



S.A(MD)No.944 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.01.2026

DELIVERED ON : 27.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.944 of 2014

and

M.P.(MD)No.1 of 2014

Ashok Saw Mill,
Piranur Border,
Firm No.16/92,
through its Partners
1.Visanci Manilal Patel
2.Lakshmi Bai
3.Nilesh V.Patel
4.Jeyanbthilal V.Patel

: Appellants/Respondents /
Plaintiffs

(cause title amended and
power agent / James Selvaraj
in respect of appellants 1 to 4
deleted vide order dated 12.01.2026
made in C.M.P.(MD) No.8710 of 2017)

Vs.

1.A.Chellappa &Co.,
Door No.1032, Aranmanai Street,
Pettai, Theni.
through Chellappa(died)



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2.Chellappa(died)

S/o Arunachalam,

Partner,

Chellappa &Co.,

Door No.1032, Aranmanai Street,

Pettai, Theni.

(Memo dated 15.11.2023 in USR No.39352,
is recorded as R.2 died who is also one of
the partners of the first respondent firm,
vide order dated 17.11.2023)

3.A.Nagarathinam,

S/o Arunachala Thevar,

Partner,

Chellappa &Co.,

Door No.1032, Aranmanai Street,

Pettai, Theni.

4.Desaimani,

S/o Arunachala Thevar,

Partner,

Chellappa &Co.,

Door No.1032, Aranmanai Street,

Pettai, Theni.

5.A.D.Shunmugasundaram,

S/o Desiamani,

Partner,

Chellappa &Co.,

Door No.1032, Aranmanai Street,

Pettai, Theni.

6.Baskara Doss,

S/o Nagarathinam,

Partner,

Chellappa &Co.,

Door No.1032, Aranmanai Street,

Pettai, Theni.

: Respondents /Appellants/Defendants



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.77 of 2011, dated 14.03.2014, on the file of I Additional District and Sessions Court, Tirunelveli, reversing the judgment and decree passed in O.S.No.41 of 2007, dated 30.09.2011, on the file of the Principal Subordinate Court, Tenkasi.

For Appellant : Mr.H.Arumugam

For Respondents : Mr.V.Janakiramulu
for R.3 to R.6

: R.2 died (memo recorded)

: R.1 died vide EB

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.77 of 2011, dated 14.03.2014, on the file of I Additional District Court, Tirunelveli, reversing the judgment and decree passed in O.S.No.41 of 2007, dated 30.09.2011, on the file of the Principal Subordinate Court, Tenkasi.

2. The appellants are the plaintiffs, who filed the suit for recovery of the balance amount due from the defendants in respect of their commercial transactions.



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3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

4. The case of the plaintiffs is that the first plaintiff is a partnership firm, in which the other plaintiffs are its partners, and that they are engaged in the business of sale of imported wooden logs. The defendants are also stated to be carrying on a similar line of business. According to the plaintiffs, the defendants purchased 16 wooden logs on various dates, namely, 12.04.2003, 07.05.2003 and 08.05.2003, under Invoice No.2003–2004/0005 dated 17.05.2003, for a total value of Rs.10,30,929/-. It is their further case that the transactions between the parties constituted a mutual, open and current account, and that a sum of Rs. 3,06,154/- remained due and payable by the defendants as on 20.08.2003. Despite repeated demands, the defendants failed to discharge the said liability. The plaintiffs therefore claim that they are entitled to interest at the rate of 18% per annum on the said amount and, consequently, were constrained to institute the present suit for recovery of a total sum of Rs.4,69,476/-, together with future interest at 18% per annum on Rs.3,06,154/- and costs.



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5. The defence of the defendants is that the suit is not maintainable either in law or on facts. According to them, the wooden logs were delivered at Tuticorin and no part of the cause of action arose within the jurisdictional limits of Senkottai–Piranur border, and therefore, the Subordinate Court, Tenkasi, lacks territorial jurisdiction to entertain the suit. It is their further case that the wooden logs were supplied on 12.04.2003, 07.05.2003 and 08.05.2003 under invoice dated 17.05.2003, and that the suit, having been filed on 07.08.2006, is barred by limitation, as it was not instituted within the prescribed period of three years. They would also contend that the court fee on the plaint was paid only after the expiry of the limitation period. It is their specific defence that the entire amount due has already been paid and that no sum remains payable to the plaintiffs. Hence, according to the defendants, the suit is liable to be dismissed.

6. The defendants further contended that the suit is bad for non-joinder of necessary parties, as the partners of the first defendant firm were not initially impleaded. In view of the said objection, the plaintiffs subsequently impleaded defendants 2 to 6 as partners of the first defendant firm.

7. The learned trial Judge, upon considering the pleadings of both parties, framed the following issues:



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“1. Whether the Court has no jurisdiction to try the suit?

2. Whether the plaintiffs are entitled to get the amount claimed with interest?

3. To what other reliefs?”

8. During trial, the plaintiffs examined their Power Agent Thiru.James Selvaraj as P.W.1 and four other witnesses as P.W.2 to P.W.5 respectively and exhibited 14 documents as Exs.A.1 to A.14. The defendants examined the sixth defendant Thiru.Baskara Doss as D.W.1 and exhibited two documents as Exs.B.1 and B.2. Six witness documents came to be exhibited as Exs.X.1 to X.6. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, passed the judgment and decree dated 30.09.2011 granting the relief as prayed for with costs. Aggrieved by the said judgment and decree, the defendants preferred an appeal in A.S.NO.77 of 2011 and the learned Ist Additional District Judge, Tirunelveli, upon considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment and decree dated 14.03.2014 allowing the appeal and thereby setting aside the judgment and decree of the trial Court and consequently dismissed the suit. Against the dismissal of the suit by the first appellate Court, the plaintiffs have preferred the present Second Appeal.



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9. At the time of admission, the following Substantial Questions of Law came to be formulated:

“ (1) When the trial Court has condoned the delay in payment of Court fee and tried the suit on merits, whether the lower appellate Court is right in reversing the decree only on the ground of not filing petition under Section 149 of C.P.C.?

(2) Whether the lower appellate Court has committed error in reversing the judgment and decree without considering Ex.A.11, the receipt for payment of amount on 10.08.2006, which saved the limitation upto 2009 and as such on the date of payment of deficit Court fee the suit is not hit by limitation?”

10. Admittedly, the first plaintiff and the first defendant are partnership firms, engaged in the business of imported timber logs. It is also not in dispute that the plaintiffs 1 to 4 are the partners of the first plaintiff firm, namely, Ashok Saw Mill, and that the defendants 2 to 6 are the partners of the first defendant firm. The defendants have primarily raised three defences namely; (i) that the Subordinate Court, Tenkasi lacks territorial jurisdiction to try the suit; (ii) that the suit is barred by limitation; and (iii) that the defendants have already discharged their liability and therefore, no amount remains due.



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11. The defendants, in their written statement, have taken a rather cursory plea that the plaintiffs had not paid the court fee due on the plaint within the period of limitation. The learned trial Judge, on consideration of the pleadings and evidence, rejected all the said pleas and decreed the suit as prayed for. Aggrieved by the same, the defendants preferred the first appeal. It is pertinent to note that the learned first appellate Judge recorded specific findings affirming that the trial Court had territorial jurisdiction to entertain the suit and that the suit was not barred by limitation. Though the learned counsel for the defendants reiterated the pleas relating to territorial jurisdiction and limitation during the course of arguments, the first appellate Court, while ultimately allowing the appeal in favour of the defendants, nevertheless rendered findings adverse to them on the said issues. Significantly, the defendants did not file any cross-appeal or cross-objection challenging those findings.

12. Order XLI Rule 22 of the Code of Civil Procedure enables a respondent in an appeal to file cross-objections against any part of the decree or against any adverse finding, even if no appeal has been preferred by him. Such cross-objections are required to be filed within the prescribed time and are treated akin to a cross-appeal. It is well settled that where the first appellate Court records



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adverse findings against a party, but ultimately grants relief in its favour, such party is bound to challenge those adverse findings by way of cross-appeal or cross-objection. In the absence of such challenge, the findings attain finality and cannot be permitted to be assailed indirectly in a second appeal filed by the opposite party.

13. In the case on hand, as already pointed out, the defendants have not filed any cross-appeal or cross-objection challenging the adverse findings of the first appellate Court with regard to territorial jurisdiction and limitation. Consequently, those findings have attained finality and the defendants are precluded from assailing the same in the present Second Appeal.

14. The first appellate Judge allowed the appeal solely on the ground that the plaintiffs had failed to pay the requisite court fee within the period of limitation and that, since the deficit court fee was paid only after the expiry of the limitation period, the suit was not maintainable. The learned counsel for the defendants would submit that the plaintiffs had presented the plaint by paying only a nominal portion of the court fee and that the substantial balance of court fee, amounting to Rs.35,167/-, was paid only on 08.06.2007, well beyond the period of limitation. It is further contended that the plaint was returned on as



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many as eight occasions, namely, on 07.06.2006, 12.06.2006, 09.10.2006, 11.10.2006, 15.11.2006, 19.01.2007, 27.04.2007 and 04.06.2007, and that despite repeated opportunities, the plaintiffs neither paid the requisite court fee within time nor filed any petition under Section 149 of the Code of Civil Procedure seeking extension of time for payment of the deficit court fee. According to the defendants, the trial Court, without invoking Section 149 C.P.C., without issuing notice to the defendants, and without proper judicial application of mind, mechanically extended the time for payment of court fee, and such extension, being legally unsustainable, would not enure to the benefit of the plaintiffs so as to save limitation.

15. The learned first appellate Judge, accepting the aforesaid contention of the defendants and placing reliance on the decisions in ***K. Natarajan v. P. Rajasekaran* [2003 (3) LW 803]**, ***S.V. Arjunaraja v. P. Vasantha* [(2005) 5 CTC 401]**, ***B.S. Santhilal v. J. Samidurai* [2010 (6) MLJ 16]** and ***V.N. Subramaniam v. A. Nawab John and others* [(2007) 2 LW 363]**, held that the substantial court fee had been paid nearly eleven months after the presentation of the plaint and beyond the period of limitation, without filing any application under Section 149 C.P.C. The first appellate Court further held that the trial Court had erred in mechanically extending time for payment of court fee without exercising its



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judicial discretion, and that the plaintiffs had failed to offer any bona fide explanation for the inordinate delay in payment of the deficit court fee. Observing that such belated payment attracts the consequences under Order VII Rule 11(c) C.P.C., the learned first appellate Judge ultimately concluded that the failure of the plaintiffs to file an application under Section 149 C.P.C., seeking permission to pay the deficit court fee beyond the period of limitation is fatal to the suit and constitutes a valid ground for its dismissal.

16. Before proceeding further, it is necessary to refer the relevant provision of Section 149 C.P.C.

“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-fees 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. “

17. The learned Counsel for the defendants primarily placed reliance on the judgment of the Division Bench of this Court in ***K.Natarajan Vs.***



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P.K.rajasekaran, reported in **2003(3) LW 803**, wherein the Division Bench has laid down the procedural safeguards governing the exercise of power under Section 149 C.P.C., and the same are extracted hereunder:

(1) [Section 149](#) of Code of Civil Procedure is a proviso to Section 4 of the Tamilnadu Court Fees and Suits Valuation Act, 1955.

(2) The word 'document' employed in [Section 149](#) of Code of Civil Procedure would include plaint also.

(3) Whenever a plaint is received, the same shall be verified and if found to be not in order, the same shall be returned at least on the third day (excluding the date of presentation so also the intervening holidays).

(4) If the suit is presented on the last date of limitation affixing less Court fee, than the one mentioned in the details of valuation in the plaint, an affidavit shall be filed by the plaintiff giving reasons for not paying the requisite Court fee.

(5) In such cases, the Court shall before exercising its discretion and granting time to pay the deficit Court fee, shall order notice to the defendants and consider their objections, if any. However, such notice is not necessary in cases where the plaintiff has paid almost the entirety of the requisite court fee and the Court is satisfied on affidavit by the party that the mistake happened due to some bona fide reasons such as calculation mistake or the alike.



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(6) *The discretion referred to in [Section 149](#) of Code of Civil Procedure is a judicial discretion and the same has to be exercised in accordance with the well established principles of law.*

(7) *But however, in cases where the time granted to pay the deficit Court fee falls within the period of limitation, the defendant need not be heard.*

(7A) *In case where the plaint is presented well within the period of limitation with deficit court fee and the court returns the plaint to rectify the defect giving some time (2 or 3 weeks), which also falls within the period of limitation, but the plaint is re-presented paying deficit court fee after the period of limitation, the Court is bound to hear the defendant, notwithstanding the fact that the plaintiff has paid substantial court fee (not almost entirety) at the first instance, before condoning the delay in paying the deficit court fee.*

(8) *In cases where part of the time granted to pay the deficit Court fee falls outside the period of limitation and the deficit court fee is paid within the time of limitation (i.e., the plaint is represented with requisite court fee), the court need not wait for the objections of the defendant and the plaint can be straight away numbered.*

(9) *The court should exercise its judicial discretion while considering as to whether time should be granted or not. Cases where the plaintiff wrongly (bona fide mistake) valued under particular provisions of law under [Court Fee Act](#) or where he could not pay the required Court fee for the reasons beyond his control, due to some bona fide reasons, the Court shall condone the delay. Payment of substantial*



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court fee is a circumstance, which will go in favour of the claim of the plaintiff that a bona fide mistake has crept in.

But however, in cases where the plaintiff acted wilfully to harass the defendant (like wilful negligence in paying court fee, awaiting the result of some other litigation, expecting compromise, etc.).

(10) If the court had exercised its discretion without issuing notice, then it is open to the defendant to file application under [Section 151](#) of Code of Civil Procedure for proper relief. It will be open to the defendant to file a revision under [Article 227](#) of Constitution of India. That apart, objection can also be raised at the trial or even at the appellate stage, since the failure to exercise judicial discretion in a manner known to law (as [laid down in](#) various decisions of the Supreme Court) amounts to Court applying a wrong provision of law.”

18. As already pointed out, the learned first appellate Judge has also relied upon the decision in ***S.V.Arjunaraja Vs. P.Vasantha*** reported in **(2005)5 CTC 401** and the relevant passages relied upon by the first appellate Court are extracted hereunder:

“20. It is also held by the Apex Court in [Mohammad Mahibulla and Anr. v. Seth Chaman Lal \(Dead\) by L.Rs. and Ors.](#), , that 'when an appeal had not been filed sufficiently stamped, instead of outright dismissing the memorandum of appeal, an opportunity should have been given and the appellant should have been called upon to make



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good the deficiency', which is also not followed by the plaintiff in this case, by filing an application and getting an order from the Court, whether the order is correct or not. For non-payment of Court Fees, generally, one occasion alone, time should be given and if the plaintiff is unable to pay the required Court Fees, even after the first return, then, it is incumbent upon him to make an application and seek time and the Court, satisfying itself, should grant time for payment of the deficit Court Fees. The Court should not extend the time, mechanically, for payment of deficit Court Fees. After giving an opportunity, if the plaintiff has not paid the Court Fees, as observed by the Apex Court, if there was failure to comply with the direction of the Court, the memorandum of the appeal should be dismissed, which procedure should have alone been followed in this case, which was also not followed. In this view also, in my opinion, the subsequent extension of time by the trial Court, blindly, is not a valid extension of time and therefore, even if the Court Fees is paid, on the alleged invalid extension of time, certainly, that will not save the limitation, as provided under [Section 149](#), C.P.C., which can be seen from the decision of the Division Bench of this Court in [K. Natarajan v. P.K. Rajasekaran](#), 2003 (2) MLJ 305.

21. In [the said decision](#), the Division Bench of this Court has considered the effect of non-payment of deficit Court Fees, within the period of limitation, as well as, how the extension of time should be given, if the deficit Court Fees has to be paid, after the period of limitation is over.



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22. All the above guidelines in the case on hand were offended, not only by the plaintiff but also infringed by the trial Court, without adopting the procedure prescribed. Further, Order 7, Rule 11, proviso of the CPC also not complied with. In this view, the payment of Court Fees, after the period of limitation is over, will come within the meaning of Order 7, Rule 11(c), as extracted by me supra. The subsequent grant of time, which is not in accordance with law, cannot be taken advantage of.

23. In *Pamidimukkala Sitharamayya and Ors. v. Ivaturi Ramayya and Anr.*, 1938 (1) MLJ 514, the Division Bench of this Court had an occasion to consider the language of Section 149, C.P.C. and payment of deficit Court Fees, after the application for extension of time having been dismissed, wherein it is held:

"The language of Section 149, Civil Procedure Code, itself seems to imply that in the absence of an order granting time under the section, the presentation of the un-stamped or insufficiently stamped memorandum of appeal will not amount to a valid presentation."

Thus, indicating that absence of an order, granting time under Section 149, C.P.C., will not save the limitation, if deficit Court Fees has been paid, after the period of limitation, which is squarely applicable to the case on hand."

19. The learned Counsel for the defendants further placed reliance on the judgment of the Hon'ble Supreme Court in *Atma Ram Vs. Charanjit Singh*



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reported in (2020)3 SCC 311 and the relevant passage relied upon is extracted

hereunder:

“8. It may be true that the approach of the High Court in non-suiting the petitioner -plaintiff on the ground of limitation, despite the original defect having been cured and the same having attained finality, may be faulty. But we would not allow the petitioner to take advantage of the same by taking shelter under Section 149 CPC, especially when he filed the suit (after more than three years of the date fixed under the agreement of sale) only as one for mandatory injunction, valued the same as such and paid court fee accordingly, but chose to pay proper court fee after being confronted with an application for the dismissal of the suit. Clever ploys cannot always pay dividends.”

20. Turning to the case of the plaintiffs side, the learned Counsel for the plaintiffs placed reliance on the decision of the Hon'ble Supreme Court in ***Mahasay Ganesh Prasad Ray and another Vs. Narendra Nath Sen and Others*** reported in **1950 SCC 782**, wherein the Hon'ble Apex Court has held that the power of the High Court to permit payment of deficit Court fee is wide and discretionary and that in appropriate cases, the bar of limitation may be ignored and overlooked while exercising such power and the relevant portions are extracted hereunder:



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“A. Civil Procedure Code, 1908 – S.149 – Discretionary power of court to allow payment of deficient court fee – exercise of

– Held, power of High Court to allow an amendment under S.149 is

– one under which plea of bar of limitation may be ignored – It was a matter of discretion for High Court which was not exercised so as to violate any recognised principles of law or that by granting leave to amend, any gross injustice had been done.”

“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 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 recognised 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.”

21. The learned Counsel for the plaintiffs would contend that the words “at any stage” occurring in Section 149 C.P.C., is of wide amplitude and does not



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impose any limitation that such discretion should be exercised only within the period prescribed for filing the suit or appeal. In support of the said contention, reliance is placed on the decision of the Hon'ble Supreme Court in ***Sansar Chand and others Vs. Union of India*** reported in **1965 SCC Online Sc 385** and the relevant passages are extracted hereunder:

“2. The first contention of the learned counsel for the appellants was that the appeal filed in the Court of the Judicial Commissioner, Himachal Pradesh, was barred by limitation. Some facts are necessary to appreciate this contention. The appeal was presented on November 29, 1957, with a court fee of Rs 1523-8-0 under the Himachal Pradesh Court Fees (Amendment) Act, 1952. The correct court fee payable was Rs 1875. There was, therefore, a deficiency of Rs 351-8-0. The said deficiency was made good on July 9, 1958. On June 21, 1959, an application was filed by the appellants in the Court of the Judicial Commissioner for excusing the delay in paying the deficit court fee. The learned Judicial Commissioner, for the reasons mentioned in his judgment, excused the delay. The result was that in law it must be held that the memorandum of appeal was filed with the requisite court fee. The argument was that the learned Judicial Commissioner had no jurisdiction to extend the time for paying the deficit court fee after the appeal was barred by limitation and, therefore, his order excusing the delay could not have rectified the defeat. This argument, if we may say so, was in



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the teeth of the express provisions of Section 149 of the Code of Civil Procedure,

.....

Under this section the court may exercise the discretion at any stage. The expression “at any stage” is very wide and it does not impose any limitation such as that the discretion should be exercised only within the period of limitation prescribed for the filing of the appeal. The court cannot obviously circumscribe the wide phraseology used in the section by extraneous or equitable considerations. The decision of this Court in Mahant Ramdas v. Ganga Das¹ relied upon by the learned counsel for the appellants in support of his contention does not bear him, out. There, the High Court made a peremptory order fixing the period for payment of deficit court fee and the appellant made an application for extension of time before the time fixed had run out, but the application came on for hearing before a Division Bench after the period had run out. It was held on a construction of Sections 148 and 149 of the Code of Civil Procedure, that an order extending the time for payment, though passed after the expiry of the time fixed, could operate from the date on which the time fixed expired. That decision was concerned only with the situation where a court fixed the period for payment but the amount was not paid within that time but the application for excusing the delay was filed within the prescribed time. Here we are confronted with a different situation. In the present case there was no order of a court prescribing the time for payment of court fee. The case directly falls within the



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express terms of Section 149 of the Code of Civil Procedure which clearly confers a discretionary power on the court to excuse delay at any stage. On the merits of the application for excusing the delay, the learned Judicial Commissioner had given relevant reasons, for excusing the delay. It is not for this Court to take a different view. This objection was, therefore, overruled.”

22. In ***A.Gurunathan @ Sivaji Vs. Muthulakshmi and 3 others*** reported in **2008(6) CTC 59** relied on by the learned Counsel for the plaintiffs, a learned Judge of this Court has specifically held that filing an application under Section 149 C.P.C., for receiving the deficit Court fee is not mandatory but only optional, and that even in the absence of such an application, the act of the Court in accepting or receiving the deficit Court fee cannot be found fault with and the relevant portion is extracted hereunder:

“Code of Civil Procedure, 1908 (5 of 1908), Sections 148 & 149 – Application for enlargement of time – Not necessary in all cases – Application to receive deficit Court-fee not a mandatory one – court can receive deficit Court-fee in exercise of judicial discretion - Duty of Court to see its act injures no party – Order of Trial Court to effect that “acceptance of payment of deficit Court-fee without an Application is irregular” - Set aside to prevent aberration of justice.”



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In the considered opinion of this Court, an Application to receive the deficit Court-fee is not a mandatory one and the same is only optional and in the absence of an Application the act of Court in accepting or receiving the deficit Court-fee cannot be found fault with and the exercise of judicial discretion by the Trial Court in this regard in favour of the plaintiffs in order to do justice is a prudent and equitable one, since the said discretion in its breath is coextensive with necessity and the resultant position is the Plaint stands Moreover, the duty of Court is to see that its good from the original date of filing and the same is not time barred. tits acts injures no party.”

23. In ***N.Mahalingam and another Vs. K.Krishnasamy Naidu and another*** reported in **2009(6) CTC 92**, a learned Judge of this Court, after referring to the decision in ***K.Natarajan Vs. P.K.rajasekaran***, reported in **2003(3) LW 803**, and ***S.V.Arjunaraja Vs. P.Vasantha*** reported in **(2005)5 CTC 401**, as well as the Full Bench decision of this Court in ***Gavaranga Sahu Vs. Botokbishna Patro and others*** reported in **1909(32) ILR Mad.**, has held as follows:

“28.Hence, the rule of interpretation did not permit the Court to interpret unless the provision as it stand is meaningless or of doubtful meaning. It is also well settled principle of law that while interpreting



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of provision, the Court can only interpret the law and cannot legislate. In this connection, it is useful to refer the judgment of the Supreme Court in (*Union of India Vs. Dharmendara Textile Processors* reported in (2008 (1) CTC 53) wherein the Hon'ble Supreme Court has held that the plain and unambiguous meaning will have to be given to the provision while interpreting it. Hence, this Court is of the opinion that in view of the clear provision mentioned under *Section 149* of C.P.C., the Court can 'at any stage' permit the party to make the payment of deficit Court fee and once the said amount is paid, the same would relate back to the presentation of the plaint at the first instance. Therefore, on consideration of the above said facts, this Court is of the opinion that the above two revisions are liable to be dismissed and accordingly the same are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

29. In the absence of any provision enabling issuance of notice to other side, this court is of the opinion that no notice is require to be issued to the proposed defendant in the suit even before numbering the plaint. Further, when an order is passed by the trial Court, allowing the payment of deficit Court fee, such an order cannot be challenged by filing a revision or at the time of deciding the suit unless mala fides are established by the defendant. In such a case, onus is heavily on the defendant to substantiate his case. It is well settled principle of law that the persons, who alleges mala fide will have to prove his case. Therefore, this Court is of the opinion that in the absence of any mala fide, the power exercised under *Section 149* of C.P.C., cannot be



interfered with. Further, the said plea being one of the fact, the same cannot be allowed to raise in the appeal, for the 1st time.”

24. After referring to various decisions, the learned Judge summarized the principles and the same are extracted hereunder:

“1.The power exercised by a Court under Section 149 is very wide and the discretion shall be exercised in favour of the plaintiff in the normal circumstances.

2.The power under [Section 149](#) of C.P.C. can be exercised by the Court concerned 'at any stage' of the suit.

3. When the Court exercises the power under [Section 149](#) of C.P.C. before numbering the plaint, the Court is not required to issue notice to the proposed defendant in the suit, since it is a matter between the Court and the plaintiff.

4.Once, the Court exercise the power under [Section 149](#) of C.P.C., the same relates back with the presentation of the plaintiff at the first instance and therefore, the question of limitation does not arise.

5.When the power is exercised by the Court on an application filed under [Section 151](#) of the Code of Civil Procedure, it is deemed to have been in exercise under [Section 149](#) of the Code of Civil Procedure.

6.The Court can exercise its power under [Section 149](#) of C.P.C. either with or without an application by the party concerned.



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7. An order passed or deemed to have been passed under [Section 149](#) of the Code of Civil Procedure, cannot be challenged and decided in a revision or at the time of final hearing in the normal circumstances, until and unless mala fide is raised and proved.

8. The onus of proving lack of bonofides or mala fides is heavily on the person who alleges the same.

9. The power exercised by the Court can also be challenged on the ground that the Court below has not followed the proviso to Order VII, Rule 11, of C.P.C.

10. The power under Order VII, Rule 11 of C.P.C. cannot be invoked when the plaintiff pays the amount as per the order of the Court as directed under Order VII, Rule 11 (b) and (c) of C.P.C.”

25. In ***P.Kumar Vs. Sanjay Agarwal and 3 others*** reported in **2010-5-L.W., 663**, relied on by the learned Counsel for the plaintiffs, a learned Judge of this Court has specifically held that the terms “at any stage” occurring in Section 149 of Civil Procedure Code contemplates that the deficiency in Court fee can be made good even after the expiry of the period of limitation prescribed for filing the suit or appeal and the relevant paragraphs are extracted hereunder:

“29. Be that as it may, the terms "at any stage" in Section 149 of Civil Procedure Code adumbrates that the deficiencies can be made



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good even after the expiry of the limitation period in regard to the filing of the suit or Appeal and further, the discretion can be exercised even in the case of a plaint without any Court fee. In this connection, it is not out of place for this Court to point out that the discretion showered on a Court of law as per [Section 149](#) of C.P.C. is over and above the application under [Order 7, Rule 11 of C.P.C.](#) To put it precisely [Order 7, Rule 11 of C.P.C.](#) is not an enabling provision, but only a disabling one and the proper Section in and by which time may be granted for payment of Court fee is only Section 149.

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."

26. The learned Counsel for the plaintiffs further relied on the decision of this Court in **V.P.Venkatachalam Vs. N.Venkatachalam** reported in **2015-4-L.W., 711**, wherein it has been held that the Courts are empowered in their discretion, to



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permit payment of deficit court fee at any stage of the proceedings by exercising their power under Section 149 of the Civil Procedure Code and the relevant passages are extracted hereunder:

“9. From a bare perusal of the above provisions made under [the Code of Civil Procedure](#), 1908, it could be seen that the Courts are empowered in their discretion to allow the payment of deficit court fee at any stage of the proceedings by exercising their power under [Section 149](#) of the Civil Procedure Code. If such person pays the deficit court fee as allowed by the Court and upon such payment, the document shall have the same force and effect as if such fee has been paid at the first instance. Thus, the reading of [Section 149](#) CPC further makes one to understand that the question of limitation cannot be put against once the payment of deficit Court fee is made as allowed by the Court under [Section 149](#) CPC.

13. In view of the above said proposition, it is not necessary for a party to make an application for the payment of deficit Court fee and in view of the specific provisions contained in [Section 149](#) C.P.C. stating that an order permitting the payment of Court fee would relate back to the presentation of the plaint, the question of limitation would not arise for consideration. The question of limitation would come when the plaint is presented after the period of limitation as prescribed by law. Inasmuch as the power exercised under [Section 149](#) C.P.C. is procedural in nature and also in view of the fact that an



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order providing for payment of Court fee would relate back to the date of the plaint, the question of limitation does not arise.”

27. In the case of ***T.Arumugam Vs. N.Namperumal*** reported in **2022(2) CTC 376**, relied on by the learned Counsel for the plaintiffs, a learned Judge of this Court has observed as follows:

“7.A mere look at the aforesaid decisions would yield the proposition that the Court has the power to permit the plaintiff to make up deficiency of Court fee. Even if the plaintiff fails to do so within the time granted, still the time-limit can subsequently be extended. It is not necessary that formal order should be passed indicating such enlargement of time. The numbering of the suit and taking the matter on file would indicate that the said power should be deemed to have been exercised. This is a matter that is between the Court and the plaintiff and there is no necessity to issue notice to the defendant. In the case on hand, by 24.03.2004, the entire Court fee has been paid. Though an application had been filed under [Section 151](#) of C.P.C., without numbering the interlocutory application or passing formal orders thereon, the trial Court had numbered the suit. That indicates that the request for enlargement of time earlier granted under [Section 149](#) of C.P.C., had been accepted in the first instance by the trial Court. There was no need for going back on the exercise of such discretion by the successor-in-office. Therefore, I hold that the Courts below went completely wrong in coming to the conclusion that the suit was time-barred. The substantial question of law is



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answered in favour of the appellant and the impugned Judgment and decree passed by the first Appellate Court is set aside.”

28. In ***G.Bagyalakshmi and others Vs. Nachimuthu (died) and others*** reported in **2022(5) CTC 305**, a learned Judge of this Court has reiterated the settled legal position that Section 149 C.P.C., vests the Court with discretion to extend the time for payment of deficit court fee. In that case, a defence similar to that raised by the present defendants was taken, namely, that the suit had been filed just two days prior to the expiry of limitation with a token court fee of Rupees one. The learned Judge, however, observed that once the suit had been numbered at a later point of time and proceeded with as if the requisite court fee had been paid in the first instance, the issue cannot be permitted to be raised at a subsequent stage and the relevant passages are extracted hereunder:

“49. Recently, this Court has also held that it is not necessary to file a separate application under [Section 149](#) of C.P.C. in [P.Kumar vs. Sanjay Agarwal & Others](#), 2010-5-L.W.663 and another decision of this Court in [V.P.Venkatachalam vs. N.Venkatachalam](#), 2015-4- L.W. 711.

50. Section 149 makes it very clear that it is the discretion of the Court to extend the period for paying the deficit court fee. The deficit court fee can be demanded at any stage of the proceedings.



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51. The Trial Court proceeded with the Trial as if there was a proper presentation of the plaint. Curiously, the Trial held that the suit was not maintainable for want of appropriate application under [Section 149](#) of CPC after the Trial.

52. No objection was taken at the preliminary stage by the defendant when the suit summons was served on him. Neither revisionary nor appellate remedy were initiated by the defendant to reject the plaint on the ground that the plaint in O.S.No.1413 of 2011 on account of delayed payment of court fee.

53. Before numbering the plaint in O.S.No.1413 of 2011, after the deficit court fee was paid belatedly, the Trial Court could have returned the plaint and asked the deceased plaintiff explain and to file appropriate application and ordered notice on the defendant to respond.

54. Instead, issues were framed. The Trial Court concluded that the deceased plaintiff paid the court fee belatedly without filing any sub application under [Section 149](#) of the CPC and therefore the suit was not

55. As per Order VII Rule 11 (c) of [CPC](#), plaint can be returned where relief claimed in properly is valued, but where the plaint is returned upon the paper being insufficiently stamped and the plaintiff on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so, the plaint can be rejected. The delayed payment of Court fee appears to be procedural in nature. This is evident from a reading of [Order VII Rule 13 of CPC](#) as per which the rejection of a plaint on any of the grounds



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hereinbefore mentioned in Order VII shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of same cause of action.

56. Though, in this case, the suit was filed just two days before the expiry of limitation with deficit Court Fee i.e. with a token Court Fee of Rs.1, nevertheless, the suit was numbered at a later point of time and the suit was proceeded as if the court fee had been paid in the first instance.

57. Therefore, the substantial questions of law is answered in favour of the appellants as far as the limitation is concerned.

58. Therefore, the Trial Court committed an error by holding that the suit was not maintainable for want of appropriate application under [Section 149](#) of CPC. The 2nd question is also therefore answered in favour of the appellants.”

29. It is pertinent to note that the Full Bench of this Court in ***Gavaranga Sahu Vs. Botokbishna Patro and others*** reported in ***1909(32) ILR Mad***, has categorically held that where the deficit court fee is paid after the expiry of the period of limitation with the permission of the court, the suit cannot be treated as having been filed beyond the limitation. As rightly observed by the learned Judge in ***Mahalingam's case*** reported in ***2009(6) CTC 92***, the Division Bench in ***K.Natarajan Vs. P.K.rajasekaran***, reported in ***2003(3) LW 803***, though having



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referred to the said Full Bench decision, has neither followed nor expressly overruled the same.

30. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in *P.K.Palanisamy Vs. N.Arumugham and another* in SLP(Civil)No.2308 of 2009), wherein the Hon'ble Apex Court has elaborately dealt with the scope of Section 149 C.P.C. The Hon'ble Apex Court, inter alia, expressed serious reservations as to whether a civil Court could hear a defendant before numbering or registering the plaint.

31. In the said case, the appellant had instituted a suit for recovery of money against the respondents before the Subordinate Court, Salem. The plaint was presented on 05.10.1998 with a court fee of Rs.1/- alone. The appellant filed an application under Sections 148 and 151 C.P.C. seeking six weeks' time for payment of the deficit court fee, which was granted by the trial Court by order dated 07.10.1998. Subsequently, on 08.11.1998, the appellant filed another application seeking eight weeks' time on the ground of non-availability of stamp papers in the Sub-Treasury, which was also granted by order dated 20.11.1998. A further extension of eight weeks was granted by order dated 21.01.1999. The deficit court fee was ultimately paid on 17.02.1999 and was accepted by the trial



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Thereafter, the plaintiff filed an application under Section 151 C.P.C. seeking condonation of delay of 272 days in representing the plaint, which was allowed by order dated 02.11.2000. The plaint was thereafter represented along with applications for attachment before judgment and for condonation of delay in re-presentation. The respondents entered appearance on 10.01.2001, but did not raise any objection with regard to the delayed payment of court fee. Subsequently, they remained absent and an ex parte decree came to be passed. Their application to condone the delay in filing an application to set aside the ex parte decree was allowed on condition of payment of costs. The appellant thereafter approached the High Court under Article 227 of the Constitution of India, which passed a conditional order directing the respondents to deposit a certain amount. After restoration of the suit, trial commenced and evidence was let in on the side of the plaintiff. At that stage, the respondents filed an application under Order VII Rule 11(c) C.P.C. seeking rejection of the plaint, for the first time contending that the suit, presented on 05.10.1998, was barred by limitation, and that the extension of time granted under Section 149 read with Section 151 C.P.C., as well as the condonation of delay in re-presentation, had been ordered without notice to them. The trial Court dismissed the said application; however, the High Court, in proceedings under Article 227 of the Constitution of India, allowed the same. The



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correctness of the said order was thereafter challenged before the Hon'ble Supreme Court.

32. The Hon'ble Apex Court has specifically held that the payment of court fee is a matter between the State and the suitor and has observed as follows:

*“9. The respondents in their written statement did not raise any issue with regard to the correctness or otherwise of the orders dated 7th October, 1998, 8th November 1998, 20th November, 1998 and 21st January, 1999. Rightly or wrongly, the plaint was accepted. The deficit court fee has been paid. The court was satisfied with regard to the bona fide of the plaintiff. Hearing of the suit proceeded; not only issues were framed but the witnesses on behalf of the parties were also examined by both the parties. It is difficult to believe that from 10th January 2001 to 4th January 2008, the respondents or their counsel did not have any occasion to inspect the records. Any counsel worth itself would not only do so but even without doing so would address himself a question as to why a suit filed on 4th October 1998 was entertained in the year 2000. The suit was at one point of time decreed ex parte. The same was set aside on certain conditions. Evidently, the conditions laid down had been satisfied only upon obtaining an extension of time. In the aforementioned backdrop of events, we may not have to go into the correctness or otherwise of the decision rendered by the Madras High Court in *K. Natarajan vs. P.K. Rajasekaran* [(2003) 2 M.L.J. 305], which has been followed in *Ramiah & Anr. vs. R.**



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Palaniappan & Ors.[(2007) 5 MLJ 559], *S.V. Arjunaraja vs.P. Vasantha* [2005 (5) CTC 401] and *V.N. Subramaniam vs. A. Nawab John & Ors.*[(2007) 1 MLJ 669].

10. We have, however, serious reservations as to whether the civil court could hear a defendant before registering a plaint. The Code does not envisage such a situation. When a suit is filed, the Civil Court is bound by the procedures *laid down in* the Code. The defendant upon appearing, however, in certain situations, may question the orders passed by the Civil Court at a later stage.

13. 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. 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.



In *Ram Sunder Ram v. Union of India & Ors.* [2007 (9) SCALE 197], it was held:

".....It appears that the competent authority has wrongly quoted *Section 20* in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under *Section 22* of the Army Act. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law [see *N. Mani v. Sangeetha Theatre and Ors.* (2004) 12 SCC 278]. Thus, quoting of wrong provision of *Section 20* in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under *Section 22* of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the Learned Counsel for the appellant."

In *N. Mani v. Sangeetha Theatres & Ors.* [(2004) 12 SCC 278], it is stated:

"9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."



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33. It is also necessary to refer to the decision of the Hon'ble Supreme Court in *Sardar Tajender Singh Ghambhir and another v. Sardar Gurpreet Singh and others*, reported in *AIR 2015 SC 242*. In that case, an objection regarding deficit court fee was raised by the defendants at the stage of first appeal. The first appellate Court observed that, while permitting amendment of the plaint, the trial Court had not prescribed any time limit for payment of additional court fee and that no objection had been raised in that regard at the earlier stage. However, the first appellate Court held that the deficiency in court fee in respect of the plaint could not be made good at the appellate stage and that such permission could not be granted under Sections 149 or 151 C.P.C. When the said order was challenged before the Hon'ble Supreme Court, the Apex Court examined the scope of Sections 6 and 12 of the Court Fees Act, 1870 (as applicable in the State of Uttar Pradesh), and categorically held that the High Court had erred in concluding that the deficit court fee could not be made good at the appellate stage. The Hon'ble Supreme Court reiterated the well-settled principle that an appeal is a continuation of the suit and that the powers of the appellate Court are co-extensive with those of the trial Court. It was further held that Section 12 of the Court Fees Act empowers the appellate Court to direct the party to make good the deficit court fee even at the appellate stage. On such



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reasoning, the Hon'ble Supreme Court set aside the orders passed by the High Court.

34. When it is well settled that the deficit court fee can be permitted to be paid even at the appellate stage, the reasoning of the first appellate Court that the requisite court fee ought to have been paid within the period of limitation cannot be sustained in law.

35. Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 mandates that any objection regarding valuation or sufficiency of court fee shall be raised before the settlement of issues and prior to the recording of evidence on the merits of the case. In the present case, as already pointed out, the defendants have made only a cursory averment in the written statement alleging that the plaintiffs had not paid the entire court fee within the period of limitation. Admittedly, no steps were taken by the defendants to have the said issue adjudicated before the commencement of trial, nor was any issue framed by the trial Court in that regard. In the absence of any such objection being pressed at the appropriate stage, the defendants are precluded from raising the same subsequently, in view of the statutory mandate under Section 12(2) of the Act. However, the learned first appellate Judge, without adverting to the above legal



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position and by merely placing reliance on the decision of the Division Bench of this Court, has erroneously concluded that the suit is liable to be dismissed on the ground that the court fee was paid after the expiry of the period of limitation. Such a finding, being contrary to the settled principles governing the issue, cannot be sustained.

36. On a careful consideration of the decisions referred to above, it is manifest that the power of the Court under Section 149 C.P.C. is wide and discretionary, and the same can be exercised at any stage of the proceedings. It is equally well settled that such power can be exercised even suo motu by the Court, without any formal application by the party concerned, and that the deficit court fee can be permitted to be made good even at the appellate stage. Once the Court, in exercise of its discretion, accepts the deficit court fee and proceeds to number the plaint, the matter ordinarily attains finality, and the same cannot be questioned by the opposite party, in the absence of any allegation of mala fides.

37. In the case on hand, the learned Subordinate Judge, having accepted the payment of deficit court fee, numbered the suit and proceeded with the trial. Since the trial Court has exercised its discretion under Section 149 C.P.C., even in the absence of a formal application, and inasmuch as no mala fides have been



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attributed by the defendants, the said exercise of discretion cannot be faulted. In view of the above, this Court has no hesitation in holding that the action of the learned Subordinate Judge in taking the plaint on file after receipt of the deficit court fee is legally sustainable, and consequently, the suit cannot be said to be not maintainable. Consequently this Court concludes that the impugned judgment and decree of the first appellate Court are liable to be set aside, and those of the trial Court are to be restored. Having regard to the facts and circumstances of the case, the plaintiffs are entitled to costs throughout.

38. In the result, the Second Appeal is allowed and the judgment and decree made in A.S.No.77 of 2011, dated 14.03.2014, on the file of I Additional District Court, Tirunelveli, are set aside. The judgment and decree passed in O.S.No.41 of 2007, dated 30.09.2011, on the file of the Principal Subordinate Court, Tenkasi are restored. Consequently, the connected Civil Miscellaneous Petition is closed. The plaintiffs are entitled to get costs throughout.

27.02.2026

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

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To:

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1. I Additional District Court, Tirunelveli.
2. The Principal Subordinate Court, Tenkasi.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN
S.A.(MD).No.944 of 2014

27.02.2026