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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 22nd July, 2019

+ **CM(M) 530/2018**

AYESHA @ ASHA & ORS

..... Petitioners

Through: Ms. Renu Verma, Advocate
alongwith Petitioner in Person.

versus

HIRAWATI

..... Respondent

Through: Ms. Smita Maan & Mr. Vishal Maan,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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1. In this petition under Article 227 of the Constitution, the petitioner has challenged an order dated 27.03.2018 passed by the ADJ-03 (South), Saket Courts, New Delhi in CS No. 7240/2016, by which the petitioners'/defendants' application under Order VII Rule 11 (c) and (d) of the Code of Civil Procedure, 1908 ["CPC"] has been rejected. It is the contention of the petitioners/defendants that the plaintiff failed to make good the deficient court fee, despite opportunity being granted for the purpose, and the plaint, therefore, ought to have been rejected.

2. The suit is between members of a family. It was instituted in the year 2009, originally in this Court, and the plaintiff/respondent sought possession, cancellation of the sale deed, permanent injunction, and mesne

profits. While issuing summons on 18.03.2009, this Court granted the plaintiff one week's time to file the deficient court fee. By a subsequent order dated 27.04.2009, it was recorded that the deficient court fee of ₹22,850 has been filed. The suit was thereafter transferred to the Trial Court, pursuant to an enhancement of its pecuniary jurisdiction, and is now pending at the stage of final arguments, after completion of evidence.

3. On 04.10.2017, the defendant no. 1 (petitioner no. 1 in this Court) filed the application under consideration under Order VII Rule 11(c) and (d) of the CPC. It was alleged therein that, in addition to the court fee of ₹22,900/- filed alongwith the plaint, the plaintiff had paid court fee only of ₹2,850/- and not ₹22,850/-, as recorded in the order of this Court dated 27.04.2019. Although the contention was also taken that the plaint did not disclose a cause of action, that argument was not pressed before me.

4. After filing of the aforesaid application, the plaintiff also moved an application under section 151 of the CPC for permission to pay the deficient court fee of ₹19,393/-. This application was resisted by the defendant on the ground that it was much belated, and the plaintiff could not be given endless opportunities to make good the deficiency in the court fees. The plaintiff also, on 06.02.2018, moved an application under Section 149 read with Section 151 of the CPC, and Section 5 of the Limitation Act, 1963, explaining the circumstances in the following terms:-

“3. That vide order dated 18.03.2009, the Hon'ble court directed the plaintiff to file the deficient court fees on the relief of declaration. The previous counsel of the plaintiff, asked the plaintiff to pay the deficient court fees of Rs.2,850/-. Thereafter an application bearing IA no. 5457/2009 dated 31.03.2009 was filed for seeking the permission to take on record the court fees of Rs.2,850/- and said application was allowed on 27.04.2009 and in

the said order due to mistake and inadvertently the amount of Rs.2,850 was typed as Rs.22,850/-.

4. That on 20.09.2017 the defendant no. 1 filed an application under order 7 rule 11(c) & (d) of CPC and raised the objection regarding the deficiency of the court fee.

5. That in order to meet out the said objection raised by defendant no. 1, the plaintiff filed an application under section 151 CPC dated 03.11.2017 for seeking the permission to file the deficient court fees of Rs. 19,393/- and said application is still pending disposal.

6. That on the last date of hearing i.e. 12.01.2018, the counsel for the defendant no. 1 again raised the objection that the plaintiff has not filed the complete court fees and there is again deficiency of court fees of Rs.3,350/-.

7. That in order to meet out the above said objection raised by the defendant no. 1, the plaintiff is ready to pay the said deficient court fees of Rs.3,350/-

8. That the plaintiff is not an educated lady and she is totally depend upon the advice given by her counsel to her at the time of filing the present suit her previous counsel asked the plaintiff to pay the court fees of Rs.22,925/-, accordingly the plaintiff had paid the said court fee. Thereafter, her previous counsel again asked the plaintiff to pay the further court fee of Rs.2,850/- accordingly the plaintiff had paid the said court fees of Rs.2,850/-

9. That after filing the application under order 7 rule 11 (c) and (d) CPC dated 20.09.2017, the present counsel again asked the plaintiff to further pay the court fees of Rs.19,393/- accordingly the plaintiff has paid the said deficient court fees of Rs. 19,393/-. As on 12.01.2018 the counsel for the defendant no. 1 again raised the objection that in the present suit there is a deficiency of the court fees of Rs.3,350/-, the plaintiff is ready to pay the said deficient court fees and the court fees of Rs.3,350/- is attached herewith.

10. That if there is any delay in paying the deficient court fees on behalf of the plaintiff, same is neither intentional nor deliberate as stated above. The plaintiff is totally depend upon the advise of her counsel and as and

when her counsel asked her to pay the court fees and deficient court fees the plaintiff has paid the same. ”

This too was resisted by the defendants on similar grounds.

5. By the impugned order, the Trial Court relied upon the judgment of the Supreme Court in *Rathnavarmaraja vs. Vimla*, AIR 1961 SC 1299, wherein it was held that the payment of courts fees was primarily a matter between the plaintiff and the State. Upon a consideration of the facts of the case, the Trial Court returned a finding that the plaintiff was always willing to make good the deficient court fees, and her failure to deposit the amount could be said to be inadvertent due to her lack of education, and a typographical error in the application filed before this Court. The Trial Court, therefore, considered it appropriate to exercise discretion in favour of the plaintiff and extended the time for filing of deficient court fees under Section 149 of the CPC.

6. Learned counsel for the petitioner has drawn my attention to the course of proceedings and the repeated opportunities sought by the plaintiff to pay the deficient court fees. She argued that the failure of the plaintiff to file the court fees, despite the order of this Court dated 18.03.2009, amounted to an invalid institution of the suit itself, which could not be repeatedly remedied or condoned. She submitted that as a reason of default of the plaintiff, the defendants have the benefit of an accrued or vested right, which is withdrawn by the impugned order of the Trial Court. She relied upon the judgment of the Supreme Court in *Buta Singh vs. Union of India*, (1995) 5 SCC 284, in support of her contention.

7. Learned counsel for the respondent, on the other hand, argued that the plaintiff had throughout been diligent in the prosecution of the suit. Any error in the deposit of the court fees, either at the time of institution of the

suit or thereafter, pointed out by the defendants or by the Court, has been remedied by her promptly and without demur. She submitted that the confusion with regard to the amount of court fees required to be deposited, pursuant to the order of this Court dated 18.03.2009, was inadvertent, and has been rightly condoned by the Trial Court.

8. The relevant provisions of Section 149 and Order VII Rule 11 of the CPC are set out below:

“Section 149 of the Code of Civil Procedure

149. Power to make up deficiency of court-fees - Where the whole or any part of any 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.

Order VII Rule 11 (c) and (d) of the Code of Civil Procedure

11. Rejection of plaint— The plaint shall be rejected in the following cases:—

xxxx xxxx xxxx

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite

stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

9. Having heard learned counsel for the parties, I am of the view that the order of the Trial Court does not call for interference under Article 227 of the Constitution. The circumstances in which the plaintiff made repeated applications for filing of the deficient court fees under Section 149 of the CPC, set out herein, has been extracted above. At the stage of filing of the suit, she had paid substantial court fees of ₹22,900/-. Although this amount did not cover all the reliefs claimed, the plaintiff did seek to comply with the order dated 18.03.2009, passed by this Court. It has been explained in the application that she was advised by counsel that she was required to pay a further sum of ₹2850/-. However, the application filed before this Court inadvertently mentioned the sum of ₹22,850/-, which amount was also reproduced in the order of the Court. Further, as soon as the discrepancy was pointed out, she applied for permission to make good the deficiency first, by paying court fees of ₹19,393/-, and thereafter by paying a further sum of ₹3350/-. In the judgment of the Supreme Court in *Buta Singh* (supra), cited by learned counsel for the petitioners, it has been made clear that the discretion under Section 149 is to be exercised judicially, on showing of sufficient cause. Further, the factors indicated by the Supreme Court make it clear that a *bonafide* mistake may be a ground to exercise discretion in favour of the party seeking it. The circumstances described in the application filed by the plaintiff do not disclose any lack of any

bonafides on her part, and the Trial Court has rightly exercised discretion in her favour.

10. In the circumstances aforesaid, the impugned order of the Trial Court does not occasion any substantial injustice or display of any excess of jurisdiction, calling for the invocation of the Court's power under Article 227 of the Constitution.

11. The petition is therefore dismissed.

JULY 22, 2019

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PRATEEK JALAN, J.

