(2005) 12 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Miscellaneous No. 23688-CII of 2005 and Civil Revision No. 4827 of 2005

Haryana State and Another		APPELLANT
	Vs	
Geeta Devi and Another		RESPONDENT

Date of Decision: Dec. 20, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11, 149 , 151
- Constitution of India, 1950 - Article 227

Citation: (2006) 4 BC 285 : (2006) 2 CivCC 604 : (2006) 2 CivCC 570 : (2006) 143 PLR 53

Hon'ble Judges: Ajay Kumar Mittal, J

Bench: Single Bench

Advocate: Madan Gupta, Deputy Advocate General, for the Appellant; Akshay Kumar Goel, for the Respondent

Final Decision: Allowed

Judgement

Ajay Kumar Mittal, J.
This is an application u/s 151 of the CPC for preponing the hearing of the present revision petition which is fixed for 23.1.2006.

2. After hearing learned Counsel for the parties, the application is disposed of and with their consent the hearing in the revision petition is preponed from 23.1.2006 and revision petition is taking up for hearing today.

Civil Revision No. 4827 of 2005.

3. This is a Civil Revision filed under Article 227 of the Constitution of India praying for setting aside the order dated 19.5.2005 passed by learned District Judge, Bhiwani, whereby the appeal filed by the State has been rejected for want of affixation of ad

valorem court-fee under Order 7, Rule 11 of the Code of Civil Procedure.

4. Briefly, the facts of the present revision petition are that the plaintiff-respondent filed a suit for recovery of Rs. 2,00,000/- against the State. The trial Court, vide judgment and decree dated 13.9.2003 decreed the suit for damages of Rs. 75,000/- on account of negligence in performance of her family planning operation along with interest at the rate of 6% per annum from the date of filing the suit till the date of realization against the defendant.

5. Aggrieved from the aforesaid judgment, defendant-State filed an appeal before the District Judge. Bhiwani, wherein a court-fee stamp of Rs. 25/- was affixed instead of affixing the ad valorem court-fee. The Court rejected the appeal on account of non-affixation of ad valorem court-fee under Order 7, Rule 11 C.P.C

6. This revision petition is against the impugned order dated 19.5.2005 passed by learned District Judge, Bhiwani. Learned State counsel submitted that in view of Section 149 of the Code of Civil Procedure. Court has power and the jurisdiction to grant time for making up the deficiency of the court-fee and the Lower Appellate Court had not granted the time to affix the court-fee and wrongly rejected the appeal under Order 7, Rule 11 of the Code of Civil Procedure. Learned Counsel further submitted that the petitioner is ready to affix the requisite court-fee within the time as may be fixed by this Court.

7. On the other hand, learned Counsel for the respondent supported the impugned order passed by the learned District Judge, Bhiwani. He has submitted that no application had been filed by the State for affixation of the ad-valorem court-fee. Thus, the order is legal and justified and calls for no interference by this Court.

Section 149 of the CPC reads thus;-

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 tee had been paid in the first instance.

8. A bare reading of the above provision shows that where there is deficiency in payment of court-fee payable on a document by the law, the Court may in its discretion at any stage allow the party to pay the requisite fee and upon such payment, the same shall have the force and effect as if it had been paid in the first instance. According to this provision, a defective document is validated retrospectively for the purpose of limitation.

9. The Apex Court in Mohammad Mahibulla and another Vs. Seth Chaman Lal (dead) by L.Rs. and others, , had laid down that when a Court goes to the conclusion that memorandum of appeal had not been sufficiently stamped, an opportunity should be

given by the Court to the appellant to make good the balance court-fee within a time to be indicated and if there was failure to comply with such direction of the Court, the memorandum of appeal could be rejected.

10. After hearing learned Counsel for the parties and also perusing the record, I am of the opinion that the learned Appellate Court should have given an opportunity to the petitioner to affix the deficient court-fee before it could rejected the memorandum of appeal. Accordingly, the impugned order dated 19.5.2005 passed by the learned District Judge. Bhiwani is hereby set aside and the revision petition is allowed. One month''s time is allowed to the petitioner to pay the deficiency in court-fee. In case, the same is done on or before 20.1.2006, the Appellate Court shall decide the appeal on merits in accordance with law.