

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 30TH DAY OF NOVEMBER 2021

THE MASTER

A.No.2665 & 2666 of 2019

in

C.S.D.No. 32423 of 2017

M/s. Karismaa Foundations Pvt. Ltd.
Represented by its Managing Director Mr. Rakesh P Sheth,
No. 340, 1st South Main Road,
Kapaleeswarar Nagar, Neelankarai,
Chennai – 600 015.

....Applicant/Plaintiff

Versus

M/s. Indus Cityscapes Constructions Pvt. Ltd.
No. 5C, Ega Trade Centre, 809, P.H.Road,
Chennai – 600 010.

....Respondent/Defendant

A.No.2665 of 2021

Application praying that this Hon'ble Court be pleased to condone the delay of 1391 days in paying deficit court fee of Rs. 3,43,729/- in Application bearing SR.No. 32423 of 2017.

A.No.2666 of 2021

Application praying that this Hon'ble Court be pleased to condone the delay of 1371 days in representing the application CS.SR.No. 32423 of 2017.

These application coming on this day before this court for hearing in the presence of Mr.Nithyaesh Natraj for M/s. Nithyaes & Vaibhav Advocates for the applicant in both applications and upon reading the Master summons and the affidavit of Rakesh P.Sheth filed in both applications and this court having observed that the suit is barred by limitation, moreover the reasons stated in affidavit in support of the application are not true and not acceptable, the reasons for delay in representation shall be explained to the satisfaction of the court, and the reason for delay is not properly explained, this court is not satisfied with the reason stated by the applicant, **it is ordered as follows :-**

That there A.Nos. 2665 & 2666 of 2019, be and are hereby dismissed.

2) That the C.S.D.No. 32423 of 2017 be and is hereby rejected.

3) That a certificate under section 70 of Tamil Nadu Court Fees and suit valuation Act, 1955 do issue herein, out of and under the seal of this court in favour of M/s. Karismaa Foundations Pvt. Ltd., represented by it managing Director Mr. Rakesh P Sheth, the plaintiff herein authorizing

them, to receive from the pay and Accounts office, High Court, Madras, a sum of Rs. 3,43,726/- (Rupees Three Lakhs Forty Three Thousand Seven Hundred and twenty Six Only) being entire court fee paid on the plaint by the plaintiff herein.

WITNESS, THE HON'BLE MR.JUSTICE MUNISHWAR NATH
BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT OF MADRAS
AFORESAID, THIS THE 30TH DAY OF NOVEMBER 2021

sd/-
ASSISTANT REGISTRAR (OS-II)

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)
From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

NS
07.12.2021

A.No.2665 and 2666 of 2021

in

C.S.D.No. 32423 of 2017

ORDER
DATED 30/11/2021

THE MASTER

FOR APPROVAL: 24/01/2022

APPROVED ON: 24/01/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 30TH DAY OF NOVEMBER 2021

THE MASTER

A.No.2665 & 2666 of 2019

in

C.S.D.No. 32423 of 2017

M/s. Karismaa Foundations Pvt. Ltd.

Represented by its Managing Director Mr. Rakesh P Sheth,

No. 340, 1st South Main Road,

Kapaleeswarar Nagar, Neelankarai,

Chennai – 600 015.

....Applicant/Plaintiff

Versus

M/s. Indus Cityscapes Constructions Pvt. Ltd.

No. 5C, Ega Trade Centre, 809, P.H.Road,

Chennai – 600 010.

....Respondent/Defendant

A.No.2665 of 2021

Application praying that this Hon'ble Court be pleased to condone the delay of 1391 days in paying deficit court fee of Rs. 3,43,729/- in Application bearing SR.No. 32423 of 2017.

A.No.2666 of 2021

Application praying that this Hon'ble Court be pleased to condone the delay of 1371 days in representing the application CS.SR.No. 32423 of 2017.

This application coming on this day before this Court for hearing the court made the following order.

1. There are two applications, one is to condone the delay of 1391 days in representing the application in C.S.D.No.32423 of 2017 and the another one is to condone the delay of 1391 days in paying deficit court fee.

2. This is the suit filed by the plaintiff for the recovery of money. The plaint was presented on 12.09.2017. The court fee to be paid along with the plaint for the purpose of relief is Rs.3,43,726/-. But the plaint was presented with a court fee of Rs.20/- only. No application under section 149 of C.P.C. was filed seeking extension of time to pay the deficit court fee. The plaint was returned on 22.09.2017 stating the reason of deficit court fee and directed to comply the same within 10 days. Thereafter the plaint was represented on 04.03.2021, along with these applications.

3. We all know that when the plaint is represented and the delay is condoned the date of presentation of plaint will be reverted back to the earlier date of presentation when it was presented for the first time. This plaint has been represented after 3 years and 10 months. The plaintiff has claimed interest for principal amount as 24% per annum. The value of relief claimed by the plaintiff is doubled as on today. But the plaintiff has paid today, the court fee for the relief of value valued before 3 years and 10

months. Moreover, interest on principal amount for this period will be added in the decretal amount and the defendant has to pay the same to the plaintiff in future if the plaintiff succeeds. Serious prejudice will be caused to the defendant. The defendant cannot be put to suffer because of the default on the plaintiff.

4. The limitation period to file a suit for recovery of money is three years. When the Act prescribes a period of limitation for an act to be done within a particular period it should have been done within that period. The limitation period cannot be extended according to the whims and fancies of the party or counsel in any manner. The plaintiff has stated in the plaint that the transaction was started in the year 2009 and transaction was completed in the year 2014. The plaint was presented in the year 2017 only. But this Court do not want to go into the merits of the case whether it is filed within limitation period or not. But even for a shake of argument, if the Court considers that the suit was filed within the period of limitation, when it was returned in the year 2017 and represented in the year 2021, the suit itself is barred by limitation.

5. The plaintiff has not sought for extension of time for paying deficit court fee. And also he has not come forward to pay the same within the period of time granted by the Court. The delay is more than 3 years and

10 months i.e., 1391 days. Without leave of the court, the plaintiff or his counsel has kept the returned plaint with them for more than 3 years and 10 months. Since they failed to represent the same within time granted the suit itself barred by limitation.

6. Moreover, the reasons stated in the affidavit is not satisfactory in the opinion of this Court. The averments found in the affidavit that the Junior counsel left the office and misplaced the bundle is not acceptable. This is a regular routine averment. The another averment is that due to the lack of knowledge of Junior counsel deficit court fee was affixed. This reason does not seem to be a bonafide one. Only a court fee for Rs.20/- has been affixed with the plaint. It cannot be said that there is deficit of court fee. But the entire court fee is not paid. This reason stated is also not seem to be true.

7. At this stage it is relevant to point out the provision of C.P.C under Order VII Rule 11 and the proviso.

Order 7 : Plaint Rule 11: Rejection of plaint.-- The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written 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;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9;

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."

The plaintiff has not paid the court fee at the time of presentation of plaint. Even after return of the plaint he has not paid the court fee within time granted by the Court. No application under Section 149 of C.P.C. for the extension of time to pay court fee is filed. There is no explanation from the plaintiff to the satisfaction of the Court that why the court fee has not been paid. Since the reason stated by the plaintiff is not satisfactory, as per Order VII Rule 11 (c) of C.P.C., the plaint is liable to be rejected.

8. This Court cannot consider this representation as a delay in representation. Though the plaint is presented first time within the period of limitation when it is represented after 3 years and 10 months after the time limit given by the court for compliance, this Court of the opinion that the suit is barred by limitation. The same cannot be condoned as a delay in representation.

9. This Court issued notice on these applications to the respondent/defendant. But after receiving notice the respondent/defendant

has not appeared. Though the respondent received notice and not appeared before the Court, it is not a ground to allow these applications by condoning the delay. Even though limitation point is not pleaded as defence, it is for the Court to dismiss the suit when the suit is barred by limitation.

10. The plaintiff has not paid court fee along with the plaint. He has not filed any application to extend the time for paying deficit court fee under Section 149 of C.P.C. The returned plaint was not represented within time granted and represented after the period of 3 years and 10 months. Therefore the suit is barred by limitation. Moreover, the reasons stated in the affidavit in support of the applications are not true and not acceptable. The reasons for delay in representation shall be explained to the satisfaction of the Court. The reason for delay is not properly explained. This Court is not satisfied with the reason stated by the applicant. In fine, this Court is not inclined to allow these applications and these applications are dismissed. The plaint is ordered to be rejected. The court fee paid along with the plaint during representation is ordered to be refunded.

Sd/-MASTER
30/11/2021

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)
From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.