike.

(6) The discretion referred to in Section 149 of Code of Civil Procedure is a judicial discretion and the same has to be exercised in accordance with the well established principles of law.

(7) But however, in cases where the time granted to pay the deficit Court fee falls within the period of limitation, the defendant need not be heard.

(7A) In case where the plaint is presented well within the period of limitation with deficit court fee and the court returns the plaint to rectify the defect giving some time (2 or 3 weeks), which also falls within the period of limitation, but the plaint is represented paying deficit court fee after the period of limitation, the Court is bound to hear the defendant, notwithstanding the fact that the plaintiff has paid substantial Court fee (not almost entirety) at the first instance, before condoning the delay in paying the deficit court fee.

(8) In cases where part of the time granted to pay the deficit Court fee falls outside the period of limitation and the deficit court fee is paid within the time of limitation (i.e., the plaint is re-presented with requisite court fee), the court need not wait for the objections of the defendant and the plaint can be straight away numbered.

(9) The court should exercise its judicial discretion while considering as to whether time should be granted or not. Cases where the plaintiff wrongly (bona fide mistake) valued under particular provisions of law under Court Fee Act or where he could not pay the required Court fee for the reasons beyond his control, due to some bona fide reasons, the Court shall condone the delay. Payment of substantial

court fee is a circumstance, which will go in favour of the claim of the plaintiff that a bona fide mistake has crept in.

But however, in cases where the plaintiff acted wilfully to harass the defendant (like wilful negligence in paying court fee, awaiting the result of some other litigation, expecting compromise, etc.)."

17. Insofar as the case on hand is concerned, applying the principles laid down by the Division Bench of this Court, the Trial Court ought to have issued notice to the petitioner and heard him before disposing of the application filed under Section 149 CPC. In the same decision referred to supra, the Hon'ble Division Bench of this Court also held that in a case where the Court had discretion under Section 149 CPC to permit the plaintiff to pay the deficit court fee, the Division Bench has held that if the Court had exercised its discretion without issuance of notice, then it is open to the defendant to file application under Section 151 CPC for appropriate relief and it is also open to the defendant to file a revision under Article 227 of the Constitution of India. Therefore, there is no bar for the petitioner to challenge the impugned orders before this Court under Article 227 of the Constitution of India. The judgments relied upon by the learned counsel for the respondent in support of his submission that liberal approach will have to be adopted in cases of condonation of delay cannot be adopted in matters relating to condonation of such an inordinate delay and that too without notice to the defendant.

18. The judgment cited by the learned counsel for the respondent

reported in **2000 (3) CTC 11** in the case of **S.Saravanan (Minor)**

Represented by mother and next friend A. Latha versus The Chief Judge court of Small Causes Court (Motor Accident Claims Tribunal), Chennai

is not applicable for the instant case. As that Judgment involves a motor accident claim, where there is no limitation period, whereas, the instant case is a civil suit, wherein limitation is prescribed under the limitation Act. In so far as the second judgment relied upon by the learned counsel for the respondent reported in **2002 (3) CTC 22 in the case of Bhuvaneswari vs. R. Elumalai** is concerned, in that case, the Court had infact issued notice to the respondent in an application under Section 149 CPC and only after hearing the respondent, the application under Section 149 CPC was allowed. But in the instant case on hand, no such notice was issued to the petitioners / defendants by the Court, both in the applications filed to condone the inordinate delay in re-presenting the plaint as well as in the application filed under Section 149 CPC for payment of deficit court fee.

19. In so far as third judgment relied upon by the learned counsel for the respondent reported in **Indian Kanoon, dated 4.12.2014** in the case of **Arul Mighu Meenakshi Sundareswarar Devathanam, Madurai vs. E.M.G. Soundarajan deceased) and others**, the said judgment is also not applicable to the facts of the instant case, since in that judgment the delay in representation was only 275 and 335 days. In the instant case on hand it is 1874 days and further the delay was condoned after the suit was represented after the period of limitation.

20. Excepting for stating that after taking the return of the bundle from the Registry, the same got misplaced with other disposed of bundles at the

time of renovation of the respondent's counsel's office, no documents have been filed to establish that the inordinate delay was caused only due to the reasons stated in the affidavit filed in support of both applications. Further it is an admitted fact, that the respondent at the time of the suit paid only a meagre court fee of Rs.300/-, even though the correct court fee of Rs.42,130/- was disclosed in paragraph 15 of the plaint at the time of filing the suit. Further as indicated, no reasons have been given by the respondent / plaintiff for not paying the entire court fee at the time of filing the suit in its common affidavit filed in support of I.A. No.2471 of 2014 in O.S.SR No.46712 of 2018 under Section 149 CPC. The Trial Court has also observed in its order dated 22.01.2014 in I.A. No.18726 of 2013 in OS. SR No.46217 of 2008 that no satisfactory explanation has been given by the respondent / plaintiff for condonation of delay but despite making such an observation, the Trial Court has condoned the delay on payment of costs of Rs.3,000/- to the District Legal Services Authority, which the respondent / plaintiff complied. The relevant portion of the order passed by the Trial Court on 22.01.2014 is extracted hereunder :

For Appearance of Plaintiff. Plaintiff Co's Supervisor appeared in person and explained the delay. Though it is not satisfactory explained, delay will be condoned on payment of Rs.3000 to DLSA to be paid on or before 12.2.2014, otherwise Petition stands dismissed. Call on 13.2.2014.

21.For the foregoing reasons, it is evident that the respondent / plaintiff

the suit for the reasons best known to them and has also not given sufficient reasons whatsoever in the affidavit for the inordinate delay in re-presentation of the suit as well as for payment of the deficit court fee. The Trial Court has also not followed the principles laid down by the Hon'ble Supreme Court as well as the Division Bench of this Court in the decisions referred to supra before allowing the applications filed by the respondent / plaintiff. Therefore, this Court is of the considered view that the impugned order passed in I.A. No.18726 of 2013 and I.A. No.2471 of 2014 in O.S. No.46217 of 2008 have to be set aside and remanded back to the Trial Court for fresh consideration.

22.For the foregoing reasons, the issues formulated at the outset of this common order are answered as follows:

A) This Court has got the supervisory powers under Article 227 of the Constitution of India where

(i) the Trial Court has condoned the inordinate delay in representing the suit after the expiry of the period of limitation without notice to the defendant.

(ii) where no reasons have been given by the plaintiff in the application filed under Section 149 of the Code of Civil Procedure seeking permission to pay the deficit court fee and when the trial Court has allowed the Section 149 application without reasons.

B)The trial Court does not have the power to allow the application filed under Section 149 of the Code of Civil Procedure after the expiry period of

limitation for filing the suit without issuing notice to the defendant. In such circumstances, the Court will have to necessarily issue notice to the defendant and only thereafter decide the said application.

C) Reasons are required to be given by the plaintiff in the affidavit filed for the payment of deficit court fee under Section 149 CPC. Since, no reasons have been given, the trial Court ought to have rejected the application under Section 149 CPC.

23. Accordingly, the impugned orders passed in I.A. No.18726 of 2013 and I.A. No.2471 of 2014 in O.S. SR No.46217 of 2008 by the V Assistant Judge, City Civil Court, Chennai are hereby set aside and the matter is remanded back to the Trial Court for fresh consideration and further proceedings in the numbered suit OS No.1064 of 2014 (previously O.S. SR No.46217 of 2008) shall be kept in abeyance until the result of I.A. No.18726 of 2013 and I.A. No.2471 of 2014 and depending upon the said result, the trial Court shall decide whether to proceed with the suit or not. This Court further directs the learned V Assistant Judge, City Civil Court, Chennai to issue notice to the petitioners / defendants in both the applications and also grant the petitioners / defendants the right to file counter in the said applications and thereafter pass final orders in accordance with law. The petitioners and the respondent are also granted liberty to file additional affidavits before the trial Court in both the applications to substantiate their respective stands.

24. With the above directions, the Civil Revision Petitions shall stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

24.06.2019

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
vsi2/pam



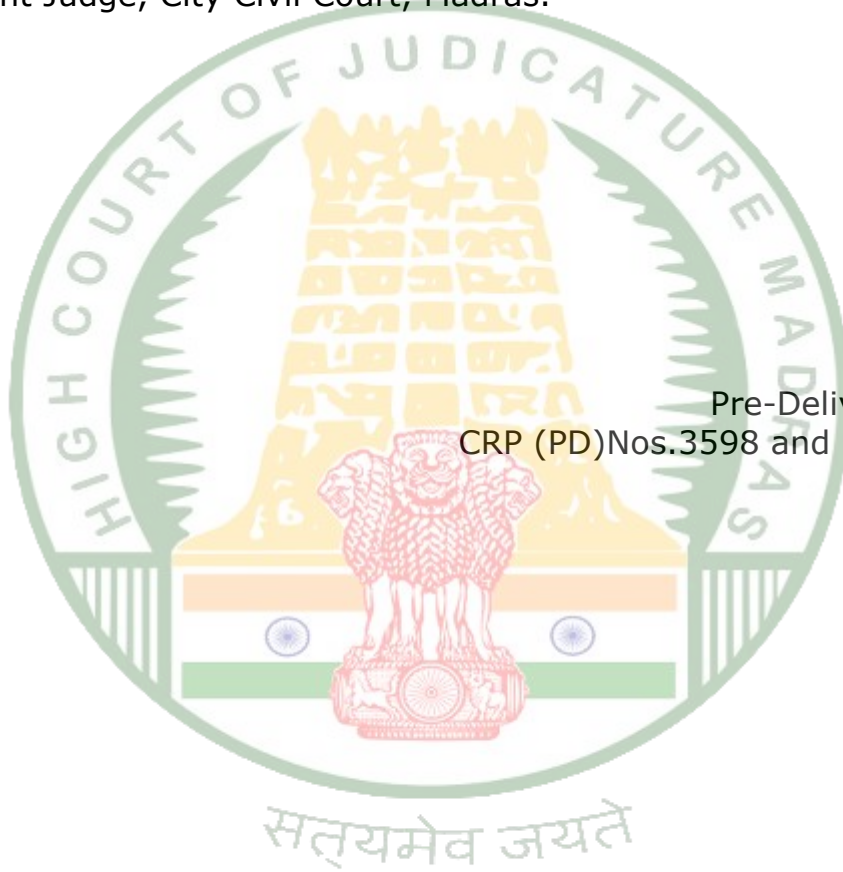
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ABDUL QUDDHOSE, J.

vsi2

To

The V Assistant Judge, City Civil Court, Madras.



Pre-Delivery order in
CRP (PD)Nos.3598 and 3599 of 2014

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24.06.2019