



S.A. No. 1379 of 2011

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.09.2024
Pronounced on : 29.10.2024

CORAM

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

S.A. No.1379 of 2011
and
M.P.No.1 of 2011 and M.P.Nos.1, 2 & 3 of 2012

Sennan

... Appellant

Versus

1.Shoba
2.Rajkumar

...Respondents

Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 28.02.2011 in A.S.No.20 of 2009 on the file of the Subordinate Court at Permbalur, confirming the judgment and decree dated 25.03.2009 in O.S.No.229 of 2004 on the file of the District Munsif Court at Permbalur.

For Appellant : Mr. P. Valliappan, Senior Counsel.
for Mr. T. Deeraj

For Respondents : Mr. R. Parthiban



S.A. No. 1379 of 2011

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JUDGMENT

The defendant is the appellant in this second appeal. The suit filed by the respondents-plaintiffs has been decreed as against which the appellant has filed first appeal and the same was also dismissed. Therefore, the defendant has preferred this second appeal.

2. For the sake of convenience, the parties are referred as plaintiffs and defendant as referred in the original suit.

3. Originally the suit in O.S.No.229 of 2004 was filed by the plaintiffs for recovery of a sum of Rs.95,081.25/- from the defendant, with interest at the rate of 9% per annum from the date of plaint and 6% per annum till the date of realization.

4. The contention of the plaintiffs in the plaint is that the defendant borrowed a sum of Rs.75,000/- from one Maheswari/the first plaintiff on 21.11.1999 and executed a promissory note on the same day promising to pay interest at the rate of 24% per annum. Despite agreeing



S.A. No. 1379 of 2011

WEB COPY

to repay, the defendant failed to do so. On 09.07.2002, the first plaintiff issued a legal notice to the defendant demanding the payment. The defendant responded to the said notice and issued a reply notice dated 23.07.2002, denying all the contentions raised by the first plaintiff in the legal notice. Even though the defendant replied to the first plaintiff, he did not pay the principal amount or interest. Consequently, the plaintiffs filed the present suit to recover the sum of Rs.75,000/- along with interest at the rate of 9% per annum.

5. During the pendency of the suit, the first plaintiff, Maheswari, passed away on 20.05.2007. Subsequently, applications were filed to bring on record the legal heirs of the deceased first plaintiff and the second and third plaintiffs were brought on record.

6. The defendant filed a written statement denying the allegations made in the plaint and contended that he never received Rs.75,000/- loan from the first plaintiff on 21.11.1999. Instead, he borrowed Rs.15,000/- and paid Rs.1,500/- towards interest for the said



S.A. No. 1379 of 2011

WEB COPY

sum. Further, he contended that after deducting the interest amount, he had received only a sum of Rs.13,500/- from the first plaintiff. Additionally, he also paid the interest of Rs.1,500/- for the consecutive two months. Even though the first plaintiff lodged a complaint before the Inspector of Police, Crime Branch, he handed over a sum of Rs.3,000/- in the police station, by which, totally he had settled a sum of Rs.6,000/-. Later the first plaintiff paid the principal along with interest to the total sum of Rs.15,000/-. In addition, he contended that the plaintiff obtained signature on blank stamped and unstamped papers besides the promissory note which were made use of for filing the present suit.

7. The Trial Court had formulated the following issues based on the plaint and the written statement:-

“1) Whether the plaintiff is entitled to recover the amount?

2) What other relief is available to the plaintiff?”



S.A. No. 1379 of 2011

WEB COPY

8. Before the Trial Court, the first plaintiff was examined as P.W.1, who died after deposition. One Maruthambal and one Kannan were examined as P.W.2 and P.W.3 respectively and the documents Exs.A1 to A4 were marked. The defendant was examined as D.W.1 and his wife, namely, one Pushpavalli was examined as D.W.2 but no document was marked on the side of the defendant.

9. The Trial Court, while evaluating the evidence and documents marked on either side, considered Ex.A1/promissory note dated 21.11.1999, executed by the defendant on the same date in favour of the first plaintiff for a sum of Rs.75,000/-. The Trial Court observed that P.W.2 and P.W.3, witnesses, corroborated the evidence of first plaintiff with regard to Ex.A1/promissory note. Thus, it was held that the plaintiffs established their case that the defendant received the said amount for his urgent requirement and affixed his signature in the promissory note in the presence of witnesses P.W.2 and P.W.3.



S.A. No. 1379 of 2011

WEB COPY

10. During the cross-examination of P.W.1, it was stated that the defendant affixed his signature in the promissory note and took the sum of Rs.75,000/- in cash, consisting of 7 bundles of Rs.100/-, a separate bundle of Rs.50/-, totaling Rs.75,000/-. Although P.W.3 stated that he did not witness the receipt of the amount by the defendant in his cross-examination, P.W.3 has stated that he had written the said promissory note dated 21.11.1999 and he witnessed when the defendant affixed his signature by stating that he has received the said amount.

11. The Trial Court also examined the correctness of the defendant's deposition as he has stated that a police complaint was filed, and based on that complaint, a sum of Rs.3,000/- was handed over to the first plaintiff in the presence of the Inspector of Police, Crime Branch. The defendant claimed that he received only Rs.15,000/-, in which Rs.1,500/- was deducted towards interest and he was given Rs.13,500/-. The defendant stated that the signature of the defendant and other witnesses in the promissory note were in two different inks, and contended that the execution of promissory note itself was a forged one.



S.A. No. 1379 of 2011

WEB COPY

12. The Trial Court, after evaluating the evidence and documents produced by the defendant, concluded that the defendant failed to produce any documents to support his claim of receiving only Rs.15,000/-. Additionally, there was no evidence to show that the defendant had settled Rs.3,000/- towards the principal amount on the basis of the complaint filed by the first plaintiff before the Inspector of Police, Crime Branch. The defendant has made only an oral submission before the Court without presenting any evidence regarding the alleged complaint or alleged payment made to the first plaintiff in the presence of the Inspector of Police. In the absence of evidence supporting the defendant's claims, the Trial Court relying on the available evidence, specifically Ex.A1/ Promissory note dated 21.11.1999, decreed the suit in O.S.No.229 of 2004 in favour of the plaintiffs.

13. Aggrieved by the same, the defendant filed an appeal in A.S. No.20 of 2009 before the Sub-Court, Perambalur. The First Appellate Court to ascertain the correctness of the judgment and decree passed in the



S.A. No. 1379 of 2011

WEB COPY

suit by the Trial Court, framed the following points for consideration, which reads as follows:-

- “i) Whether the Lower court is right in allowing the suit?*
- ii) Whether the Lower court decree and Judgment are liable to be set aside?”*

14. The First Appellate Court vide order in A.S.No.20 of 2009 dated 26.04.2010 found that the plaintiff has established the execution of promissory note marked as Ex.A1 through oral and documentary evidence. The aforesaid judgment was challenged in S.A.No.727 of 2010. This Court by its judgment dated 2012.2010 remitted back the matter to the First Appellate Court with a direction to frame a specific point for determination which is as follows:

- “iii) Whether the trial court was justified in condoning the delay in paying the court fee as per section 149 of the code of civil procedure and in entertaining the plaint?”*



S.A. No. 1379 of 2011

WEB COPY

15. Before the First Appellate Court, the appellant/defendant raised a plea that the Court-fee had not been properly paid at the time of presenting the suit. The First Appellate Court found that the Court fee has been paid within the time given by the Court. So no malafide attitude could be attributed to the plaintiff.

16. In view of the same, the First Appellate Court dismissed the appeal and confirmed the Judgment and Decree in O.S.No.229 of 2004, dated 25.03.2009. Challenging the same, the present Second Appeal has been filed.

17. This Court while deciding the Second Appeal No.727 of 2010 filed by the present appellant/defendant, evaluated the principles regarding deficit Court-fees by referencing to several judgments. This Court also noted that the plaintiff filed an application under Section 149 of the Code of Civil Procedure, 1908 (in short “the *CPC*”) for the deficit of Court-fee.



S.A. No. 1379 of 2011

WEB COPY

18. This Court while remitting the matter back to the First Appellate Court, made the following observation:

“.....27. However, I do understand in the facts and circumstances of the case of the plight of the plaintiffs and that their rights also have to be safe-guarded and that too in view of the facts that the matter was already decided exparte and E.P was filed but the exparte decree was set aside and opportunity to file written statement was given, wherein the plea of limitation was not taken by the defendant at the earliest point of time and that only before the first appellate court such plea of limitation was taken, I would like to impose the condition as under:

“The appellant/defendant shall to a tune of 1/3rd of the suit amount furnish security or deposit in the form of cash in the trial court within a period of four weeks from this date and if there is any non-compliance with the aforesaid condition, then this order will not enure to the benefit of the appellant/defendant. The parties shall appear before the first appellate court either in person or through their advocates on 10.01.2011.....”



S.A. No. 1379 of 2011

WEB COPY

19. Pursuant to the direction of this Court in S.A.No.727 of 2010 dated 20.12.2010, the appellant/defendant deposited 1/3rd of the suit amount before the Trial Court.

20. The First Appellate Court evaluated Ex.A1/ promissory note dated 21.11.1999, Ex.A2/a copy of legal notice issued by the plaintiff to the defendant dated 09.07.2002, Ex.A3/Acknowledgment card, and Ex.A4/ reply notice, given by the defendant to the plaintiff, dated 23.07.2002, and the evidence of witnesses on both sides namely P.W.1 to P.W.3 and D.W.1, D.W.2. The First Appellate Court, framed the following points for determination:

“(i) Whether the Lower Court is in right to allow the suit?

(ii) Whether the Lower Court decree and judgment are liable to be set aside?”

21. As per the direction of this Court, the following was also taken as a point for consideration:



S.A. No. 1379 of 2011

WEB COPY

“Whether the Trial Court was justified in condoning the delay in paying the Court fee as per Section 149 of CPC and in entertained the plaint?”

22. The First Appellate Court held that insofar as the liability of the defendant on the promissory note is concerned, the decision taken by the First Appellate Court in the judgment dated 26.04.2010 remains the same.

23. Regarding the deficit Court-fee under Section 22 of the Tamil Nadu Court Fees and Suits Valuation Act, the First Appellate Court noted that on 12.11.2002, Rs.150 was paid as Court-fee. At the time of filing the suit, no application was filed for non-payment of entire Court-fee under Section 4 of the TNCSV Act. While so, the Trial Court returned the plaint by pointing out the deficit Court-fee and granted four weeks time on 21.11.2002. The plaintiff re-presented the plaint on 19.12.2002. The plaint was again returned for non-compliance on 27.12.2002. On 23.01.2003, the plaint was re-presented with an application under Section 149 of the CPC seeking condonation of delay in paying the entire Court-



S.A. No. 1379 of 2011

fee. The plaintiff, on the same day, paid the entire deficit Court-fee and the petition under Section 149 of the CPC, was allowed and the delay was condoned by the Trial Court.

24. The First Appellate Court, after evaluating the judgment and decree of the Trial Court and evidence presented by both sides, concluded that Section 149 of the CPC is an enabling provision. For convenience, Section 149 of the Code of Civil Procedure is extracted hereunder:-

“149. Power to make up deficiency of court-fees.- Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fee 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 fee had been paid in the first instance.”



S.A. No. 1379 of 2011

WEB COPY

25. Admittedly, an application was filed by the respondents/ plaintiffs under Section 149 of the CPC for condoning the delay in paying the deficit Court-fee and the same was allowed. Once the subjective satisfaction was arrived at for allowing the application for condoning the delay in paying the deficit Court-fee, then the same cannot be questioned or agitated.

26. The learned Senior Counsel appearing for the appellant/defendant would contend that Section 149 of the CPC and Section 22 of TNCSV Act must be strictly adhered to as per terms of the Act. The Act itself provides that affixing the stamp as Court-fee is only based on the relief claimed by the plaintiff under the various heads. Further, he contended that since the plaintiff did not file an application under Section 149 of the CPC immediately after filing the suit, the Courts below have no jurisdiction to entertain the case. Further, the learned Senior Counsel for the appellant/defendant would contend that the variation of inks found in the promissory note/Ex.A1 suggests that the defendant did not sign with free will. Instead, the plaintiff allegedly created a forged



S.A. No. 1379 of 2011

WEB COPY

document using the defendant's signatures from blank stamped and unstamped unwritten documents.

27. The learned Senior Counsel appearing for the appellant relied upon the judgment of this Court, in ***S.V. Arjunaraja v. P. Vasantha*** reported in **2005 (5) CTC 401**, to emphasise that filing an application under Section 149 of the CPC or under Order 7 Rule 11(d) of CPC cannot grant an extension of time for paying Court fees. The relevant portion of the said judgment is extracted hereunder:-

*“25. The Andhra Pradesh High Court, while considering Section 149 and Oder 7, Rule 11(d), proviso of C.P.C., in **S.A. Khadeer v. G.V.R Anjaneyulu**, 2003 (4) CLJ 917, has come to the conclusion, 'if no reason is recorded by the trial Court for extension of time, cause of exceptional nature not being shown, the extension of time for payment of Court Fees is illegal and the same is liable to be set aside'. In our case, no application has been filed, no extension has been granted either under Section 149 or under Order 7, Rule 11(d), C.P.C. Under the above circumstances, it should be*



S.A. No. 1379 of 2011

WEB COPY

held, that on the mechanical return of the plaint, which cannot be said that an order has been passed, extending the time for payment of Court Fees, would save the limitation, if the Court Fees is paid, after the period of limitation prescribed, is lapsed. In this case, admittedly, by the time, the sufficient Court fee has been paid by the plaintiff, the suit was out of time. Therefore, as rightly contended by the learned counsel for the revision petitioner/plaintiff, the case on hand squarely comes under Order 7, Rule 11(c), C.P.C., and therefore, the plaint should be rejected, as barred by limitation.”

28. He also relied upon another judgment of this Court, in ***K. Rajendran v. S. Nagarajan*** reported in **2012 (5) CTC 857**, more particularly the paragraphs 2, 14 and 19 for the proposition that non-filing of application under Section 149 of the CPC for granting order permitting extension of time by the Lower Court is not warranted. The relevant portions are extracted hereunder:-

“2.The short facts culled out from the pleadings are as follows:

The Respondent herein borrowed a sum of ₹75,000/- from the Petitioner on 17.06.2004 and



S.A. No. 1379 of 2011

WEB COPY

executed a promissory note on the same day promising to repay the said sum with interest on demand by the Petitioner. As the Respondent did not pay the said sum, in spite of a notice issued by the Petitioner on 12.11.2005, the Petitioner came forward with the above said suit and filed the same on the file of the Principal Sub-Court, Gobichettipalayam on 10.04.2007. While filing the said Suit, the Petitioner has paid a sum of ₹7,523/- towards the Court-fee. As the Court below has found that the Court-fee paid is deficient, the Plaint presented by the Petitioner was returned on 16.4.2007 by granting two weeks' time for payment of the deficit Court-fee. Admittedly, the Petitioner did not pay the deficit Court-fee within the time stipulated by the Court below and however re-presented the Plaint with full court-fee only on 28.9.2007 along with an Application filed under Sections 148 & 151, C.P.C. Seeking for condonation of a delay of 150 days in re-presenting the Plaint. The said Application filed by the Petitioner was numbered as I.A.No.354 of 2007. The Petitioner filed an Affidavit in support of the said Application in I.A.No.354 of 2007, wherein he has stated that he could not re-present the Plaint by paying the deficit Court-fee within the time granted by the Court as he was bed ridden for five months.

14. Thus, from the reading of the above said decision of this Court, it is seen that the very grant of time by the Court below on 16.4.2007 for payment of deficit Court-fee without there being any Application under Section 149, C.P.C is not valid under law as the said grant of time was not supported by recording of the reasons as well. It is an admitted case that there was no Application filed



S.A. No. 1379 of 2011

WEB COPY

under Section 149, C.P.C for grant of time for payment of deficit Court-fee warranting an order of granting time of two weeks by the Court below on 16.4.2007. Thus, by applying the said decision of this Court, it can only be concluded that the order dated 16.4.2007 granting time of two weeks for payment of deficit Court-fee itself is bad in law in the absence of any application filed by the Petitioner under Section 149, CPC.

*19. No doubt, a decision of the Hon'ble Supreme Court reported in **P.K. Palanisamy v. N. Arumugham and another**, 2009(4) CTC 187(SC) : 2009 (9) SCC 173, was sought to be relied on by the Petitioner. But on reading the said judgment, I find that the facts therein are distinguishable as the Plaintiff therein had filed an Application under Section 148 read with Section 151 seeking time for payment of the deficit Court-fee. But, in this case, I have already pointed out that there was no such Application filed by the Petitioner at any point of time and on the other hand, an Application filed in I.A.No.354 of 2007 under Sections 148 & 151, C.P.C., was seeking for condonation of delay of 150 days in re-presenting the Complaint alone and not for seeking for permission for payment of deficit Court-fee. At any event, this decision of the Hon'ble Supreme Court reported in **P.K. Palanisamy v. N. Arumugham and another**, 2009(4) CTC 187(SC) : 2009 (9) SCC 173, has been taken note of and considered by the Hon'ble Supreme Court in the recent decision referred to above in Civil Appeal Nos.4838-4840 of 2012 dated 3.7.2012 reported in **A. Nawab John and others v. V.N. Subramaniam**, 2012(4) CTC 206. Therefore, I am of the view that the said decision reported in **P.K. Palanisamy v. N.***



S.A. No. 1379 of 2011

WEB COPY

Arumugham and another, 2009(4) CTC 187(SC) : 2009 (9) SCC 173, is not going to help the Petitioner in any manner as the facts therein are totally distinguishable.”

29. Both the judgments relied upon by the learned Senior Counsel would only deal with the deficit of Court-fee paid and consequence thereof. Both the judgments would only show that if no application was filed under Section 149 of the CPC, then the appellant/defendant or the respondent/plaintiff are at liberty to contend that the decision made in the suit is *void ab initio*.

30. Conversely, Mr. R. Parthiban, learned counsel for the respondents would contend that the evidence of P.W.2 and P.W.3 corroborated the evidence of P.W.1 regarding the defendant's signature. Notably, learned counsel for the appellant has not disputed the signature found in Ex.A1/promissory note. Thus, it is clear that the defendant had received a sum of Rs.75,000/- as pleaded by the respondents/plaintiffs in the suit.



S.A. No. 1379 of 2011

WEB COPY

31. Heard the learned Senior Counsel for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.

32. Though on the defendant side, the defendant was examined as D.W.1 and his spouse as D.W.2, there was no evidence for the contention that the defendant had only received Rs.15,000/- loan for which Rs.1,500/- was deducted towards interest. Further, the allegation that on the basis of the complaint lodged by the plaintiffs before the Inspector of Police, Crime Branch, a sum of Rs.6,000/- was handed over and the remaining amount was also settled by the defendant to the plaintiffs, was not proved by the defendant.

33. Apart from oral statements, the appellant/defendant did not produce any documents to establish that only Rs.15,000/- was received. Moreover, the defendant did not call the Inspector of Police, who



S.A. No. 1379 of 2011

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investigated the case as a witness to support his claim. Learned counsel for the respondents/plaintiffs would rely upon the following judgments:-

*“ i) The judgment of the Hon'ble Supreme Court of India, in **Mahasay Ganesh Prasad Ray and Anr., v. Narendra Nath Sen and Ors.**, reported in (AIR 1953 SC 431, 1951 (O) KLT 28 SC; more particularly paragraph 5, which reads as follows:*

“5. To repel the contention of the respondents it was strenuously urged that Binodini could not have been born to the first wife of Govind Ballab because Sabitri was born to that lady about six to seven months before 9-5-1880, and therefore the alleged birth of Binodini on 9-5-1880 as a full grown healthy child, who lived for 58 years thereafter, was an impossible story.

18. Secondly, the power of the High Court to allow an amendment under Section 149, Civil Procedure Code is clearly one under which the plea of the bar of limitation may be ignored. There are decisions of very high authority taking that view. The contention therefore that by allowing the



S.A. No. 1379 of 2011

WEB COPY

amendment the High Court took away the present appellants' valuable right to plead the bar of limitation cannot be accepted. It was a matter of discretion for the High Court and the materials put before us indicate no reason to hold that the discretion was exercised so as to violate any recognized principles of law or that by granting leave to amend any gross injustice has been done. As pointed out by the High Court, the payment of court-fees is a matter primarily between the Government and the present respondents and that was the whole fight in respect of this contention. In our opinion therefore the preliminary objection fails.”

*ii) The judgment of the Hon'ble Supreme Court of India, in **P.K. Palanisamy v. N. Arumugham & Anr.**, reported in (2009) 9 SCC 173.*

The relevant portion is extracted hereunder:-

“26. A contention has been raised that the applications filed by the appellant herein having regard to the decisions of the Madras High Court could not have been entertained which were filed under Section 148 of the Code.



S.A. No. 1379 of 2011

WEB COPY

27. Section 148 of the Code is a general provision and Section 149 thereof is special. The first application should have been filed in terms of Section 149 of the code. Once the court granted time for payment of deficit court fee within the period specified therefor, it would have been possible to extend the same by the court in exercise of its power under Section 148 of the Code. Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity. It is a well-settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor.

‘33. The question which survives for consideration is as to what is the scope of Section 149 of the Code?

34. In Ganesh Prasad Ray & Anr. v. Narendra Nath Sen & Ors. [AIR 1953 SC 431], this Court held that the court fee is a matter between the



S.A. No. 1379 of 2011

WEB COPY

State and the suitor. Mr. Venugopal would urge that the said observations were made keeping in view the fact that the contention in that behalf had been raised at the appellate stage. It may be so, but it is well known that the appeal is continuation of the suit.

35. Yet again in Mahanth Ram Das v. Ganga Das, [AIR 1961 SC 882], this Court held:-

"5. The case is an unfortunate and unusual one. The application for extension of time was made before the time fixed by the High Court for payment of deficit court fee had actually run out. That application appears not to have been considered at all, in view of the peremptory order which had been passed earlier by the Division Bench hearing the appeal, mainly because on the date of the hearing of the petition for extension of time, the period had expired. The short question is whether the High Court, in the circumstances of the case, was powerless to enlarge the time, even though it had peremptorily fixed the period for payment. If the Court had considered the application and rejected it on merits, other considerations might have arisen; but the High Court in the order quoted, went by the letter of the original order under which time for



S.A. No. 1379 of 2011

WEB COPY

payment had been fixed. Section 148 of the Code, in terms, allows extension of time, even if the original period fixed has expired, and Section 149 is equally liberal. A fortiori, those sections could be invoked by the applicant, when the time had not actually expired. That the application was filed in the vacation when a Division Bench was not sitting should have been considered in dealing with it even on 13-7-1954, when it was actually heard.

37.... The trial court was also empowered under Section 149 CPC to extend the time. In the present case, the order passed by the trial court accepting the deficit court fee paid on 23-2-2000, thereafter registering the suit on 10-4- 2000 and consequently the order dated 3-11-2001 rejecting the defendant-respondents' application under Order 7 Rule 11 CPC were perfectly in accordance with law and within the discretion conferred on the trial court with which the High Court ought not to have interfered in exercise of the jurisdiction vested in the High Court under Section 115 CPC. The order of the High Court, if allowed to stand, is likely to occasion failure of justice."



S.A. No. 1379 of 2011

WEB COPY

*iii) The judgment of this Court, in **P.Kumar v. Sanjay Agarwal and three others**, in C.R.P.(NPD).No.2811 of 2009 dated 05.10.2010, reported in (2010) 5 LW 663: (2011) 3 Mad LJ wherein paragraphs 30 & 31 held as follows:*

“30. That apart, an application to receive the Court fee is not a mandatory one and the same is only optional, as opined by this Court and even in the absence of any application, the trial court is quite competent and well within its bound to accept or deposit court fee in a prudent, sensible and equitable manner, but in the instant case on hand, the observation of the trial court that 'the Revision Petitioner/Plaintiff neither paid the Court fee within the period of limitation filed the Application under Section 149 of C.P.C. to extend the time for payment of deficit Court fee and consequently, rejecting the plaint by allowing I.A.74 of 2008, etc.', are not correct in the eye of law.

31. This Court succinctly points out that when the Revision Petitioner/Plaintiff as on 24.08.2007 has represented the Plaint by complying with certain defects and also paid the deficit court fee, then such act cannot be found fault with by the



S.A. No. 1379 of 2011

WEB COPY

*Respondents raising a plea there must be separate application under Section 149 of C.P.C. to extend the time for payment of deficit Court fee is not a correct and tenable one and since the order of the trial court dated 30.04.2009 is not in conformity of the well settled legal position that an application to receive the deficit Court fee is not a mandatory one since the same being an optional one, the non filing of an application under Section 149 of Civil Procedure Code is not a fatal one and hence, this Court necessarily interferes with the said order and accordingly, sets aside the same by allowing the Civil Revision Petition, by exercising its supervisory and parental powers under Article 227 of the Constitution of India which has to be sparingly used and since it is a fit case for using the said power, this Court is exercising the same in furtherance of substantial cause of justice. **(Emphasis supplied)***

*iv) The judgment of the Hon'ble Supreme Court of India, in **Sardar Tajendar Singh Gambhir and Anr., v. Sardar Gurpreet Singh & Ors.**, in Civil Appeal No.8660 of 2014 (SLP(C).No.9042 of 2013,*



S.A. No. 1379 of 2011

WEB COPY

relying paragraphs 11 & 12 of the judgment reads as follows:

“ 11. The argument of the learned senior counsel for the respondent Nos. 1 and 2 on construction of sub-sections (2) & (3) of Section 6 of 1870 Act cannot be accepted. The High Court was clearly in error in invoking the above provision without appreciating the fact that there was no order by the trial court directing the plaintiffs to make good the deficit court-fee within a particular time.

12. The High Court was also in error in holding that deficiency in court-fee in respect of plaint cannot be made good during the appellate stage. In this regard, the High Court, overlooked well known legal position that appeal is continuation of suit and the power of the appellate court is co-extensive with that of the trial court. It failed to bear in mind that what could be done by the trial court in the proceeding of the suit, can always be done by the appellate court in the interest of justice.

*v) The judgment of the Hon'ble Supreme Court of India, in the case of **Manoharan v. Sivarajan & Ors.**, in Civil Appeal No.10581 of 2013 (S.L.P(C).No.23918 of 2012) dated 25.11.2013,*



S.A. No. 1379 of 2011

WEB COPY

reported in (2014) 4 SCC 163. Paragraphs 7, 8 & 18 of the judgment are extracted hereunder:

“7. Section 149 of the Civil Procedure Code prescribes a discretionary power which empowers the Court to allow a party to make up the deficiency of court fee payable on plaint, appeals, applications, review of judgment etc. This Section also empowers the Court to retrospectively validate insufficiency of stamp duties etc. It is also a usual practice that the Court provides an opportunity to the party to pay court fee within a stipulated time on failure of which the Court dismisses the appeal. In the present case, the appellant filed an application for extension of time for remitting the balance court fee which was rejected by the learned sub Judge. It is the claim of the appellant that he was unable to pay the requisite amount of court fee due to financial difficulties. It is the usual practice of the court to use this discretion in favour of the litigating parties unless there are manifest grounds of mala fide. The Court, while extending the time for or exempting from the payment of court fee, must ensure bona fide of such discretionary power. Concealment of material fact while filing application for extension of date for



S.A. No. 1379 of 2011

WEB COPY

payment of court fee can be a ground for dismissal. However, in the present case, no opportunity was given by the learned sub Judge for payment of court fee by the appellant which he was unable to pay due to financial constraints. Hence, the decision of the learned sub Judge is wrong and is liable to be set aside and accordingly set aside.

“8. In State of Bihar v. Kameshwar Prasad Singh [(2000) 9 SCC 94 : 2000 SCC (L&S) 845] , it was held that power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to the parties by disposing the cases on merit. The relevant paragraphs of the case read as under: (SCC pp. 102-104, paras 11-13)

“11. Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in Collector (LA) v. Katiji [(1987) 2 SCC 107 : 1989 SCC (Tax) 172] held that the expression ‘sufficient cause’ employed by the legislature in the Limitation



S.A. No. 1379 of 2011

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Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realised that: (SCC p. 108, para 3)

‘1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in



S.A. No. 1379 of 2011

WEB COPY

injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.'

12. After referring to the various judgments reported in New India Assurance Co. Ltd. v. Shanti Misra [(1975) 2 SCC 840 : (1976) 2 SCR 266] , Brij Indar Singh v. Kanshi Ram [(1916-17) 44 IA 218 : (1917) 6 LW 592 : ILR (1918) 45 Cal 94] , Shakuntala Devi Jain v. Kuntal Kumari [AIR 1969 SC 575 : (1969) 1 SCR 1006] , Concord of India Insurance Co. Ltd. v. Nirmala Devi [(1979) 4 SCC 365 : 1979 SCC (Cri) 996 : (1979) 118 ITR 507] , Lala Mata Din v. A. Narayanan [(1969) 2 SCC 770 : (1970) 2 SCR 90] , State of Kerala v. E.K. Kuriyipe [1981 Supp SCC 72] , Milavi Devi v. Dina Nath



S.A. No. 1379 of 2011

WEB COPY

[(1982) 3 SCC 366] , O.P. Kathpalia v. Lakhmira Singh [(1984) 4 SCC 66] , Collector (LA) v. Katiji [(1987) 2 SCC 107 : 1989 SCC (Tax) 172] , Prabha v. Ram Parkash Kalra [1987 Supp SCC 339] , G. Ramegowda v. Land Acquisition Officer [(1988) 2 SCC 142 : (1988) 3 SCR 198] , Scheduled Caste Coop. Land Owning Society Ltd. v. Union of India [(1991) 1 SCC 174] , Binod Bihari Singh v. Union of India [(1993) 1 SCC 572 : AIR 1993 SC 1245] , Shakambari & Co. v. Union of India [1993 Supp (1) SCC 487] , Ram Kishan v. U.P. SRTC [1994 Supp (2) SCC 507] and Warlu v. Gangotribai [1995 Supp (1) SCC 37] this Court in State of Haryana v. Chandra Mani [(1996) 3 SCC 132 : (2002) 143 ELT 249] held: (SCC p. 138, para 11)

‘11. ... The expression “sufficient cause” should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on



S.A. No. 1379 of 2011

WEB COPY

merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid down to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.’

To the same effect is the judgment of this Court in Tehsildar (LA) v. K.V. Ayisumma [(1996) 10 SCC 634 : AIR 1996 SC 2750] .



S.A. No. 1379 of 2011

WEB COPY

13. In *Nand Kishore v. State of Punjab* [(1995) 6 SCC 614 : 1996 SCC (L&S) 57 : (1995) 31 ATC 787] this Court under the peculiar circumstances of the case condoned the delay in approaching this Court of about 31 years. In *N. Balakrishnan v. M. Krishnamurthy* [(1998) 7 SCC 123 : (2008) 228 ELT 162] this Court held that the purpose of the Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a court is to adjudicate disputes between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack mala fides or is not shown to have been put forth as a part of a dilatory strategy, the court must show utmost consideration to the suitor. In this context it was observed in *N. Balakrishnan v. M. Krishnamurthy* [(1998) 7 SCC 123 : (2008) 228 ELT 162] : (SCC p. 127, para 9)



S.A. No. 1379 of 2011

WEB COPY

'9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is



S.A. No. 1379 of 2011

WEB COPY

Constitution of India read with the provision of Section 12(h) of the Legal Services Authorities Act read with Regulation of Kerala State. We further direct the trial court to adjudicate on the rights of the parties on merit and dispose of the matter as expeditiously as possible. ”

34. When there is a deficit of Court-fees, an application under Section 149 of the CPC can be submitted at any stage of the suit. Admittedly, the respondents/plaintiffs paid the Court-fees upon representation. Therefore, the judgments cited by the learned counsel for the appellant/defendant does not support the case of the appellant.

35. On the contrary, the judgments cited by the learned counsel for the respondents/plaintiffs demonstrate that once an application under Section 149 of the CPC is filed and it was allowed, the Court's subjective satisfaction cannot be questioned later, and there is no basis to suspect the same. In view of the above, the respondents/plaintiffs paid the deficit Court-fees and the evidence of P.W.2 & P.W.3, corroborated with the evidence of P.W.1, and the appellant/defendant has not submitted even an



S.A. No. 1379 of 2011

iota of material to suggest Ex.A1/Promissory note dated 21.11.1999 was obtained through compulsion, duress, fraud or coercion.

36. On 16.11.2011, this Court admitted the Second Appeal based on the following substantial questions of law:-

“(1) Whether there is a specific direction by this Hon'ble Court directing the Lower Appellate Court to decide whether the Trial Court was justified in condoning the delay in payment of Court fee as per Section 14 of the Code of Civil Procedure, whether the Lower Court is correct in law in not considering the interlocutory order passed in the application filed under Section 149 of the Code of Civil Procedure especially since Section 105 of the Code of Civil Procedure enables Appellate Court to consider the validity of interlocutory orders passed by the Trial Court in the appeal filed by the aggrieved party?”

(2) When the respondent had admittedly paid the Court fee after the time provided for filing the suit, whether the Courts below are correct in



S.A. No. 1379 of 2011

WEB COPY

law in holding that the suit is not barred by limitation?

(3) Whether the Courts below are correct in law in granting decree for recovery of money especially when the suit was filed by praying nominal Court fee and the correct Court fee was paid after the expiry of the period of limitation for filing the suit for recovery of money?

(4) Whether the respondents can sustain the suit for recovery of money especially when the deficit Court fee was paid after the expiry of the period of limitation, in contravention of Article 113 of the Limitation Act, 1963?

(5) Whether the Courts below are correct in law in attaching much importance to the order passed in the application filed under Section 149 of the Code of Civil Procedure, particularly when no notice was issued to the appellant and he is not bound by the order passed?

(6) When the appellant had borrowed only a sum of Rs.15,000/- and out of which he paid a major portion of the money, whether the Courts below are correct in law in holding that the



S.A. No. 1379 of 2011

WEB COPY

appellant had borrowed the alleged suit amount of Rs.75,000/- without any evidence?

(7) When the respondents had not sustained their claim by acceptable oral and documentary evidence, whether the Courts below are correct in law in granting decree as prayed for?
”

37. As previously discussed, all substantial questions of law framed by this Court, being factual in nature, are decided in favour of the respondents/plaintiffs.

38. In view of the same, the Second Appeal is dismissed. The Judgment and Decree in A.S No. 20/2009 dated 28.02.2011 passed by the Subordinate Judge, Perambalur is confirmed and, consequently, the Judgment and Decree in O.S No. 229/2004 dated 25.03.2009 passed by the District Munsif Court, Perambalur is upheld. No costs. Consequently, connected miscellaneous petitions are also closed.

29.10.2024

Index :Yes/No



S.A. No. 1379 of 2011

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Speaking/Non-Speaking Order
Neutral Case Citation : Yes/No

To:

1. The Subordinate Court, Permbalur.
2. The District Munsif Court, Permbalur.
3. The Section Officer, V.R.Section, High Court of Madras.

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S.A. No. 1379 of 2011

N.SENTHILKUMAR, J.

klt

Pre-Delivery Judgment in

S.A.No.1379 of 2011
and
M.P. No.1 of 2011 and
M.P. Nos.1, 2 & 3 of 2012

29.10.2024



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S.A. No. 1379 of 2011

S.A. No.1379 of 2011
and
M.P.No.1 of 2011 and M.P.Nos.1, 2 & 3 of 2012

N. SENTHILKUMAR, J.

After pronouncement of Judgment in Second Appeal, the learned counsel for the respondents/plaintiffs submitted that as per the direction of the First Appellate Court, one third of the suit value of Rs.47,912/- has been deposited before the District Munsif Court, Perambalur and the same is lying in the Court deposit.

2. Learned counsel for the respondents further submitted that at the time of admission of the Second Appeal, as directed by this Court in M.P.No.1 of 2011, the respondents have also deposited a sum of Rs.20,000/- before the trial Court and he seeks refund of the same.

3. Considering the above submissions, the District Munsif Court, Perambalur is directed to refund Rs.67,912/- (Rupees Sixty Seven Thousand Nine Hundred and Twelve only) to the respondents/plaintiffs, after making necessary enquiry regarding the identification of the respondents/plaintiffs, within a period of fifteen days from the date of receipt of a copy of this order.

29.10.2024

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S.A. No. 1379 of 2011

N.SENTHILKUMAR, J.

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S.A.No.1379 of 2011
and
M.P. No.1 of 2011 and
M.P. Nos.1, 2 & 3 of 2012

29.10.2024