



WEB COPY



C.R.P. (PD) .No.2912 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2912 of 2021

R.Anikumar

.. Petitioner

Vs.

P.Neelakandan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order passed by the learned Sub-Judge at Tambaram in I.A.No.339 of 2021 in I.A.No.240 of 2021 in O.S.Sr.No.3465 of 2021 dated 28.10.2021 by allowing this Civil Revision Petition.

For Petitioner : Mrs.T.Jayanthi

ORDER

Page No.1/7



C.R.P. (PD) .No.2912 of 2021

In view of the fact that the order has been passed prior to the numbering of the suit, notice to the respondent is deemed un-necessary.

2. Challenge in this Revision is to the order of the trial Court made in I.A.No.339 of 2021, in and by which, the trial Court, dismissed the petition filed by the petitioner seeking to dispense with notice to the respondent in I.A.No.240 of 2021, an application filed under Section 149 of the Code of Civil Procedure seeking condonation of delay in payment of deficit Court fee.

3. The petitioner had filed a suit for recovery of advance paid by him under the agreement of sale dated 08.03.2019. The petitioner had valued the suit at Rs.6,50,000/- and paid Court fee of Rs.19,500/-. The plaint was returned requiring the petitioner to add the interest and pay the Court fee on it. Accordingly, the plaintiff added the interest and paid the deficit Court fee also. The plaint was presented on 27th July 2021. The agreement of sale is dated 08.03.2019. The plaintiff has a minimum of 3 years to sue for refund. The suit has been filed well within the limitation period. The re-valuation of



C.R.P. (PD) .No.2912 of 2021

the suit has also been done within the limitation period and the deficit Court fee has also been paid within the limitation period.

4. The trial Court however ordered notice in the application in I.A.No.240 of 2021 seeking condonation of delay of payment of deficit Court fee. The trial Court relied upon the judgment of this Court in CRP.(MD).(PD).No.259 and 1010 of 2012 to order notice.

5. The petitioner filed application in I.A.No.339 of 2021 pointing out that since the Court fee has been paid before the expiry of period of limitation in the suit, no notice is necessary in the application for condonation of delay in payment of deficit Court fee. The petitioner relied upon the judgment of the Division Bench of this Court in ***K.Natarajan Vs. P.K.Rajasekaran*** reported in ***2003 (2) MLJ 305***, wherein the Division Bench has pointed out that if the entirety of the Court fee is paid within the limitation period and the mistake was out of the *bona fide* error, notice is not necessary in an application seeking condonation of delay in payment of deficit Court fee. The



C.R.P. (PD) .No.2912 of 2021

same view has been reiterated in CRP.(MD).(PD).No.259 and 1010 of 2012 by Hon'ble Mr.Justice N.Anand Venkatesh. In fact the learned Judge has referred to the judgment in *K.Natarajan Vs. P.K.Rajasekaran* reported in **2003 (2) MLJ 305**, where the Division Bench has specifically pointed out that if the deficit Court fee is paid within the time granted, no notice is necessary.

6. The learned trial Judge mis-read the judgments of this Court and concluded that in all cases where the plaintiff seeks condonation of delay in payment of Court fee, notice has to be ordered to the respondent. On that premise the learned trial judge dismissed the application in I.A.No.339 of 2021.

7. I am satisfied that the dismissal of I.A.No.339 of 2021 is erroneous. From the dates mentioned it is clear that the plaintiff has paid entire Court fee within the time allowed under law for institution of suit. Therefore, no prejudice would be caused to the defendant by condonation of delay. The



C.R.P. (PD) .No.2912 of 2021

Division Bench in *K.Natarajan Vs. P.K.Rajasekaran* reported in 2003 (2)

WEB CO

MLJ 305, has specifically pointed out that if the entire Court fee is paid within the limitation period provided for filing the suit, no notice is necessary to the respondent in the application for condonation of delay in payment of deficit Court fee.

8. In such view of the matter, I am convinced that the Revision has to be allowed. Therefore, the Revision is **allowed**. The order in I.A.No.339 of 2021 is set aside, I.A.No.240 of 2021 will stand allowed and the delay in payment of deficit Court fee is condoned. The trial Court viz., learned Subordinate Court, Tambaram is directed to number the suit and proceed with the trial in accordance with law. No costs.

03.01.2022

dsa

Index : No

Speaking order

Page No.5/7



C.R.P. (PD) .No.2912 of 2021

To

The Sub-Judge, Tambaram

R.SUBRAMANIAN, J.

dsa

C.R.P.(PD).No.2912 of 2021

03.01.2022

Page No.6/7



WEB COPY



C.R.P. (PD) .No.2912 of 2021