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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.11.2021

Pronounced on : 04.02.2022

C O R A M

THE HONOURABLE Mrs. JUSTICE S.KANNAMMAL

Civil Revision Petition No.2245 of 2017
and
CMP No. 10620 of 2017

M.S.Chandrasekar

..Petitioner/plaintiff

Vs

M/s.Sattva CFS & Logistics (P) Ltd
Rep. By its Managing Director
Narasimhan
Old.No.82 New No.153
Sundaram Pioneer Tower
Near Iyyappan Temple
Santhome High Road
Raja Annamalai Puram
Chennai

..Respondent/Defendant

Prayer: Civil Revision Petition is filed against the fair and decreetal order passed in I.A.No.2690 of 2017 in O.S.No.5510 of 2013 on the file of Vth Assistant, City Civil Court at Chennai, dated 22.03.2017.

For Petitioner .. Mr.N.Velayudham

For Respondent .. Mr.Patrick Ryan

ORDER

This Civil Revision Petition is directed against the fair and decreetal order passed in I.A.No.2690 of 2017 in O.S.No.5510 of 2013 on the file of Vth Assistant, City Civil Court at Chennai, dated 22.03.2017.

2.The case of the petitioner before the Court below in nutshell is as follows:

The petitioner is the plaintiff in the suit in O.S.No.5510/2013 filed for a direction to the defendant to pay a sum of Rs.1,02,348/- with interest from the date of legal notice till the date of realisation. Pending suit, the respondent filed I.A.No.2690 of 2017 to reopen the suit under section 151 of the Code of Civil Procedure.



3. The defendant raised a counter claim to return the HP Pavillion Lap Top G6 series and the defendant has not paid any court fee in respect of the counter claim and it came to light when the suit was reserved for judgment and the non payment of court fee is neither wilful nor premeditated one and hence I.A. is filed for a direction to reopen the suit for payment of court fee in respect of the counter claim.

4. Considering the oral and documentary evidence, the trial Court allowed the interlocutory application by stating that an opportunity is to be given to the petitioner to pay the court fee in the counter claim raised in the written statement, against which, the respondent is before this Court.

5. Per Contra, the learned counsel appearing for the petitioner would contend that the trial Court has failed to consider the counter filed by the petitioner in the petition to re-open and also failed to note that the Court fee for counter claim shall not be entertained at this stage of judgment and sought for setting aside the order passed by the trial Court.

6. This Court perused the entire materials available on record. The respondent herein has filed a petition to re-open the case and to condone the delay in payment of Court fee. The main suit in O.S.No.5510 of 2013 has been filed by the petitioner herein for recovery of Rs.1,02,348/- from the defendant. The defendant in the main suit has filed written statement denying all the allegations in the plaint and sought for dismissal of the suit. The other prayer is ordering the plaintiff to return to the defendant HP Pavillion Laptop G6 series containing the sensitive opinion about the defendant companies trade secrets. According to the respondent herein since he has omitted to pay the Court fee for the above prayer, he filed I.A.No.2690 of 2017 and the trial Court has rightly allowed the same and no interference is called for.

7. The learned counsel appearing for the petitioner would contend that such petition for payment of Court fee for counter claim shall not be entertained at this stage of judgment and relied on the judgments reported in AIR 1991 Karnataka 283(1), AIR 1986 Punjab & Haryana 252(1) and AIR 1991 MAD 163. On careful perusal of the above said judgments, the facts and circumstances are entirely different. In the present case on hand, the respondent herein has prayed for return of HP Pavillion Lap Top G6 series in the written statement which was filed as early as on 28.02.2014 itself.

8. The learned counsel for the respondent would submit that the payment of Court fees is between the Court and the litigant and there is nothing wrong in the findings of the trial Court. The learned counsel for the respondent also relied on a judgment by the Apex Court in the case of



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P.K.Palanisamy Vs. N.Arumugham & Another in which at paragraph No.16 of the judgment, the scope of Section 149 of CPC has been considered by pointing about the judgment in Mahasay Ganesh Prasad Ray & Another Vs. Narendra Nath Sen & Others [AIR 1953 SC 431].

9. In the above case, it has been held that the Court fee is a matter between the State and the suitor. The Apex Court has also extracted the relevant portion of judgment in K.C.Skaria Vs. Govt. of State of Kerala & Another [(2006) 2 SCC 285] in paragraph No.20:

"20. The appellant next attempted to press into service Section 149 of CPC to contend that he ought to have been given an opportunity to pay the deficit court fee on the total amount due for the work done. Section 149 provides that where the whole or any part of court fee prescribed for any document 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 court fee had been paid in the first instance. Section 4 of the Court Fee Act bars the court from receiving the plaint if it does not bear the proper court fee. Section 149 acts as an exception to the said bar, and enables the court to permit the plaintiff to pay the deficit court fee at a stage subsequent to the filing of the suit and provides that such payment if permitted by the court, shall have the same effect as if it had been paid in the first instance. Interpreting Section 149, this Court in Mannan Lal v. Chhotka Bibi (AIR 1971 SC 1374) held that Section 149 CPC mitigates the rigour of Section 4 of the C.F. Act, and the courts should harmonise the provisions of the C.F. Act and the CPC by reading Section 149 as a proviso to Section 4 of the C.F. Act, and allowing the deficit to be made good within the period to be fixed by it. This Court further held that if the deficit is made good, no objection could be raised on the ground of bar of limitation, as Section 149 specifically provides that the document is to have validity with retrospective effect."

10. Hence, this Court does not find any infirmity in allowing the petition passed by the trial Court in I.A.No.2690 of 2017 in O.S.No.5510 of 2013 filed under Section 149 r/w Section 157 of CPC, on the file of Vth Assistant, City Civil Court at Chennai, dated 22.03.2017.



11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gbi

To

1.The Vth Assistant Judge,
City Civil Court at Chennai.

2.The Registrar,
City Civil Court,
Chennai.

C.R.P.No.2245 / 2017

GJ (CO)

PR (21/02/2022)