



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2021

CORAM

THE HONOURABLE MR.JUSTICE **R. SUBRAMANIAN**

C.R.P.(MD)No.1668 of 2009

R.V.Perumal Asari

: Petitioner

Vs.

1.Abdul Salam (Died)

2.The Branch Manager,
Tamil Nadu Small Scale Industrial
Development Corporation Limited,
Virudhunagar - 626 003.

3.Daulath Salam

4.Arifa Sadat

5.Sailaja Banu

: Respondents

(R3 to R5 are brought on record as legal representatives of deceased first respondent vide order of this Court, dated 28.07.2020 made in C.M.P.(MD)Nos.6122, 6126 and 6128 of 2019)

PRAYER:- Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair order and decreetal order, dated 02.03.2009 made in I.A.No.268 of 2008 in O.S.No.81 of 2008 on the file of the District Munsif Court, Aruppukottai.

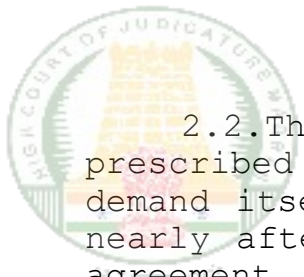
For Petitioner	:Mr.V.Mariselvaraj
R1	:Died
R2	:No Appearance
For R3 to R5	:Mr.M.M.Iqbal

ORDER

This revision is against the order made in I.A.No.268 of 2008, in and by which, the trial Court dismissed the application for extension of time for payment of deficit Court fee.

2.The facts, that lead to filing of this revision, are as follows:

2.1.The plaintiff sued for specific performance of an agreement of sale entered into between him and the first defendant on 25.10.2004. The suit property, admittedly, belonged to the second defendant and it is stated that it was allotted to the first defendant. The prayer of the plaintiff is to direct the first defendant to compel the second defendant to execute the sale in his favour and thereafter, execute a sale in favour of the plaintiff. The Court pay fee payable in the suit was stated to be Rs.6,826.50/-. However, only Rs.41/- was paid along with the plaint.



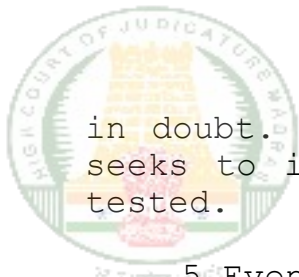
2.2.Though the agreement of sale is dated 25.10.2004 and it prescribed the period of two months for performance, the notice of demand itself was issued by the plaintiff only on 27.11.2007, ie., nearly after expiry of three years one month from the date of the agreement, it is claimed that since no sale deed was obtained by the first defendant from the second defendant, the plaintiff could not seek specific performance earlier.

2.3.Be that as it may, the conduct of the plaintiff in filing the suit on 17.12.2007 by paying Rs.41/- as Court fee instead of 6826.50/- needs further probe. The plaint was presented on 17.12.2007 and the trial Court, on 20.12.2007 returned the plaint requiring the plaintiff to make good the deficit Court fee. The plaint was re-presented on 21.01.2008 with an endorsement, "order complied with, re-presented". Again on 22.01.2008, the trial Court returned the plaint with an endorsement "Earlier defects have not been rectified". The plaint was again re-presented for the second time on 20.02.2008, with an endorsement "Deficit Court has been paid along with petition to condone delay under Section 149 of CPC". The Court directed the Registry to number the suit subject to maintainability and issue notice in the application for condonation of delay in payment the deficit Court fee, namely, I.A.No.268 of 2008.

2.4.The reason assigned in that application is that the plaintiff had financial difficulties. As alright pointed out, the suit is one for specific performance and the plaintiff is expected to be ready and willing through out the period. Whether a plaintiff, who seeks time to pay Court fee on the ground that he experiencing financial difficulties, could be said to be ready and willing is a larger question. We need not go into the said question at this stage, as I am convinced that the attempt of the plaintiff is not *bona fide*.

3.Section 149 of CPC empowers the Court to condone the delay in payment deficit Court *de hors* the question of limitation. Order 7 Rule 11(C) of CPC also enables the Court to require the plaintiff to make good the deficit Court fee at any point of time. Therefore, the power of the Court to condone the delay in paying the deficit Court fee or to require the plaintiff to pay the deficit Court fee at any point of time cannot be questioned. However, the Courts have held that the delay in paying the deficit Court fee should be *bona fide* and it should not be a *mala fide* attempt.

4.The learned Counsel for the petitioner would rely upon the judgment of Honourable Supreme Court in the case of **Manoharan vs Sivarajan and others**, reported in **2013 (6) CTC 765**, wherein, the Honourable Supreme Court has pointed out that the Civil Court has power to retrospectively validate insufficiency of stamp duties and Court fees. As I already pointed out, the power of the Court is not



in doubt. But, the reasonableness or *bona fides* of the party, who seeks to invoke the said power of the Court, has to be definitely tested.

5. Even in the said judgment cited by the learned Counsel for the petitioner, the Honourable Supreme Court has pointed out that the power to condone the delay or the discretion to condone the delay should be exercised in favour of the litigating parties, unless there are manifest ground for *mala fide*. The Honourable Supreme Court has further gone on to state that while extending the time for payment of Court fee, the Court must ensure the *bona fide* of such discretionary power.

6. If the conduct of the plaintiff is tested on the above principles of law laid down by the Honourable Supreme Court, I am afraid that the plaintiff will fail in this revision. As I already pointed out, the plaint was originally returned on 20.12.2007 granting a months time for the plaintiff to make good of deficit Court fee. Though the plaintiff re-presented the plaint on 21.01.2008, he did not choose to make good the deficit Court fee nor he did not make any attempt to get an order of extension. The plaint was re-presented with the following endorsement, "Defects have been complied with and re-presented". It is only after the Court again pointed out that the deficit Court fee has not been made good, did the plaintiff pay the deficit Court along with an application under Section 149 CPC., on 20.02.2008. This conduct of the plaintiff, in my considered opinion, cannot be said to be *bona fide*.

7. It is not as if that there was some miscalculation of Court fee payable or some uncertainty in the quantum of Court fee to be paid. The plaintiff was very much aware of the quantum of Court fee and even the memorandum of valuation in the plaint reflects that the plaintiff had to pay a sum of Rs.6826.50/- as Court fee. But, he deliberately chose to pay Court of fee of Rs.41/- while presenting plaint. This by itself would show that the plaintiff's attempts are not *bona fide* and therefore, the plaintiff does not deserve the indulgence of the Court or exercise of discretion in his favour. I, therefore, do not find any illegality or irregularity in the order of the Court below and the revision, therefore, fails and it is, accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar (CS)



To

1.The District Munsif, Aruppukottai.

2.The Section Officer, (2C)

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.

+1CC to Mr.V.Mariselvaraj, Advocate, SR.No.6773 dated 23.02.2021

C.R.P. (MD)No.1668 of 2009
23.02.2021

SV2 (CO)

KB(11.03.2021) 4P 5C