

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5493 of 2018

Date of Decision: March 08, 2019

Om Parkash

.....Petitioner

vs.

Himanshu and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. R.D. Gupta, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the judgment and decree passed by the learned Additional Civil Judge (Senior Division), Sonapat, on 11.09.2015, by which the suit filed by the six respondents herein under Section 6 of the Specific Relief Act, 1963, seeking restoration of the suit property, has been allowed.

2. As per the case of the respondents-plaintiffs, the suit property was a shop in Sonapat, Haryana, that was first occupied as a tenant by their grand-father Goverdhan Dass, in the year 1962 at a monthly rent of Rs. 24.

Thereafter, the tenancy was stated to have passed on to the respondents-plaintiffs' father, Jagdish Chander @ Jaggi, upon the death of Goverdhan Dass on 15.02.1989, after which he was stated to have been running the shop in question, with the rent being paid regularly to the present petitioner (landlord).

3. It was further pleaded by the respondents-plaintiffs in their suit that on the morning of 12.10.2008, when Jagdish Chander reached the shop to open it, he found that the locks on the shop had been changed and on enquiry from

neighbours, he came to know that the present petitioner, Om Parkash, had broken open the locks used by Jagdish Chander and had replaced them with his own lock.

As per the respondents, Jagdish Chander is stated to have contacted the petitioner (defendant in the suit) seeking the reason for the change, to which the petitioner is contended to have replied that all goods belonging to Jagdish Chander had been sent to Panipat.

Jagdish Chander is then stated to have made a complaint to the SHO of Police Station City, Sonapat, upon which FIR No. 410/08 came to be registered on 17.10.2008, alleging therein the commission of offences punishable under Sections 448 and 380 of the IPC.

Therefore, as per the respondents-plaintiffs in their civil suit, the petitioner had broken the locks without the consent of Jagdish Chander and had tress-passed into the shop.

It was further contended by them that an electric meter was also installed in the shop in the name of the father of Jagdish Chander, i.e. the late Goverdhan Dass, thereby further proving that the shop was in the occupation of Goverdhan Dass (and thereafter Jagdish Chander as contended), which had been illegally tress-passed into.

4 The plaintiffs also stated that earlier their father, Jagdish Chander @ Jaggi, had filed a civil suit under the same provision, i.e. Section 6 of the Specific Relief Act, seeking restoration of possession of the shop, but Jagdish Chander unfortunately died on 21.04.2009, after which the plaintiffs (in the present *lis*, i.e. the respondents herein), were impleaded as his legal representatives in that suit, with the trial Court having directed them to pay court fee *ad valorem*, vide an order dated 14.03.2011, with the last date for depositing the court fee fixed by that Court as 15.04.2011.

5. It was next contended by the respondents in their suit that on 17.08.2011 work had been suspended by the District Bar Association, Sonapat, and on the same date, the suit instituted by Jagdish Chander (with them being his LRs therein), was rejected on an application having been filed under Order VII Rule 11 of the Code of Civil Procedure.

6. Hence, the suit in the present *lis* was instituted by them on 09.09.2011, which as per the respondents, was within limitation.

7. Notice in the suit, in the present *lis*, having been issued to the present petitioner-defendant, he appeared and filed his written statement, raising preliminary objections with regard to non-maintainability thereof, further stating that the predecessor-in-interest of the present plaintiffs, i.e. Jagdish Chander, had actually left the shop in question himself after taking a sum of Rs. 15,000/- from the petitioner, with the petitioner also having waived off the rent of the shop for the period 01.01.1999 to 2008.

In reply to the merits of the plaint, it was reiterated by the petitioner in his written statement before the trial Court, that though Jagdish Chander was a tenant in the shop, he himself had surrendered it upon taking Rs. 15,000/- from the petitioner and consequently, the petitioner had lawfully and peacefully entered into such possession on 10.10.2008.

It was further contended in his written statement that the suit had been filed beyond the period of limitation and was therefore liable to be dismissed.

8. No replication having been filed by the respondents-plaintiffs, the following issues were framed by the trial Court:-

“1. Whether the plaintiffs are entitled for the relief of restoration of possession as per Section 6 of the Specific Relief Act, 1963, as prayed for? OPP.

2. *Whether the suit of the plaintiffs is not maintainable in the present form? OPD*
 3. *Whether the plaintiffs have no cause of action to file the present suit? OPD*
 4. *Whether the plaintiffs have suppressed the true and material facts from the Court? OPD*
 5. *Whether this Court has got no jurisdiction to try and entertain the present suit? OPD*
 6. *Whether the suit is barred under Order II Rule 2 CPC under Section 41 (h) of the Specific Relief Act? OPD.*
 7. *Whether the suit is barred by the law of limitation? OPD*
 8. *Relief.”*
9. In support of their contentions, the plaintiffs examined plaintiff no. 1 Himanshu (respondent no. 1 herein), who reiterated the contents of the plaint in his testimony, with plaintiff no. 5 (also respondent no. 5 herein), i.e. the mother of the remaining plaintiffs and widow of Jagdish Chander, Shanti Devi, having testified as PW-2, the plaintiffs further having tendered the following documents by way of evidence in support of their suit:-
- | | |
|--|--------------------------|
| <i>Tax Receipts</i> | <i>Ex.P-1;</i> |
| <i>Electricity bills</i> | <i>Exs. P-2 to P-17;</i> |
| <i>Income Tax assessment order</i> | <i>Ex. P-18;</i> |
| <i>Demand notice</i> | <i>Ex. P-19 and</i> |
| <i>Certified copy of judgment dated 21.05.1986</i> | <i>Ex. P-20</i> |
10. The present petitioner-defendant also examined two witnesses in his defence, including himself as DW-2, with one Suresh Kumar son of Shivji Lal, having testified as DW-1, both of them reiterating the contents of the written statement.

By way of documentary evidence, the petitioner tendered a copy of a judgment passed by the Judicial Magistrate Ist Class, Sonapat, in the criminal case

registered against the petitioner (pursuant to the FIR got registered by Jagdish Chander), the petitioner having been acquitted of the charge framed against him, such charge being one on the commission of an offence punishable under Section 411 of the IPC (though in the FIR he had been alleged to have committed offences punishable under Sections 448 and 382 of that Code). The said judgment (Ex. D-1 before the trial Court in the present *lis*), was delivered on 17.02.2014.

Other than the above, the petitioner also tendered a cash memo dated 22.10.2008 as Ex. D-2, the said cash memo being on the cash book of M/s Singla Iron and Hardware Store, Rohtak Road, Sonapat.

11. No evidence having been led in rebuttal by the plaintiffs, after considering the pleadings and the evidence led before it, the learned trial Court first recorded a finding on the primary issue no. 1 (on whether the plaintiffs are entitled to restoration of possession in terms of Section 6 of the Act of 1963), that as regards the predecessor-in-interest of the plaintiffs, i.e. as regards Jagdish Chander, he and his father before him were undoubtedly in occupation of the shop since 1962 (with such occupation actually not denied by the present petitioner-defendant, he even having contended to have got vacated the shop by paying Rs.15000/-).

12. As regards the contention of the respondents-plaintiffs' father having been illegally dispossessed from the suit property, on the testimony of DW-1 Suresh Kumar (examined by the present petitioner), that Court recorded a finding that he had testified to the effect that the petitioner as also Jagdish Chander had come to his shop in October 2008, with the petitioner having disclosed to him that Jagdish Chander was demanding Rs. 25,000/- for vacating the shop. Suresh Kumar also stated that the petitioner had told him that he was ready to waive off the rent from 01.01.1999 to 30.09.2008. Suresh Kumar further stated that seeing the rival

stands, he had succeeded in getting a compromise effected between the parties, that the petitioner would pay Jagdish Chander, Rs. 15,000/-, which in fact DW-1 stated that he had paid, the petitioner not having the said amount.

13. The aforesaid testimony of DW-1 Suresh Kumar was however 'rejected' by the trial Court, by holding that nowhere in the written statement had it being contended that Suresh Kumar was instrumental in effecting a compromise, with in fact even the petitioner himself, while testifying as DW-2, not having stated anything to that effect.

It was further recorded by the trial Court that in cross-examination Suresh Kumar had stated that the petitioner had come to him and had stated that "some money" was to be paid to Jagdish Chander and that Jagdish Chander had not disclosed to him "regarding making payment."

Yet further, it was found that DW-1 in his cross-examination had stated that the matter had been settled between Jagdish Chander and Om Parkash amongst themselves, further admitting that no writing was made with regard to the payment of Rs. 15,000/- (to Jagdish Chander). That was stated to be on account of the fact Jagdish Chander had stated that he would vacate the shop as he had received the money and that there was no need to make any such writing.

14. Having observed as above and recorded so as regards the testimony of DW-1, including his cross-examination, the learned trial Court held that such testimony was in fact beyond pleadings and further, if indeed Jagdish Chander had vacated the shop on receiving Rs. 15,000/-, then there was no reason for not reducing such a compromise to writing.

15. As regards the acquittal of the petitioner in criminal proceedings (vide the judgment dated 17.02.2014, Ex. D-1), it was held that the onus of proof in a criminal case has to be beyond all reasonable shadow of doubt, whereas in a civil

matter preponderance of probabilities was to be seen.

16. As regards the suit in the present *lis* being time beyond limitation, as also being barred in terms of Order II Rule 2 of the CPC (as was contended on behalf of the petitioner before the trial Court), it was held that the previous suit filed by Jagdish Chander (with the present respondents-plaintiffs thereafter substituted in that suit itself as his LRs), having been rejected on 17.08.2011 for non-payment of Court fee, a fresh suit was not barred even in terms of Rule 13 of Order VII (and consequently the bar contained in Order II Rule 2 would not apply).

A judgment of this Court in **Bhagmal vs. Surji @ Surjit Kaur and others 2011 (1) CCC 542**, was also referred to by the trial Court to come to that conclusion.

17. Coming to the question as to whether the 2nd suit (now filed by the respondents-plaintiffs) under Section 6 of the Specific Relief Act, could be held to be barred on account of it being filed beyond the statutory period of six months stipulated in the said provision, limitation was held to be also not violated, “after adjusting the time spent during the earlier suit bearing no. 425 of 2008.”

Thus, the suit in the instant *lis* having been filed on 09.09.2011, with the previous one having been filed on 08.11.2008, and it having been dismissed on 17.08.2011, it was held to have been filed within limitation.

18. An argument also having been raised before the trial Court by counsel appearing for the petitioner that the site plan had not been proved by the plaintiffs, that Court held that though the site plan had undoubtedly not been proved, however, that was immaterial, with the admitted case of the defendant being that the shop in question was rented out to Goverdhan Dass (grand-father of the respondents-plaintiffs), which was being used by their father Jagdish Chander, and

they also having produced an original site plan to show that the shop was measuring 4.6"x8'x3'3"x8'. Hence, the shop was found to be fully identifiable and therefore the site plan not having been specifically proved, was held by that Court to be immaterial.

19. Thus, having decided other issues as were framed actually while deciding issue no. 1, issues no. 2, 5, 6 and 7 were decided accordingly, with issues no. 3 and 4, on there being no cause of action and the respondents-plaintiffs having having suppressed the truth, found to have not been pressed.

Consequently, the suit of the respondents herein was decreed in their favour, with the petitioner directed to hand-over vacant possession of the suit property (shop) within a period of two months from the date of the passing of the judgment, i.e. 11.09.2015.

20. Thereafter, the petitioner filed an appeal before the learned District Judge, Sonapat (stated to be as per advice given to him), with in fact even notice having been issued in that appeal, during the pendency of which, (it is stated in paragraph 13 of the present petition), "that the petitioner was informed that the said appeal was not maintainable due to the operation of law."

Consequently, that appeal was withdrawn by the petitioner, vide a statement made by his counsel on 03.07.2018 before the learned Additional District Judge, the said statement reading as follows:-

"Stated that I have been informed that the present appeal is not maintainable, therefore, I be permitted to take the same back."

Hence, this revision has been filed, impugning therein the order of the learned Civil Judge (Senior Division), Sonapat, dated 11.09.2015.

21. On the first date that the petition had come for hearing, i.e.

24.08.2018, the following order had been recorded:-

“As per the learned counsel, the testimony of plaintiff-respondent no.1, Himanshu, was also beyond the pleadings and it was never stated in the plaint that he along with his father had occupied the shop, in which originally his grand father, Goverdhan, was a tenant.

Record of the learned trial Court be summoned.

Adjourned to 27.09.2018.”

Obviously, this Court (this Bench) had not seen the fact at that stage, that even in the present petition actually the petitioner does not deny that the shop in question was occupied by the predecessors-in-interest of the present respondents-plaintiffs, i.e. by Jagdish Chander and before him by his father Goverdhan Dass.

It would be appropriate therefore to reproduce paragraph 3 of the present petition, in that context. It reads as follows:-

“That the petitioner is the owner in possession of a very small shop measuring 4.6”x8’x3’3”x8’, situated in the area of Rohtak Road, near Shankar Electric Store, Sonapat, from where he is presently running his small business of selling 'Pattals'/'Donas' (leaf plates). The said shop had earlier been occupied by the predecessor-in-interest of the respondents namely Late Jagdish Chander @ Jaggi as tenant, who had inherited the tenancy rights from his father namely Late Goverdhan Dass.”

(Emphasis applied in this judgment only).

Naturally therefore, the aforesaid contention did not actually lie at all with counsel appearing for the petitioner.

Hence, the judgment cited by him, of a co-ordinate Bench of the Andhra Pradesh High Court, in **MCV Prasad and others** vs. **M. Subba Raju and others** AIR 2013 CC 2946 (AP), is wholly inapplicable to the present case,

because in that case there actually was a doubt on what the suit property was, whereas in the present case the identity of the shop is obviously not in doubt.

He also cited a judgment of the Supreme Court in **Mahavir Prasad Jain** vs. **Ganga Singh** AIR 1999 SC 3873, to submit that the onus was upon the plaintiff to show his exclusive possession over the suit property and his failure to prove the tenancy did not entitle him to therefore get any relief in a suit instituted under Section 6 of the Act of 1963.

Again I do not see how that judgment can help the petitioner in any manner, the exclusive possession of Jagdish Chander and Goverdhan Dass, having even been admitted before this Court in paragraph 3 of this petition, as reproduced hereinabove.

22. Be that as it may, he thereafter had argued on 28.11.2018 that the shop had been voluntarily vacated by the father of the respondents-plaintiffs.

That argument had been rejected by this Court at the threshold, stating that not a single document had been led in evidence by the petitioner before the trial Court, to either show any compromise reached between Jagdish Chander and the petitioner, nor even was there any receipt produced to the effect that Rs. 15,000/- had been paid by the petitioner to him. Consequently, this Court had held (in the order dated 28.11.2018), that simply on the oral testimony of DW-1 Suresh Kumar, it could not be accepted that a compromise had been entered into between the parties, pursuant to which Jagdish Chander had voluntarily vacated the suit premises.

23. Mr. Gupta had next submitted that there was no evidence on record to show that there was any force used by the petitioner to oust Jagdish Chander from the suit property, and therefore a suit under the provisions of Section 6 of the Specific Relief Act, 1963, was not maintainable.

In that context, he cited a judgment of the Bombay High Court (Aurangabad Bench) in Ramesh Madhavrao Shelke vs. Bhaskar Seetaram Pradhan AIR 2011 CC 3147 (BOM).

24. Mr. Gupta had next submitted that the previous suit filed by Jagdish Chander having been rejected on the ground of non-payment of court fee, and the 2nd suit having been filed beyond six months from the date of the alleged ouster of Jagdish Chander, it would not be maintainable in terms of Section 6 of the Specific Relief Act, even though it was instituted by the respondents who are the legal heirs/representatives of Jagdish Chander, and who had been duly substituted as such in the previous suit.

25. Last, Mr. Gupta had also relied upon a judgment of a co-ordinate Bench of the Bombay High Court in Anwar Faramosh Khan vs. Mahendrakumar Jugalkishore Gupta AIR 2004 Bombay 232, to submit that a receiver should be appointed to receive the rent from the respondents. I do not see how that judgment is applicable at this stage of a revision, (which even when judgment was reserved, was at the threshold of the decision, even *in limine*), because that case was one in which a receiver was ordered to be appointed in a suit filed before the Bombay High Court under Section 6 of the Specific Relief Act. Thus, that was at a stage when the suit itself was pending before the Bombay High Court, in its original civil jurisdiction, (with earlier a suit having been filed in the Small Causes Court at Mumbai by the occupier of that suit property, apprehending forceful eviction).

Obviously, in the present case with the suit of the respondents-plaintiffs already having been decreed in their favour in the year 2015 and this being a revision filed in the year 2018 against that judgment and decree, the question of appointment of a receiver would only perhaps arise if this Court was

inclined to issue notice of motion to the respondents.

26. Having considered the arguments of learned counsel, as already noticed, the first argument on the shop having been voluntarily vacated by the father of the respondents-plaintiffs had already been rejected by that Court on that date that judgment was reserved, by holding that there was not a single document, either in the form of a compromise deed or in the form of a receipt, showing that Jagdish Chander had been paid Rs. 15,000/- to vacate the shop and therefore, simply on the oral testimony of DW-1 Suresh Kumar, which also the learned trial Court had found was not corroborated in his cross-examination (he in his examination-in-chief having had stated that he had paid Rs. 15,000/- as Jagdish Chander did not have the money and thereafter having stated in cross-examination that the matter was settled between the parties themselves), I see no ground to hold otherwise today at the time of pronouncement of the judgment, the matter essentially having been reserved on learned counsel having first submitted that as no force was shown to be used by the petitioner to oust Jagdish Chander, the provisions of Section 6 would be inapplicable; and secondly, he having contended that the 2nd suit, i.e. the one in the present *lis*, having been filed beyond 06 months of the alleged ouster of Jagdish Chander.

27. Coming therefore to the aforesaid two contentions.

As regards the first contention, that there was no evidence on record to prove that there was force used by the petitioner to oust Jagdish Chander and consequently the provisions of Section 6 of the Specific Relief Ac, 1963, are not applicable, the said provision is reproduced hereinunder:-

6. Suit by person dispossessed of immovable property.

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person

claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) *No suit under this section shall be brought—*

(a) *after the expiry of six months from the date of dispossession; or*

(b) *against the Government.*

(3) *No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.*

(4) *Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.*

28. A perusal of sub-section (1) shows that there are three conditions contained therein which are necessary to be fulfilled before the jurisdiction of a Civil Court can be invoked in terms of the said provision.

Firstly, a person must have been in possession of a particular immovable property; secondly, that he/she was dispossessed of such possession, without his consent; and thirdly, that such dispossession was otherwise than in the due course of law.

If all three of the aforesaid 'ingredients' are proved, then, even if the person who has dispossessed the person in possession, has title to such property, the person dispossessed would be entitled to be put back in possession thereof; the reason obviously being that his dispossession has been otherwise than in accordance with law.

Sub-section (2) stipulates that any suit brought by a person so dispossessed, must be within a period of six month from the date of such dispossession and that such dispossession should not be by Government (as no suit would lie against the Government under the said provision).

Sub-section (3) prohibits the filing of any appeal against any order or

decree passed in such suit, it further prohibiting any review of such an order or decree.

Sub-section (4) protects the rights of an owner of such a property by enabling him/her to file a suit seeking to recover possession by establishing his/her title to such property, (obviously from a person who does not have title but who is still in possession or has been put in possession upon a suit having been instituted by him under Section 6 of the Specific Relief Act).

29. Having seen the provision, it s to be repeated that it has already been held by this Court that as regards the predecessor-in-interest (i.e. father/husband) of the respondents-plaintiffs, Jagdish Chander, it was duly proved, and in fact to repeat yet again, even admitted before this Court, that he was in possession of the property, as was his father before him. The question therefore is, whether he was dispossessed without his consent, otherwise than in due course of law.

The finding of the trial Court has also been upheld hereinabove, to the effect that despite the petitioner contending that he had paid Rs. 15,000/- to the late Jagdish Chander to vacate the suit property, he could not prove any such payment by way of any documentary evidence, with the oral testimony of DW-1 Suresh Kumar correctly having been disbelieved by the learned trial Court, on the grounds already discussed hereinabove.

Hence, in my opinion, once that is held to be so, a natural doubt would arise in the mind of the court, that with no money having been proved to be paid to Jagdish Chander, his contention would seem to be correct, as stated in his original plaint (the same being the contention of the respondents-plaintiffs in their subsequent plaint), that when he reached his shop on 12.10.2008, he found that his locks had been removed and instead a new lock had been “put” by the petitioner-landlord, thereby prohibiting Jagdish Chanders' entry into the suit property.

On such a doubt naturally arising, a perusal of the testimony of respondent no. 1 (plaintiff) is required, to determine the correctness of that contention.

A perusal thereof (the records having been called for by this Court, even though it is a revision but against a judgment and decree passed by the first court having jurisdiction), shows that respondent no. 1 had testified as PW-1 to the effect that after he and his father closed shop on 10.10.2008, thereafter, when they went there to open it on 12.10.2008, they found the locks to have been replaced and upon query from the neighbours they came to know that it was the petitioner who had removed them, who, on query, told them it was his shop which he had taken possession of, and that they could do whatever they wanted to do.

Thereafter, the police having initially told them (as per respondent no. 1), that they should settle the matter amongst themselves, and that not having been done, they are stated to have approached the Superintendent of Police, after which an FIR was eventually registered against the petitioner.

30. Hence, though the petitioner has been acquitted of the charge framed against him in criminal proceedings, it, in the opinion of this Court, becomes very obvious that the respondents-plaintiffs had proved that they had been forcibly ousted from the suit property due to which the FIR had to be registered and which actually led to the petitioner facing a criminal trial.

Thus, with the money allegedly paid by the petitioner, as per his contention, to Jagdish Chander, not having been proved to have been paid (Rs. 15,000/-) and the respondents having gone to the length of instituting criminal proceedings against the petitioner, in my opinion they would not have done so had they not actually been dispossessed from the shop.

Consequently, the finding of the trial court, that the father of the

respondent-plaintiffs' was dispossessed from the suit property without his consent, is upheld.

31. The contention of learned counsel for the petitioner that such ouster was not proved to be a forced ouster and therefore a suit under Section 6 could not have been maintainable, is also a contention to be rejected, because forced ouster does not necessarily mean physical removal by manhandling, and dispossession stands proved once it is shown that the occupant of the suit property was not allowed to enter it by any means, including by his locks being changed and new locks being put, thereby prohibiting such entry.

Obviously, once his entry into the premises is so prohibited, with him not allow to enter thereafter also, he stands dispossessed, and with no such consent for such dispossession having been proved as discussed many times hereinafore, such dispossession is to be accepted to be one without his consent and therefore forced dispossession.

Consequently, the contention that forcible dispossession was not proved and therefore Section 6 was not invocable, is also an argument that is rejected.

32. Coming last then to whether the suit in the current *lis* has to be held to be one filed beyond limitation.

Though, if clause (a) of sub-section (2) of the provision is to be literally interpreted, then obviously the suit having been instituted by the respondents herein on 09.09.2011, with the ouster of their father having admittedly been even as per their own case, on 12.10.2008, it has to be considered to be instituted far beyond the period of 6 months stipulated in Section 6 and therefore not maintainable.

However, in the context of the present case, a judgment of the

Supreme Court in A. Nawab John and others vs. V.N. Subramaniyam 2013 (3)

RCR (Civil) 749 can be referred to, wherein it was held as follows:-

35. We have already noticed that under Order VII Rule 11, a plaint, which has not properly valued the relief claimed therein or is insufficiently stamped, is liable to be rejected. However, under Rule 13, such a rejection by itself does not preclude the plaintiff from presenting a fresh plaint. It naturally follows that in a given case where the plaint is rejected under Order VII Rule 11 and the plaintiff chooses to present a fresh plaint, necessarily the question arises whether such a fresh plaint is within the period of limitation prescribed for the filing of the suit. If it is to be found by the Court that such a suit is barred by limitation, once again it is required to be rejected under Order VII Rule 11 Clause (d). However, Section 149 Civil Procedure Code, as interpreted by this Court in Mannan Lal (supra), confers power on the Court to accept the payment of deficit court fee even beyond the period of limitation prescribed for the filing of a suit, if the plaint is otherwise filed within the period of limitation. Therefore, the rigour of Order VII Rule 11 CPC and also [Section 4](#) of the Tamil Nadu Act is mitigated to some extent by the Parliament when it enacted Section 149 CPC. We may not forget that Limitation is only a prescription of law; and Legislature can always carve out exceptions to the general rules of limitation, such as [Section 5](#) of the Limitation Act which enables the Court to condone the delay in preferring the appeals etc.

*36. This court on more than one occasion held that the jurisdiction under Section 149 CPC is discretionary in nature. [See **P.K. Palanisamy v. N. Arumugham & Anr.**, 2010 (1) RCR (Civil) 129; 2009 (6) Recent Apex Judgments (R.A.J) 183; (2009) 9 SCC 173 and (2012) 13 SCC 539]*

37. 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 of 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.

33. Thus, in the aforesaid judgment, after considering an earlier judgment in Mannan Lal vs. Mst. Chhotka Bibi, it was held by their Lordships that because Section 149 of the Code of Civil Procedure empowers the Court to accept the court fee at any stage, therefore, the rigour of Order VII Rule 11 is mitigated to some extent.

In A. Nawab Johns' case (*supra*), however, the suit was filed within the period of limitation, though the fee was sought to be remitted afterwards, in which context it was held as above by the Supreme Court.

In the present case, as seen, undoubtedly the 2nd suit was filed well beyond the period of six months within which it had to be filed in terms of Section 6 (2) (a) of the Specific Relief Act.

However, even though nothing extra can be read into a statute except the plain meaning thereof, in my opinion, the 2nd suit having been filed 23 days after the first one was dismissed by the trial Court on 17.08.2011, and that too on a date when the Bar was stated to be abstaining from work, as recorded in the order of the trial Court in terms of the argument raised before it and not shown to be otherwise by learned counsel, I do not think that Court has erred in holding that the 2nd suit was maintainable, court fee having been duly paid at the time of its filing.

Thus, to my mind, Rule 13 of Order VII specifically allowing filing of a fresh suit if the first one is rejected on any of the grounds given in Rule 11, and as said, the first suit having been rejected on a date when the Bar was abstaining from work, and such rejection being on the ground that inadequate court fee had been affixed, and the 2nd suit having been filed within 23 days thereafter, duly affixing the court fee, the impugned judgment of the trial court does not call for interference on that count either.

34. Consequently, finding no merit in this petition, it is dismissed *in limine*.

March 08, 2019
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes