IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18th DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

WRIT PETITION NO.49371 OF 2014 (GM-CPC)

BETWEEN:

SRI J. RAVIKUMAR,
AGED ABOUT 74 YEARS,
S/O SRI JAVAREGOWDA,
R/O KALLAHALLI II STAGE,
7TH 'C' GROUP, K.H.B. COLONY,
VINOBHA NAGAR
SHIMOGA CITY.

... PETITIONER

(BY SRI VARADARAJ R. HAVALDAR, ADVOCATE)

AND:

SMT.G.A.LEELAVATHI,
W/O SRI SHIVASHANKAR
L.R OF LATE D.K.KRISHNAPPA,
AGED ABOUT 22 YEARS,
R/O I.D.K. 58/B, NEW COLONY,
BHADRAVATHI. ... RESPONDENT

(RESPONDENT - SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, TO QUASH THE ORDER DATED 12.09.2014 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, SHIMOGA IN R.A.NO.26/2014 VIDE ANNEXURE - A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner has filed the present writ petition invoking the writ jurisdiction of this Court assailing the order dated 12.09.2014 passed by the Principal District and Sessions Judge, Shimoga in R.A.No.26/2014. A copy whereof is at Annexure 'A', whereby learned Judge has directed petitioner to file fresh valuation slip in respect of the subject matter of the appeal and also pay the deficit Court fee of Rs.16,584/- within a period of 10 days from the date of the order.

2. The suit was originally instituted by one D.K.Krishnappa against the petitioner – J. Ravikumar on 23.08.2001 before the Court of Additional Senior Civil Judge & JMFC, Badravathi in O.S.No.186/2001 for recovery of Rs.2,50,200/-. The suit was based on demand

promissory note dated 9.10.1998 purported to have been executed by petitioner.

Petitioner being defendant appeared and contested the suit by filing written statement and prayed for dismissal of the suit. During the pendency of the suit, original plaintiff – D.K.Krishnappa died and one Leelavathi claiming to be the foster daughter of D.K.Krishnappa came on record as plaintiff and accordingly, the plaint was amended.

The evidence was recorded on behalf of plaintiff by examining 3 witnesses and documents were marked as Exs.P1 to P9 and P(a). Defendant examined as DW-1 and he did not produce any document.

On trial of the action, the suit came to be decreed on 6.11.2013 holding that defendant is liable to pay Rs.2,50,200/- with interest @ 8% p.a. from the date of suit till realization with costs.

Defendant preferred an appeal on 4.6.2014 and the same was registered in R.A.No.26/2014. It is noticed that defendant preferred the appeal without filing valuation slip, but enclosed challan for Rs.17,139/- towards Court fee and was credited to the concerned Head of Account. There was an office objection regarding deficit Court fee of Rs.16,584/-.

Learned Judge directed petitioner / defendant to make good of the deficit Court fee by filing fresh valuation slip. It is this order which is called in question on various grounds as set out in the writ petition.

3. Sri.Varadaraj R.Havaldar, learned counsel submitted that Lower Appellate Court has erred in passing the order thereby, directing petitioner to pay deficit Court fee of Rs.16,584/-. He submitted that the direction to pay deficit Court fee is improper, incorrect, contrary to law and therefore, he submitted that the same is liable to set aside.

Next, he submitted that Appellate Court has failed to appreciate the fact that the judgment and decree passed in O.S.No.186/2001 passed by the Additional Senior Civil Judge and JMFC, Bhadravathi, is wholly contrary and opposed to law as only the judgment was delivered and a decree could not be drawn for want of succession certificate.

A further submission was made that First Appellate Court has failed to appreciate the fact that the trial Court has only passed the judgment and decree is not drawn.

It has been contended that the First Appellate Court should have directed the trial Court to call upon plaintiff to produce the succession certificate.

Counsel further submitted that the Court fee which was paid in the Court of first instance has been paid by the petitioner before the Appellate Court. It is also submitted that the Appellate Court has failed to appreciate the law laid down by this Hon’ble Court in decision reported

DEVAKKA v. VEERAPPA VIRBASAPPA PALLED reported in ***ILR 1986 KAR 1701*** with regard to Section 149 of CPC.

Lastly, he contended that the First Appellate Court has erred totally in all aspects of law and merits and thereby, the order passed by the Appellate Court in R.A.No.26/2014 directing defendant to pay deficit Court fee of Rs.16,584/- is improper and hence, he prayed the same is liable to be set-aside by quashing the order.

Counsel relied upon the following decisions to substantiate his contentions: -

1. ILR 1986 KAR 1701 - DEVAKKA v. VERAPPPA VIRBASAPPA PALLED.
2. 2014(2) KCCR 1568 - N.ASWATHAIAH v. DR.N.NAGARAJU AND OTHERS.

4. Heard Sri Varadaraj R. Havaldar, learned counsel for petitioner and perused the papers with care.

5. The sole question involved in the present writ petition is whether learned Judge justified in directing petitioner to pay the deficit Court fee?

6. It is not in dispute that the suit is one for recovery of money based on pronote. On the trial of the action, learned Judge has decreed the suit directing petitioner/defendant to pay a sum of Rs.2,50,000/- to plaintiff along with interest at the rate of 8% per annum from the date of the suit till the date of realization. It is also not in dispute that, petitioner has preferred the judgment and decree before the Appellate Court.

It is pertinent to note that petitioner preferred the appeal before the Appellate Court without filing a valuation slip. He has enclosed a challan and credited a sum of Rs.17,139/- to the concerned Head of Account.

Learned Judge on perusal of office check slip found that there was an office note with regard to deficit Court fee of Rs.33,723/- which petitioner was required to make good. Accordingly, exercising discretionary powers, directed petitioner to file a fresh valuation slip and make good of the deficit Court.

While arguing the case, learned counsel attempted to press into service Section 149 of CPC to contend that learned Judge ought to have given sufficient opportunity for petitioner to pay the deficit Court fee. Counsel sought to urge that the Appellate Court ought to have directed the trial Court to draw up the decree.

This Court is not inclined to accept the said contention. A careful reading of Section 149 shows that it is an enabling provision. It empowers the Court to allow a party to make up the deficiency of Court fees payable on plaints, memorandum of appeal, applications for review of judgment, etc., even after expiration of the period of

limitation prescribed for the filing of these documents. The Section enables a defective document to be retrospectively validated if the insufficiency of the stamp is subsequently made up with the leave of the Court. But it is to be remembered that the power however, to make up the deficiency of Court fee is subject to the discretion of the Court and is not claimable as of right by party.

Thus, it is clear that the power is purely discretionary. The same ought to be exercised with greatest care and only in the most peculiar circumstances.

Indeed, the Appellate Court has exercised the discretionary powers judicially and with greatest care by taking into consideration of all the material facts and directed petitioner to make good of the deficit Court fee.

It is perhaps well to observe that a Judge's order under Section 149 of the Code of Civil Procedure, 1908, is a typical exercise of purely discretionary power, and would

be interfered with by the High Court only in exceptional cases.

An Appellate Court should not interfere with the discretion of the lower Court unless, it was exercised in violation of recognized principles of law or its exercise cause grave injustice.

In the present case, petitioner has not satisfied the onus of showing that the discretion of the Judge had been wrongly exercised. In my opinion, the learned Judge has exercised its power in right perspective.

Learned counsel vehemently urged that the real dispute involved is who is the legal representative and production of succession certificate. It is also sought to be urged that the trial Court has not drawn the decree and therefore, the appellate Court ought to have considered these facts.

I find myself unable to accept the said contention. The contentions urged are on the merits of the case. It is needless to observe that the Appellate Court would consider the matter on merits of the case once petitioner make good of the deficit Court fee.

In the last resort, learned counsel relied upon the decisions referred to supra. In my consideration opinion, they are not applicable to the facts and circumstance of the present case.

I find no reasons to interfere with the order passed by the Appellate Court and exercise supervisory power under Article 227 of the Constitution of India.

7. Accordingly, writ petition is ***dismissed.***

Sd/-
JUDGE

VMB