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Reserved on: 21.06.2024

Pronounced on: 28.06.2024

A. Nos.2780 & 2792 of 2024

in

TOS. No.9 of 2023

P.B.BALAJI, J.

A.No.2780 of 2024 has been taken out for grant of interim stay, staying the operation of the order dated 13.04.2023 passed by the learned Master TOS. No.9 of 2023, pending disposal of the present Appeal.

2. A.No.2792 of 2024 has been taken out to set aside the order dated 13.04.2023 passed in TOS. No.9 of 2023 by the learned Master, permit the Petitioner to file a fresh Affidavit of assets and Liabilities of the deceased, Direct the Registry to recalculate the Court Fees as per the fresh affidavit of Assets filed along with the Judges summons.

3. The Application in A.No.2792 of 2024 in the nature of an Appeal against the order of the learned Master dated 13.04.2023 in TOS.No 9 of 2023.

4. I have heard Mrs.Nalini Chidambaram, learned Senior Counsel for Mrs.C.Uma, learned counsel for the Applicant, Mr. Jayesh B. Dolia, learned



Senior Counsel for M/S. Aiyar & Dolia, learned counsel for the 1st respondent, Mr. S.R.Raghunathan, learned counsel for the 2nd respondent and Mr. B.Arvind Sreevatsa, learned counsel for the 3rd respondent.

5. The learned Senior Counsel Mrs. Nalini Chidambaram, appearing on behalf of the learned counsel for the Applicant, would submit that the learned Master has erroneously directed the Applicant to pay Court fee invoking a wrong provision of law. She would invite my attention to Article 6 of Schedule I of the Tamil Nadu Court-Fees and Suits Valuation Act, 1965 and state that the said Article is the relevant provision and only a sum of Rs.25,000/- is payable as Court fees. She would also contend that Article 11(k) of Schedule II of the Tamil Nadu Court-Fees and Suits Valuation Act, 1965, would not apply to the facts of the present case.

6. That apart, the learned Senior Counsel would submit that the beneficiaries have already taken away the Fixed Deposits to the tune of Rs.1 crore and diamond jewellery worth about Rs.6 crores. Further, there are liabilities which remain unpaid and all these would have to be deducted from the net value of assets. Inadvertently, these were left out while valuing



the assets in the affidavit of assets and therefore, she would submit that either the beneficiaries will have to be called upon to return the amounts and jewellery taken away by them or alternatively, the value of the same ought to be deducted from the net value of assets and in which event, no additional Court fee will become payable by the applicant/plaintiff. She would therefore pray for the above Application being allowed.

7. Per contra, Mr.S.R.Raghunathan, learned counsel for the 2nd respondent would submit that the Appeal itself is not maintainable in view of the provisions of Order XIV Rule 12 of the Madras High Court Original Side Rules, 1994. He would also submit that under Order II Rule 3 of the Madras High Court Original Side Rules, 1994, the learned Master had no power to adjudicate upon the issue of insufficient Court fee and therefore, the order which is now impugned in the Application is only a superfluous order. That apart, he would submit that the Court fee payable is only on the Original Petition being converted into a Testamentary Original Suit and the learned Master in any event, has rightly directed the Applicant for payment of Rs.1,02,98,452.50/-.

8. He would also place reliance on the decision of the Hon'ble



Division Bench of this Court in the case of *Sreyas Sripal & T.P.Anand vs Upasana Finance Ltd* reported in 2007 3 LW 680 in this regard. He would also invite my attention to the affidavit of assets where no debts are shown and the assets have been valued at Rs.68,65,63,498/-. He would place reliance on the decision of this Court in the case of *Philo Peter & Arputhasamy vs Divyanathan & Others and Mariapushpam & Others* reported in 1988 2 LW 181. According to Mr. S.R.Raghunathan, learned counsel for the 2nd respondent, the Will is a forged and fabricated document and none of the legatees have any issue with regard to sharing of the estate. He would also state that in a connected suit, there is already a decree passed by consent where the properties of the testatrix have been agreed to be divided in a particular fashion and the executor is a rank stranger, who has no interest in the estate of the deceased, excepting for claiming under the alleged Will, which according to the respondents, is forged and fabricated.

9. Mr. Jayesh B. Dolia, learned Senior Counsel appearing for the 1st respondent, apart from contending that the Appeal against the order of the learned Master is not available since the issue pertains to payment of Court fee. He would also take me through the Application filed by the plaintiff. He



would further state that though the Applicant claims that there are alleged debts due, no creditor has come forward with any claim till date and the respondents are alone in possession of the properties and estate of the deceased.

10. Mr. B.Arvind Sreevatsa, learned counsel for the 3rd respondent would invite my attention to Clause 34 of Letters of Patent and would also submit that the decision of the Hon'ble Division Bench in the case of *Philo Peter's* case (referred herein supra), may not apply since it was a case arising by way of Revision from the District Court and the same would not apply to the Original Side of this Court. He would further submit that in the condone delay affidavit, the Applicant has stated that he is not in a position to determine the value of the assets and referring to the date of the said affidavit filed in September 2023, Mr. B.Arvind Sreevatsa, learned counsel for the 3rd respondent would submit that the Applicant cannot be allowed to approbate and reprobate by now seeking to produce figures which he was not in a position to do so few months ago.

11. In short, the respondents have strongly opposed the Application



Appeal lies from an order or decision of the learned Master. Here, the order impugned in the present Application is nothing but an order directing payment of proper Court fee. Therefore, I am unable to see how the present Application by way of an Appeal is even maintainable in the first instance.

15. Even otherwise, as rightly contended by Mr.S.R.Raghunathan, learned counsel for the 2nd respondent, the very issue of the proper Court fee to be paid is governed by Order II Rule 3 of the Madras High Court Original Side Rules, 1994, which is as follows:

“A plaint, or original petition, or originating summons, shall be headed with a cause-title, in Form No. 1. The cause-title shall set out the name of the Court, the serial number of the suit or original petition, and the names of the parties, separately numbered, and described as plaintiff and defendant, or petitioners and respondents, as the case may be. The plaint shall also contain a statement of valuation. Where it appears that the suit is undervalued or that the stamp affixed to the plaint is insufficient, the Registrar shall require the plaintiff to make good the deficiency within a period fixed by him. If default is made, the Registrar shall post the plaint before the Court for orders under Order VII, Rule 11, Clauses (b) and (c) of the Code.

If during the hearing of a suit, it appears to the Court that the suit is undervalued or that the stamp affixed to the plaint is insufficient, the Court may require the plaintiff to make good the deficiency within a time fixed by it and in default dismiss the suit.

A memorandum of appeal shall be headed with a cause-title setting out the name of the Court, the serial number of the appeal, the names of the parties, separately numbered and described as appellants and respondents and also the full cause-title of the original suit or matter as in Form No. 2. All subsequent



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proceedings shall be headed with a short cause-title as in Form Nos. 3 and 4.

Every proceeding shall also contain, immediately after the cause-title, a short description of its contents as in Form Nos. 5 and 6.”

Thus the Rule mandates that when a suit is undervalued or the stamp affixed is insufficient, the Registrar has required the plaintiff to make good the deficiency within a period fixed by the Registrar and in default, the Registrar is directed to necessarily post the plaint before Court for orders under Order VII Rule 11(b) and (c) of the Code of Civil Procedure, 1908. Therefore, the learned Master need not have passed the impugned order at all. Admittedly, the Registrar has found the Court fee paid to be deficient and the said deficit Court fee has not been made good by the Applicant/Plaintiff, despite opportunity being granted.

16. Even in the present Application, the Applicant has only stated he is not liable to pay the Court fee being an executor. That apart, he has also questioned the demand for deficit Court fee on the ground that the proper Court fee is only Rs.25,000/- and nothing more. In ground (h) of the Application, the Applicant has stated that in all a sum of Rs.76,625/- has



been paid as Court fee, even though the Applicant is not liable to pay any Court fee. Therefore, it is clear that the Applicant/plaintiff does not propose to pay any further Court fee in the above matter.

17. As already discussed, the Appeal against the order of the learned Master regarding Court fee is not maintainable and the present Application therefore deserves to be rejected on this limited ground itself.

18. Further, interestingly, in the prayer to the present Application, the Applicant seeks to file a fresh affidavit of assets and liabilities of the deceased with a further direction to the Registry to recalculate the Court fees as per the fresh affidavit of assets filed along with the Judge's Summons.

The present Application is only in the nature of an Appeal against the order of the learned Master. Such a consequential permission or prayer cannot be sought for in such an Application. In any event as already seen, the Applicant has in no uncertain terms come on record stating that sufficient Court fee is already paid and no further Court fee is payable. Therefore, such a request cannot be made by the Applicant along with the Application challenging the order of the learned Master. Therefore, even on this ground, I am unable to countenance the arguments of the learned Senior



Counsel for the Applicant, that such an Application is justified and also maintainable.

19. Coming to the decisions relied on by the counsel,

19(i) In *Sreyas Sripal's* case (referred herein supra), a Division Bench of this Court, referring to Order II Rule 3 of the Madras High Court Original Side Rules, 1994 as well as Order XIV Rule 12, held that no further Appeal would lie against such an order of the learned Master, there being an express bar contained.

19(ii) In *Philo Peter & Arputhasamy's* case (referred herein supra), a Division Bench of this Court dealing with a Revision Petition, held that it is only Article 11(k)(2) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1965 which would apply to Testamentary Original Suits before this Court and not Article 6 as is contended by learned Senior Counsel for the Applicant before me.

20. In view of the above finding that the Appeal itself is not maintainable, I only see it as a futile exercise to deal with the other arguments advanced by the learned counsel for the respondents.



Consequently, the stay petition is also liable to be dismissed.

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21. For all the above reasons, the Application in A.No.2792 of 2024 and A.No.2780 of 2024 in TOS No.9 of 2023 are dismissed.

28.06.2024

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P.B.BALAJI, J.
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Pre-delivery order made in
A. Nos.2780 & 2792 of 2024
in
TOS. No.9 of 2023

(1/2)

28.06.2024