



Orders Reserved on 28.08.2024	Orders Pronounced on 03.09.2024
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A.Nos.3995 & 3996 of 2023
in
C.S.DR.No.95746 of 2019

RMT. TEEKAA RAMAN, J.

The applicant in both applications is the plaintiff in the suit filed in
C.S.DR.No.95746 of 2019.

2. To set aside the common order of dismissal dated 02.12.2022 in
A.Nos.5227 and 5228 of 2022 passed by the learned Master, these
applications have been filed.

3. The suit has been filed for recovery of money from the defendants
arising from a contract entered into between the parties and it was not
completed. Hence, applicant/plaintiff was constrained to file the above suit
for recovery of money allegedly paid for service tax, retention of money,
refundable deposit and other claims as stated in the plaint.



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4. Before the learned Master, two applications in A.Nos.5227 and 5228 of 2022 were filed seeking (i) condonation of delay of 1161 days in representing the plaint; and (ii) to condone the delay of 1181 days in paying the deficit court fees. Both applications were dismissed by the learned Master, leading to the filing of the present applications.

5. Respondents 1 to 4 entered appearance through counsel. The matter was referred to mediation by order dated 05.11.2023. However, it is seen that the mediation failed.

6. Heard the learned counsel for the applicant/plaintiff and the learned counsel appearing for respondents 1 to 4/defendants 1 to 4.

7. On perusal of the impugned common order dated 02.12.2022, this Court finds that the learned Master has observed, based upon the records, that there is an improper presentation and under the guise of re-presentation and that the plaintiff wanted to bring the suit in time. Ultimately, the learned Master dismissed the said applications.



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8. Learned counsel for the applicant/plaintiff would contend that due to Covid-19 pandemic situation, he could not represent the papers returned by the Registry nor was able to mobilize the funds for payment of required court fee. Hence, he prayed for allowing the present applications.

9. On the contrary, the learned counsel appearing for respondents 1 to 4/defendants 1 to 4 made submissions in support of the common order dated 02.12.2022 passed by the learned Master.

10. On further perusal of the said common order dated 02.12.2022, it is also seen that the plaint was presented and once again re-presented on various dates. The relevant portion reads as follows :

"This is the suit for recovery of money. The plaint was presented before this Court on 26.07.2019 and returned on 29.07.2019. It was re-presented on 02.08.2022 and again returned on 03.08.2022. Again, the same was re-presented on 26.08.2022 and again returned on 02.09.2022. Again re-presented on 06.09.2022 and returned on 20.09.2022. Again re-presented on 06.09.2022



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and returned on 20.09.2022. Again re-presented and returned on 13.10.2022. Finally now it is re-presented on 04.11.2022, with these applications to condone the delay of 1181 days in representation and to condone the delay in paying court fees."

11. It is also relevant to extract paragraph 6 of the said common order dated 02.12.2022, which reads as follows :

"The plaint was returned for the first time in the year 2019 for want of court fee. Only a court fee stamp for Rs.10/- was affixed with the plaint at the time of presentation. The recovery amount is nearly 2 ½ crores. The required court fee to be paid along with the plaint would have been nearly 2 ½ lakhs. The Registry while returning the plaint mentioned specifically to pay the deficit court fee. After three years of time when it was re-presented for the first time on 02.08.2022, the same was not complied and the court fee is paid only on 15.10.2022."

12. From the returned plaint, I find that no application has been filed



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at the time of presenting the plaint under Section 149 of the Civil Procedure Code, seeking leave of the Court to pay deficit court fee in future.

13. The reason assigned for condoning the huge delay of 1161 days in representing the plaint was that due to Covid -19 pandemic, the plaint could not be represented. As stated supra, the plaint was presented on 24.7.2019 and was returned on 29.7.2019 and it was represented only on 02.08.2022 i.e after a period of three years. After various returns, the plaint was once again represented on 04.11.2022. Hence, this Court finds that the reason assigned by the applicant/plaintiff appears to be a tailor-made reason not suiting the plaint endorsement. Besides that, this Court also finds that the cause of action stated in the plaint is 30.7.2016. The limitation period is 30.7.2019. However, the plaint was filed on 26.7.2019 without any application under Section 149 of the CPC.

14. As per the Court docket endorsement, the court fee stamp of Rs.10/- alone was affixed with the plaint. The suit claim is for about Rs.2.5



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Crores. The court fee is roughly calculated at about Rs.2.5 lakhs. Further, the calculation of court fee has been indicated in the return dated 29.7.2019. However, once again, the plaint was represented on 02.8.2022 without payment of the deficit court fee. Even subsequently, the required court fee was not paid. Here, the non filing of application under Section 149 of the CPC application assumes significance.

15. The learned Master relied upon the decision of a learned Single Judge of this Court in the case of ***General Manager Vs. Veeyar Engineering & Contractors*** [reported in ***(2019) SCC OnLine Mad. 5586***], in which, the decision rendered by a Division Bench of this Court in the case of ***K.Natrajan Vs. P.K. Rajasekaran*** [***A.S.No.375 of 1989 dated 30.04.2003***] wherein the scope of Section 149 of the CPC and Section 4 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 were dealt with and it has been held that a plaint presented without necessary court fee could not be termed as proper presentation and even for representation at the first instance, neither proper court fee was paid nor application under Section 149 of the CPC was filed. Hence, the learned Master observed that the



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application filed to condone delay in representation is only a colour to get over the period of limitation.

16. This Court finds that right from the beginning, the plaintiff was not diligent enough and that plaint was presented on 24.7.2019 without payment of proper court fee. After three years from the date of presentation, the plaint was represented only on 02.8.2022 and even the court fee was paid on 15.10.2022 i.e. more than three years after the presentation of the plaint. In other words, the court fee was paid after six years of the cause of action and hence, this Court is not expressing any opinion on the point of limitation. But, this Court could very well state that it is an improper presentation. The improper presentation will not arrest the running time of limitation period as defined in the Limitation Act. There is no cause much less sufficient cause for condoning the huge delay of 1161 days in representation and 1181 days in paying the deficit court fee.

17. The petitioner has come forward that the specific case that he had difficulty in mobilizing the funds viz., Rs.2.5 lakhs for the purpose of paying



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the court fee. As per the averments contained in the plaint, he is a contractor engaged in multiple crores of business and the learned Master has rightly rejected the alleged plea of difficulty in mobilizing the funds for paying the required court fee. I do not find any error or illegality warranting interference with the findings rendered by the learned Master.

18. As the applicant/plaintiff having not satisfactorily explained the delay of 1161 days in representation and 1181 days in paying the required deficit court fee, the learned Master has rightly ordered the plaint to be rejected. The common order of the learned Master dated 02.12.2022 is hereby confirmed.

19. For the foregoing reasons, both these applications in A.Nos.3995 & 3996 of 2023 stand dismissed. The court fee already paid is ordered to be returned to the applicant/plaintiff in accordance with law.



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Pre-Delivery Order in
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