



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

C.R.P. (MD) (PD) Nos.259 and 1010 of 2012

and

M.P. (MD) No.1 of 2012

C.Badrinarayanan : Petitioner/Respondent/Petitioner
in both cases

vs.

1.M/s.Sel Jegat Printers (P) Limited,
Sivakasi, Through its Managing Director,
S.Jaganathan.

2.M/s.Sel Jegat Modern Foils Embossers,
Sivakasi, A Partnership Firm through its Partner,
S.Jegatheesan. : Respondents/Plaintiffs/Respondents
in both cases

PRAYER in C.R.P. (MD) (PD) No.259 of 2012: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed by the learned Principal District Judge, Virudhunagar at Srivilliputhur, in I.A.No.360 of 2009 in O.S.No.165 of 2008, dated 07.07.2011.

PRAYER in C.R.P. (MD) (PD) No.1010 of 2012: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed by the learned Principal District Judge, Virudhunagar at Srivilliputhur, in Unnumbered I.A.No. /2008 in O.S.No.165 of 2008, dated 28.08.2008.

(In both cases)

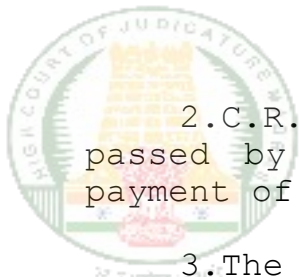
For Petitioner : Mr.V.K.Vijayaragavan

For Respondents : Mr.S.Raja Jeyachandara Paul

COMMON ORDER

C.R.P. (MD) No.259 of 2012 has been filed against the dismissal of the application filed by the petitioner under Order VII Rule 11 (3) CPC.

<https://hcservices.ecourts.gov.in/hcservices/>



2.C.R.P.(MD)No.1010 of 2012 has been filed against the order passed by the Court below extending the period of 15 days for payment of Court fee.

3.The petitioner is the defendant in the suit. The respondents filed a suit claiming for the relief of recovery of money against the petitioner. It is seen from the records that the respondents had filed the suit without paying the entire Court fee and that they filed an application before the Court below under Section 149 CPC to grant 15 days time for paying the entire Court fee. The Court below allowed the application and granted 15 days time to pay the entire Court fee. It is seen that the extension of time was granted only after the limitation period was over and this order was passed without giving notice to the petitioner.

4.The petitioner had also filed an independent application seeking for rejection of plaint on the ground that the relief sought for against the petitioner is barred by limitation.

5.The Court below, in view of the fact that it had already granted extension of time for payment of Court fee, dismissed the application for rejection of plaint, since the suit has been filed before the period of limitation and by payment of balance Court fee within the extended time, the suit will be deemed to have been filed within limitation and it will date back to the date on which the suit was actually filed by the respondents.

6.The learned Counsel for the petitioner submitted that the Court below committed an illegality in passing the order under Section 149 of C.P.C., by extending the period for payment of entire Court fee without giving notice to the petitioner. The learned Counsel, in order to substantiate his submissions, relied upon the following judgments:

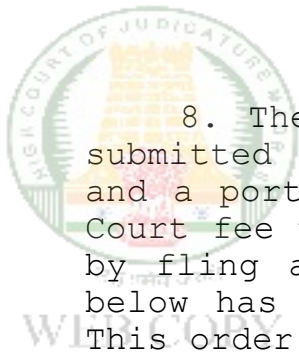
1)K.Natarajan vs P.K.Rajasekaran ((2003) 2 M.L.J. 305)

2)Sennan vs Shoba and another (2011-1-L.W.-832)

**3)P.Singaravel and another vs Ammani Ammal and others
((2012) 2 MLJ 906)**

4)Rafeeqe Ahmed vs C.Lickmichand Jain and others (2014-1-L.W.-883)

7. The learned Counsel would further submit that in view of the judgments that have been cited by him, the order passed by the Court below, under Section 149 CPC, is liable to be set aside. Once, the order is set aside, the learned Counsel contended that the order passed in the application for rejection of plaint must also be set aside and the case has to be remitted back to the Court below to consider the same afresh, after giving an opportunity to the petitioner, in accordance with law.



8. The learned Counsel appearing on behalf of the respondents submitted that the suit was filed within the period of limitation and a portion of the Court fee was also paid. The balance of the Court fee was sought to be paid after seeking for extension of time by filing an application under Section 149 CPC and that the Court below has also granted 15 days time to pay the balance Court fee. This order has been complied with and the balance Court fee has also been paid and therefore, the learned Counsel submitted that there is no ground to interfere with the order passed by the Court below. The learned Counsel further submitted that the limitation is always a mixed question of fact, and law and unless, the suit is apparently barred by limitation, the Court cannot venture into the exercise of finding whether the suit is barred by limitation without going through the process of trial. The learned Counsel, therefore, submitted that no interference is required with the order passed by the Court below and the Civil Revision Petitions are liable to be dismissed.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

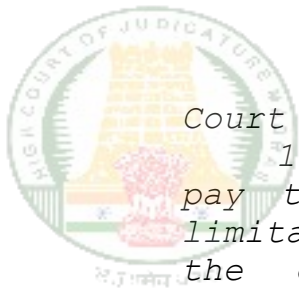
10. This Court will first consider C.R.P.(MD)No.1010 of 2012, since any order passed in this Civil Revision Petition will have a bearing with the issue concerned with C.R.P.(MD)No.259 of 2012.

11. It is an admitted case that deficit Court fee was paid beyond the period of limitation, pursuant to the extension of time granted by the trial Court in exercise of its power under Section 149 CPC.

12. The issue that requires to be considered by this Court is as to whether the Court below can extend the time for payment of Court fee without giving notice to the petitioner. At this juncture, this Court has to take note of the judgments, that have been cited by the learned Counsel for the petitioner.

13. The first judgment, that has been cited by the learned Counsel for the petitioner is in the case of **K.Natarajan vs P.K.Rajasekaran ((2003) 2 M.L.J. 305)** (referred supra) and the relevant portion of the said judgment is extracted hereunder:

"13. Thus, the legal position can be summed up as that before exercising discretion under Section 149 C.P.C., and granting time to the plaintiff to pay necessary Court fee and which time goes beyond the period of limitation to file a suit, notice must be given to the defendant. We also point out that suppose a reason is given by the plaintiff for not paying the Court fee, it would not be possible for the Court to investigate into it and certainly the presence of the defendant will help the



Court to take a decision.

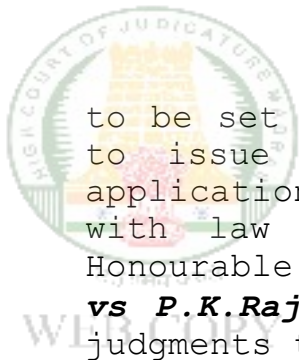
14. Of course, where the time granted by the Court to pay the deficit court fee falls within the period of limitation to file the suit, no notice need be given to the defendant/opposite party. It is desirable that whenever a plaint is presented, the same is verified and returned at least on the third day (excluding the holidays), if necessary pointing out the defects.

15. The next question is, suppose if no notice is given to the defendant and the Court exercises its discretion in favour of plaintiff, what is the remedy to the defendant. The defendant can file an application under Section 151 C.P.C. with necessary prayer thereon. Once such an application is filed, the Court will take the same on file if in order and dispose of within a period of three months therefrom after hearing both the parties, in any event before framing of the issues. The rulings AIR 1950 Madras 769 (Venkataseshamma v. Ranganaryakamma), AIR 1967 A.P. 147 can be pointed out in support of this legal position. Of course, the defendant alternatively will be at liberty to file a revision under Article 227 of Constitution of India. Whenever a plaint is filed affixing less Court fee than what is required under the Act, the plaintiff is bound to file an affidavit setting out the reason as to why he or she is paying less Court fee than the one mentioned in the plaint itself. Thereupon, the Court before granting time, order notice to the defendant, hear him/her and decide as to whether time should be granted or not. But however, in respect of cases where the time has already been granted, if defendant has grievance that Court should not have granted time, it will be open to the defendant to take out an application as mentioned supra.

14.The other three judgments cited by the learned Counsel for the petitioner are also in line with the judgment of Honourable Division Bench of this Court (referred supra).

15. It must also be borne in mind that even though a Court has the discretion under Section 149 CPC to permit the plaintiff to pay the deficit Court fee, the discretion has to be exercised judicially "and on sufficient cause" shown by the plaintiff, as to why he did not pay the entire Court fee at the first instance. This become mandatory, since the Court fee is paid after the period of limitation prescribed under the Limitation Act, 1963, to file the suit.

16.In this case, no notice was given to the petitioner before the order was passed, extending the time for payment of deficit Court fee. Therefore, the order passed by the Court below is liable



to be set aside and the matter is remitted back to the trial Court to issue notice to the petitioner and thereafter, decide the application for extension of time to pay the Court fee in accordance with law and in accordance with the guidelines given by the Honourable Division Bench of this Court in the case of ***K.Natarajan vs P.K.Rajasekaran ((2003) 2 M.L.J. 305)*** referred supra and other judgments that have been cited in this case.

17.In view of the order passed in CR.P.(MD)No.1010 of 2012, the order passed by the Court below in I.A.No.360 of 2009 dismissing the application for rejection of plaint, is also set aside and the said application is also remitted back to the Court below to consider afresh. It goes without saying that the order to be passed in the application under Section 149 of C.P.C., will have a bearing while considering the application filed for rejection of plaint.

18.In the result, both Civil Revision Petitions are allowed and the matters are remitted back to the Court below to consider the applications afresh, after affording an opportunity to the petitioner. The Court below is also directed to complete the exercise within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

cmr

To

The Principal District Judge, Virudhunagar at
Srivilliputhur.

+2 CC to Mr.S.RAJA JEYACHANDRA PAUL, Advocate SR-85889 & 85890.
+1 CC to Mr.V.K.VIJAYA RAGAVAN, Advocate SR-85968.

C.R.P. (MD) (PD) Nos.259 and 1010 of 2012
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