

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2127 of 2017

Shanmugam

... Petitioner

Vs.

N.C.Saravanabhavan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 27.11.2015 made in I.A.No.475 of 2015 in un-numbered O.S.No.Nil of 2015 on the file of the District Munsif Court-cum-Judicial Magistrate's Court, Kodumudi, Erode District.

For Petitioner : Mr.C.Prakasam

For Respondent : No appearance

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

Civil Revision Petition is filed against the fair and decretal order dated 27.11.2015 made in I.A.No.475 of 2015 in un-numbered O.S.No.Nil of 2015 on the file of the District Munsif Court-cum-Judicial Magistrate's Court, Kodumudi, Erode District.

2.The petitioner is plaintiff and respondent is defendant in O.S.No.Nil of 2015 on the file of the District Munsif Court-cum-Judicial Magistrate's Court, Kodumudi, Erode District. The petitioner has presented the plaint in the Court of District Munsif-cum-Judicial Magistrate, Kodumudi, Erode District, for recovery of money of Rs.67,983/- based on the promissory note for Rs.50,000/- executed by the respondent. The Court fee payable by the petitioner is Rs.5,099.50. The petitioner affixed Rs.100/- and presented the plaint. The learned Judge returned the plaint directing the petitioner to pay the deficit Court fee and granted one week time for representing the plaint by affixing correct Court fee. The petitioner represented the plaint along with I.A.No.475 of

2015 to condone the delay of 145 days. The learned Judge dismissed the I.A. and returned the plaint stating that as per Section 148 of C.P.C., the Court has power to extend the time only by 30 days.

3. Against the said fair and decretal order dated 27.11.2015 made in I.A.No.475 of 2015 in un-numbered O.S.No.Nil of 2015, the petitioner has come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioner contended that the petitioner has filed suit for recovery of money based on the promissory note executed by the respondent. According to the petitioner, the Court fee papers were not available at Kodumudi during the time of filing suit and in order to avoid limitation, the petitioner presented the plaint by affixing Rs.100/- Court fee to save the limitation. The learned Judge returned the plaint giving one week time to represent the same along with proper Court fee. Due to ill-health of the petitioner, he could not purchase stamp papers and represent the plaint in time. On 04.09.2015, he purchased Rs.5,000/- Court fee papers and represented

along with I.A.No.475 of 2015 to condone the delay of 145 days in representing the plaint. The Court erroneously dismissed the I.A. for extension of time to pay Court fee, returned the plaint and prayed for allowing the Civil Revision Petition.

5.In support of his contentions, the learned counsel appearing for the petitioner relied on the following judgments:

- (i) **Order dated 17.09.2014 made in C.R.P.(MD)No.330 of 2008 [Natarajan vs. Jacob Manohar];**
- (ii) **(2009) 3 MLJ 760 [A.Gurunathan @ Sivaji vs. J.Muthulakshmi and others];**
- (iii) **2013 (6) CTC 765 [Manoharan vs. Sivarajan & others];**

6.Though notice was served on the respondent and his name is printed in the cause list, there is no representation for him either in person or through the counsel.

7.Heard the learned counsel appearing for the petitioner and

perused the entire materials on record.

8.From the materials available on record, it is seen that the learned Judge rejected the plaint on the ground that the Court has power to extend the time only for 30 days and he has no power to extend beyond 30 days. The said reason is contrary to Section 148 of C.P.C. and the two judgments relied on by the learned counsel appearing for the petitioner. The judgment of the Hon'ble Apex Court reported in **2013 (6) CTC 765 cited supra** relied on by the learned counsel for the petitioner is squarely applicable to the facts of the present case. The Court has discretion to extend the time for payment of Court fee at any stage as per Section 149 of C.P.C. The Hon'ble Apex Court also held that the Court has discretion to extend the time to make deficit Court fee payable by litigant and discretion must be exercised in favour of litigant, unless the intention of the litigant is malafide or he suppressed the material fact. In the present case, the petitioner has stated that when he presented the plaint before Kodumudi, Court fee papers were not available in Kodumudi.

Subsequently, according to the petitioner, due to his ill-health, he could not purchase the Court fee papers and represent the plaint in time. The reasons given by the petitioner are acceptable and the learned Judge ought to have exercised his discretion and numbered the plaint, if it is otherwise in order. For the above reasons, the order of the learned Judge is liable to be set aside and is hereby set aside. The petitioner is directed to re-present the plaint with correct Court fee within a period of two weeks from the date of receipt of a copy of this order. On such re-presentation, the learned Judge is directed to take the plaint and number the plaint, if it is otherwise in order and proceed as per law.

9. With the above directions, the Civil Revision Petition stands allowed. No costs.

Index : Yes/No
Internet: Yes/No
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V.M.VELUMANI,J.

Kj

To

The District Munsif-cum-Judicial Magistrate
Kodumudi, Erode District.



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