HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
HONOURABLE SRI JUSTICE T.AMARNATH GOUD

CIVIL REVISION PETITION NO.6846 OF 2018

O R D E R
(Per Sanjay Kumar, J)

1. Bharti Axa General Insurance Company Limited filed C.O.S.S.R.No.1723 of 2018 before the learned Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad (*for brevity*, 'the Commercial Court'), for recovery of a sum of Rs.69,59,19,278/- with interest from the first, second and third defendants. It filed I.A.No.134 of 2018 therein under Section 148 CPC to condone the delay of 248 days in re-submission of the suit. By order dated 02.07.2018, the Commercial Court allowed the I.A. subject to payment of costs of Rs.25,000/-. Aggrieved thereby, VARKS Engineers Private Limited, the second defendant, filed this revision under Article 227 of the Constitution.

2. By order dated 22.11.2018 passed in I.A.No.1 of 2018 filed in this civil revision petition, the Commercial Court was directed not to number the suit, if not already numbered, as the re-submission of the suit required examination.

3. Heard Sri Vedula Venkata Ramana, learned senior counsel representing Sri A.Venkatesh, learned counsel for the petitioner-second defendant, and Sri S.Niranjan Reddy, learned senior counsel appearing for Sri Tarun G. Reddy, learned counsel for the first respondent-plaintiff.

4. Parties shall hereinafter be referred to as arrayed in the suit.

5. Facts, to the extent relevant, are as follows: The plaintiff issued an insurance policy insuring one Alstom Projects India Limited in relation to execution of a project of the Telangana State Power Generation Corporation Limited, the fourth defendant. This policy was valid from

19.02.2013 till 31.05.2015. An accident occurred at the project site on 30.07.2014 and the plaintiff settled the insurance claim of Alstom Projects India Limited, the insured. It then filed the subject suit for recovery, by way of subrogation, from the consortium of bidders who undertook the civil works, viz., the first, second and third defendants. The suit was filed on 27.06.2017 without payment of court-fee. It was returned with objections on 29.06.2017. It was re-submitted with delay on 12.03.2018. In the affidavit filed in support of the I.A., the plaintiff stated that the requisite court-fee of Rs.69,61,619/- was paid ,*vide* RTGS, on 19.09.2017 through its banker, Standard Chartered Bank. However, Form A, which had to be submitted by it in the Registry of the Commercial Court, was issued with delay by the bank only on 18.10.2017. The delay was stated to have been further compounded by the fact that after the bank issued the form, it was sent to the counsel at Hyderabad, but Grishma, the junior colleague of the counsel, who received the form fell ill and was hospitalised. In view of the same, the plaintiff claimed that there was a delay of 248 days in filing the form in the Registry. The plaintiff sought condonation of this delay and acceptance of the suit papers.

6. The first and second defendants in the suit contested the I.A. In its counter, the second defendant stated that the court-fee was paid with inordinate delay on 08.06.2018, long after expiry of the limitation period, as the accident which was the basis for the suit claim occurred on 30.06.2014. It asserted that for all practical purposes, the date of filing of the suit has to be taken as 08.06.2018 only, as mere filing of the suit without payment of court-fee and required documents did not amount to proper presentation. It pointed out that even as per the claim of the plaintiff, the court-fee was paid only on 19.09.2017, after expiry of the

limitation period. The reasons cited for the delay were also assailed on the ground that they were not genuine and *bonafide*. The second defendant accordingly prayed for rejection of the condone delay application.

7. In the order under revision, the Commercial Court observed that the manner and mode of re-submission of the suit clearly showed that the plaintiff was negligent. The suit papers were returned on 29.06.2017, giving the plaintiff seven days time to comply with the objections, but it admittedly paid court-fee only on 19.09.2017, long thereafter. The court-fee receipt in this regard was submitted only on 08.06.2018, nearly nine months later. Even when the suit was re-submitted on 12.03.2018, the court-fee receipt was not filed. The Commercial Court noted that there was a delay of 75 days in payment of the court-fee and 248 days in effective re-submission of the plaint. Having opined so, the Commercial Court observed that the plaintiff was an insurance company which was a custodian of public monies and therefore, in the interest of safeguarding public monies, the delay could be condoned upon imposition of costs. It was contended before the Commercial Court that the condone delay petition was filed under the wrong provision of law as Section 149 CPC would have application and not Section 148 CPC. The Commercial Court however observed that relief could not be denied merely because the wrong provision of law was mentioned. The I.A. was accordingly allowed subject to payment of costs of Rs.25,000/- by the plaintiff to the Legal Services Authority. Further, the Commercial Court directed that these costs should be recovered from the erring officer of the plaintiff who caused delay in the processing of the case.

8. Sri Vedula Venkata Ramana, learned senior counsel, would contend that presentation of a suit without payment of any court-fee whatsoever

cannot be equated with a case of payment of deficit court-fee. He would point out that the issue of limitation would also arise in this case as the date of presentation of the suit has to be taken as 08.06.2018, when proof of payment of court-fee was filed in the Court. By that date, *per* the learned senior counsel, the suit claim stood barred by limitation. He would therefore contend that condonation of delay in the case on hand prejudicially affected the substantive rights of the second defendant, as a time-barred suit is now sought to be entertained.

9. *Per contra,* Sri S.Niranjan Reddy, learned senior counsel, would argue that payment of court-fee is not an intrinsic part of the adversarial process in suit proceedings. He would point out that the defendant in a suit cannot ask for rejection of the plaint on that ground simpliciter. He would rely on Order 7 Rule 11(b) and (c) CPC in this regard and assert that payment of court-fee is essentially between the Court and the plaintiff and it is only if the plaintiff fails to pay the deficit court-fee within the time fixed by the Court that consequences would follow. He would point out that Section 149 CPC vests the Court with the power to allow payment of court-fee at any stage and once such discretion is exercised by the Court, no cause is made out for interference therewith in exercise of revisionary power.

10. The core question that beseeches an answer is whether presentation of a suit without payment of any court-fee would amount to valid presentation at all in the eye of law?

11. This issue would turn upon Sections 4 and 5 of the Telangana Court Fees and Suits Valuation Act, 1956 (*for brevity*, 'the Act of 1956'), Section 149 CPC and Order 7 Rules 11(b) & (c) CPC. Section 4 of the Act of 1956 provides that a document which is chargeable with fee under the

said Act should not be acted on by any Court except on payment of such fee. Section 5 thereof provides for collection of proper fee on documents and states that when a document, on which the whole or any part of the fee payable under the said Act has not been paid, is produced or received in any Court, the Court may direct the person by whom such fee is payable to pay the fee or part thereof, as the case may be, within such time as may be fixed and upon such payment, the document shall be dealt with as if the full fee had been paid in the first instance.

12. Section 149 CPC empowers the Court to allow payment of deficit court-fee. It states that where the whole or any part of the fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee and upon such payment, the document in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

13. Order 7 Rule 11(b) CPC deals with undervaluation of the relief claimed and failure on the part of the plaintiff to correct the valuation within the time fixed by the Court. Such failure would entitle the Court to reject the plaint. Clause (c) of Order 7 Rule 11 CPC deals with a situation where the relief claimed is properly valued but the plaint is written upon insufficiently stamped paper. In such a situation, the Court may require the plaintiff to supply the requisite stamp paper within the time fixed and in the event he fails to do so, rejection of the plaint would follow.

14. Now, a look at case law. In Dr.D.SATYANARAYANA RAJU V/s. STATE BANK OF INDIA[1], a Division Bench of the Andhra Pradesh High

[1] 1986 (1) APLJ 99 (SNRC)

Court had occasion to deal with a like issue. That was a case where the last date for filing of an appeal was 02.07.1985 and on that day, the appeal was presented with a court-fee of only Rs.5/- though the required court-fee was Rs.7,526/-. An application was filed thereafter seeking condonation of the delay of fifteen days in payment of the deficit court-fee. The Division Bench was not satisfied with the reasons for the delay and observed that it has been repeatedly held that presentation with a nominal court-fee is no presentation in law. Significantly, there was no discussion on the legal aspects or the applicable statutory provisions.

15. However, the decision of the Supreme Court in A.NAWAB JOHN V/s. V.N.SUBRAMANIYAM[2] is directly on the point and, in our opinion, settles the issue. Therein, the Supreme Court observed that in a case where a 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 it has discretion under Section 149 CPC, must scrutinize 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 of the defendants. It was further observed that Section 149 CPC does not confer an absolute right on a plaintiff to pay the court-fee as and when he pleases and 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. *Per* the Supreme Court, exercise of discretion by the Court in such a case would be conditional upon the satisfaction of the Court that the plaintiff has a legally acceptable explanation for not paying the court-fee within the period of limitation.

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[2] (2012) 7 SCC 738

In para 28 of the judgment, the Supreme Court framed the question thus – 'if appropriate court-fee is not paid at the time of filing of the plaint, can the suit be said to be a valid suit in the eye of law'. A further question was framed as to what is the effect of the payment of court-fee subsequent to the expiry of period of limitation for filing of a suit in a case where the plaint was filed within the period of limitation. The Supreme Court observed that when a plaint is presented to a Court without payment of the appropriate court-fee payable thereon, undoubtedly the Court has the authority to call upon the plaintiff to make the required payment and such authority can be exercised by the Court at any time and at any stage of the suit. The Supreme Court therefore held that mere lapse of time would not fetter the authority of the Court to direct payment of deficit court-fee and as a logical corollary, the plaintiff cannot be said to be barred from paying the deficit court-fee because of passage of time. Reference in this regard was made to the judgment in MANNAN LAL V/s. CHHOTAKA BIBI[3]. The observations made therein apropos Section 149 CPC are of import and are extracted hereunder:

> '12. The above section therefore mitigates the rigour of Section 4 of the Court Fees Act and it is for the Court in its discretion to allow a person who has filed a memorandum of appeal with deficient court-fee to make good the deficiency and the making good of such deficiency cures the defect in the memorandum not from the time when it is made but from the time when it was first presented in Court.
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> 13. In our view in considering the question as to the maintainability of an appeal when the Court fee paid was insufficient to start with but the deficiency is made good later on, the provisions of the Court Fees Act and the Code of Civil Procedure have to be read together to form a harmonious whole and no effect should be made to give precedence to provisions in one over those of the other unless the express words of a statute clearly override those of the other.

[3] (1970) 1 SCC 769

> 14. ... there can in our opinion, be no doubt that Sec.4 of the Court Fees Act is not the last word on the subject and the Court must consider the provisions of both the Act and the Code to harmonise the two sets of provisions which can only be done by reading Section 149 as a proviso to Section 4 of the Court Fees Act by allowing the deficiency to be made good within a period of time fixed by it. *If the deficiency is made good no possible objection can be raised on the ground of the bar of limitation; the memorandum of appeal must be treated as one filed within the period fixed by the Limitation Act* subject to any express provision to the contrary in that Act and the appeal must be treated as pending from the date when the memorandum of appeal was presented in court. In our view it must be treated as pending from the date of presentation not only for the purpose of limitation but also for the purpose of sufficiency as to court-fee under Section 149 of the Code. (emphasis supplied)'

Ultimately, the Supreme Court held that a plaint would be a validly presented plaint once the deficit Court fee is paid upon exercise of discretion by the Court under Section 149 CPC.

16. We accordingly affirm the settled legal position that a plaint which is presented within time would still be a validly presented plaint even if the required court-fee is paid thereon, even in entirety, after expiry of the limitation period for presentation of such a suit. The decision to the contrary of the Andhra Pradesh High Court in Dr.D.SATYANARAYANA RAJU[1] would necessarily have to give way to the *ratio* laid down in A.NAWAB JOHN[2] and does not constitute good law. However, as pointed out in A.NAWAB JOHN[2], the Court has to carefully exercise discretion under Section 149 CPC based on the facts. No doubt, in the case on hand, the application was filed by the plaintiff under Section 148 CPC but mere mention of the wrong provision of law in the Code of Civil Procedure, 1908, would not curtail the exercise of power by the Court under the correct provision, if available. Therefore, the Commercial Court necessarily had to examine the issue of delay in re-submission of the suit

under Section 149 CPC. However, the Commercial Court did not at all deal with the explanation offered by the plaintiff to account for the delay on its part, be it in payment of the court-fee or filing of the receipt long thereafter. The Commercial Court did not choose to examine these aspects in the context of exercise of the discretion vesting in it and condoned the delay only on the ground that public monies may be involved. Be it noted that the plaintiff appears to be a private insurance company and it is open to question as to whether public monies would even be involved in its operations. In any event, as the Commercial Court did not undertake the exercise in terms of Section 149 CPC and the law laid down by the Supreme Court in A.NAWAB JOHN[2], we are of the opinion that the order under revision cannot be sustained.

17. The civil revision petition is accordingly allowed setting aside the order dated 02.07.2018 passed in I.A.No.134 of 2018 in C.O.S.S.R.No.1723 of 2018 and the matter is remitted to the file of the Commercial Court for consideration afresh on merits and as per the law laid by the Supreme Court in A.NAWAB JOHN[2]. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

JUSTICE T.AMARNATH GOUD

20th AUGUST, 2019

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