



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.11.2020

Pronounced on: 18.11.2020

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THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Second Appeal No.1436 of 2010

Munusamy Kounder,
S/o.Kanna Gounder,
Athipattu Village,
Gingee Taluk,
Thiruvannamalai District.

... Appellant

/versus/

Radhakrishnan,
S/o.Parasurama Pillai,
Athipattu Village,
Gingee Taluk,
Thiruvannamalai District.

... Respondent

Prayer: Second Appeal is filed under Section 100 of C.P.C., praying against the judgment and decree dated 07.08.2009 in A.S.No.8 of 2008 on the file of Subordinate Judge, Gingee, reversing the decree and judgment dated 30.08.2005 in O.S.No.509 of 2004 on the file of the Principal District Munsif's Court, Gingee.

For Appellant : Mr.R.Rajarajan

For Respondent : Mr.D.Ravichander

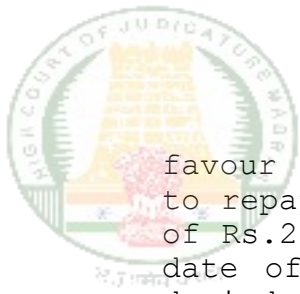
JUDGMENT

(The case has been heard through video conference)

This Appeal is preferred by the plaintiff being aggrieved by the dismissal of his money suit by the First Appellate Court by reversing the judgment and decree granted in his favour by the trial Court.

2. The facts of the case as averred by the parties in the plaint and written statement are as below:-

According to the plaint, the defendant borrowed a sum of Rs.20,000/- from the plaintiff on 07.03.1998 and agreed to repay the same on demand with 12% p.a and executed a pro-note in



favour of the plaintiff. Since the defendants on demand failed to repay the loan amount with interest, suit was filed for a sum of Rs.25,400/- being the sum of principle and interest, till the date of filing the suit. The said claim of the plaintiff was denied by the defendant. According to the defendant, he never borrowed Rs.20,000/- from the plaintiff on executing a pro-note. In fact, in the year 1995, he borrowed a sum of Rs.10,000/- from the plaintiff, for which, the plaintiff obtained two signatures from him in unfilled bond affixed with revenue stamp. For the said due, he has already obtained a mortgage deed in the name of his brother-in-law and thereafter, he started threatening and demanding exorbitant interest. Hence, a complaint was given against the plaintiff on 26.02.2001 to the Superintendent of Police, Villupuram District. The plaintiff promised not to harass the defendant any further. However, making use of the blank pro-note signed and given to the plaintiff, he has filled up the same and filed the present suit. The witnesses were signed in his presence nor the pro-note was filled in his presence.

3. The Trial Court has framed the following issues:-

- (i). Whether the suit pro-note dated 07.03.1998 is not true, valid and binding on the defendant?
- (ii). Whether the suit pro-note is not supported by consideration?
- (iii). Whether the defendant had already discharged the consideration?
- (iv). Whether the plaintiff is entitled to the suit claim as prayed for?
- (v). To what other relief, the plaintiff is entitled?

4. Before the Trial Court, the plaintiff marked the pro-note (Ex.A.1) and examined two witnesses to substantiate his claim. On behalf of the defendant marked 5 Exhibits (Ex.B.1 to Ex.B.5) and examined 1 witness.

5. The Trial Court decreed the money suit against the defendant. Aggrieved by the said decree and judgment, the defendant took up the matter to the First Appellate Court, wherein, the specific plea of limitation was pleaded.

6. It was contended by the defendant in the First Appellate Court that the plaint was returned for defective presentation and same was represented with a delay of 1086 days with petition to condone the delay. The representation of delay was condoned without adhering to the procedure and law.



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7. Ex.B.1 to Ex.B.5 goes to show that the plaint was re-presented with inordinate delay of 1086 days to counter blast the complaint given to the Superintendent of Police and Monday Petition to the Collector against the plaintiff for demanding exorbitant interest.

8. The First Appellate Court, on considering the grounds of appeal has allowed the appeal holding that the plaint was presented on 07.03.2001, the last day of limitation with deficit Court fees. The petition was represented with a delay of 1086 days, nearly 3 years after the return. While representing the plaint, the petition was not filed under appropriate provisions of law to accept the deficit Court fees but under Section 115 of C.P.C, the said delay was condoned on costs. Therefore, relying upon the judgment of the Hon'ble Supreme Court reported in Indian Statistical Institute Vs. Messrs Associated Builders and Others reported in 1978 (1) SCC 483, the First Appellate Court allowed the appeal and setting aside the judgment and decree of the Lower Court.

9. In the appeal, it is contended that the First Appellate Court ought to have observed that the defendant has failed to establish any prejudice or adverse interest suffered by him due to non-hearing while condoning the delay of representing. The defendant had not raised any objection during the trial proceedings, regarding condonation of delay in representation and payment of deficit Court fees. Having failed to object the same before the Trial Court, the plea cannot be agitated before the appellate Court. The payment of Court fees is a matter between the Court and the litigant, the defendants have no right to object, for extension of time.

10. Relying upon the judgment of this Court reported in 2009 (3) MLJ 760 and judgement of the Hon'ble Supreme Court in P.K. Palanisamy Versus N.Arumugham & Another reported in 2009 (8) MLJ 123, the Learned Counsel appearing for the appellant would contended that the delay in paying the deficit court fees will not bar the suit on the point of limitation.

11. The Learned Counsel appearing for the respondent would submit that condonation of delay in representation and payment of deficit Court fees ought to have been filed under appropriate provisions. The Trial Court, without notice and without proper application under Section 149 of C.P.C., had accepted the deficit Court fees, after delay of 1086 days and therefore, the Appellate Court has rightly dismissed the suit, referring the judgment of this Court in B.S.Santhilal (deceased) & Others Versus J.Samidurai & Another reported in 2010 (2) LW 689. The Learned Counsel appearing for the respondent would submit that extension of time for payment of Court fees not been



filed under Section 149 of C.P.C. The suit claim is liable to be rejected and point of limitation can be raised at any point of time and the Principle of Acquiescence shall not apply.

12. Heard the rival contention of the Learned Counsels. Records perused.

13. Ex.A.1 is the suit pro-note, it is dated 07.03.1998. The printed pro-note has been filled and defendant denies the knowledge about the content and specifically pleaded that the signature was obtained from him in a blank pro-notes in the year 1995.

14. The suit has been laid even without pre-suit notice and presented on 07.03.2001, which was the last date of limitation for filing the pro-note suit. This suit was presented affixing Two Rupees Court fees and no explanation found in the plaint for presenting the plaint with deficit Court fees. The Registry of the Trial Court has returned the plaint on 08.03.2001 to represent within a period of 15 days time after rectifying defects and with balance Court fees. The plaint was represented only on 27.02.2004 without any application for extension of time to pay the deficit Court fees. When the plaint was taken on file, the suit was miserably barred by limitation. Almost 6 years have passed from the date of execution of the pro-note. It is to be noted that the defendant being harassed by the plaintiff had given a complaint to the Police Commissioner on 26.02.2001 and same has been marked as Ex.B.1 and the receipt of acknowledgement marked as Ex.B.2. Only thereafter, the suit has been presented before the Trial Court on 07.03.2001 with Two Rupees Court fees as against the Court fees of Rs.1905.50 payable. When the plaint was returned for curing defect and for payment of deficit Court fees within 15 days on 08.03.2001, the plaint along with deficit Court fee had been presented only on 27.02.2004.

Section 149 of C.P.C reads as below:-

"Section 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."

15. In this case, the plaint has been represented by deficit Court fees without an application under Section 149 of C.P.C. The Trial Court had erred in holding that Ex.B.1 to Ex.B.5 are not relevant to the facts of the present case. Ignoring that the suit has been filed only after complaint given to the Police and Collector with two Rupees Court fees and leisurely been represented after delay of 10 days short of three years.

16. None should be prejudice by the Act of Court "Actus Curiae Neminem Gravabit". A strange features in this case strikingly seen is that, a pro-note suit filed without a demand or pre-suit notice on the last day of limitation with two rupees Court fees as against Rs.1905.50 same was returned on the next day for defective filing. It was not represented within a period of 15 days, the time granted but presented after 1086 days without an application under Section 149 of C.P.C, same has been accepted by the Trial Court based on an application filed under Section 151 C.P.C., which gives inherent power to the Civil Court, which can be exercised only if there is no specific provisions of law provided under the code and when necessary for the ends of justice or to prevent abuse of the process of the Court.

17. The plaint itself is in printed Form and filled up with details. After 6 years of the alleged transaction, on receipt of the notice from the Trial Court, the defendant has come to know about the suit. More strangely, the trial Court has awarded interest at the rate of 9% from 07.03.2001 till the date of decree. When the suit itself was taken on file only on 05.03.2004, after representation with deficit Court fees. This only show the non-application of mind by the Trial Court which has been rectified by the judgment of the First Appellate Court by allowing the appeal and dismissing the suit.

18. In B.S.Santhilal (deceased) & 8 others Vs. J.Samidurai and others reported in 2010 (2) LW 689, this Court has dealt at length about the consequence of filing a suit with deficit Court fees and represented beyond the period permitted without an application under Section 149 of C.P.C. The relevant passage at paragraph No.17 is extracted below:-

"17. A transaction may be set aside by reason of mistake of law, but not by reason of ignorance of law. Here, he must know the consequences of not paying the court fee in time. He has not represented the plaint in time. He represented the plaint with a delay



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of 729 days with an application under Section 151 of C.P.C. to condone the delay of 729 days in representing the plaint. But, the revision petitioners must have filed an application under Section 149 C.P.C. for extension of time for payment of deficit Court fee. So, he cannot claim that it is a mistake committed by the Court. Hence, the decision relied upon by the learned counsel appearing for the petitioners reported in (2009) 4 MLJ 505, Mansoor and others vs. Bagavathi Ammal, has no relevance. Hence, as per the decision reported in (2003) 2 MLJ 305, K.Natarajan vs. P.K.Rajasekaran, I am of the view that the revision petitioner has filed the suit on the last date of limitation with the Court fee of Rs.100/-, even then, without filing any application under Section 149 C.P.C., the Court has granted two weeks time for payment of deficit court fee as well as for rectifying the other defects. But, he has not represented the plaint in time. He represented the plaint with a delay of 729 days along with a petition under Section 151 C.P.C. He had not filed any application under Section 149 C.P.C. to extend the time for payment of court fee. In such circumstances, I do not find any merits in this Civil Revision Petition. So, I am of the view that the rejection order passed by the trial court is correct, fair and proper and it does not warrant interference."

19. Though the plea is taken at the appellate stage, the right of the defendant pointing out the patent error and illegality in entertaining the suit cannot be deprived or taken away just because, it has come to his knowledge belatedly. In view of this Court, the Lower Appellate Court has rightly considered the facts and law and has dismissed the suit. Hence, this Court finds no reason to interfere the Second Appeal. Accordingly, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar



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To:

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1. The Subordinate Judge, Gingee.

2. The Principal District Munsif Court, Gingee.

Copy to:

The Section Officer,

V.R.Section, High Court, Madras.

+1cc to Mr.D.Ravichander, Advocate, S.R.No.37143

S.A.No.1436 of 2010

RP(CO)

CB(17/08/2021)