

**(2005) 08 MAD CK 0146**

**Madras High Court (Madurai Bench)**

**Case No:** C.R.P. (PD) No. 1381 of 2004

S.V. Arjunaraja

APPELLANT

Vs

P. Vasantha

RESPONDENT

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**Date of Decision:** Aug. 8, 2005

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 54
- Court Fees Act, 1870 - Section 4

**Citation:** (2006) 1 RCR(Civil) 295

**Hon'ble Judges:** M. Thanikachalam, J

**Bench:** Single Bench

**Advocate:** R. Kannan, for the Appellant; S. Natarajan, for A. Thirunavukkarasu, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

M. Thanikachalam, J.

The defendant, who attempted before the trial Court by filing I.A. No. 521 of 2003 in O.S. No. 153 of 2003, invoking the grounds available under Order 7, Rule 11(c), C.P.C., to reject the plaint, failed and the result is this revision.

2. The respondent herein, as plaintiff, has filed a suit for recovery of a sum of Rs. 4,29,166.50, with interest on Rs. 2,50,000, at the rate of 24% per annum, from the date of plaint, till the date of realisation, on the basis of a promissory note dated 30.12.1999, alleging that the defendant/revision petitioner had borrowed the said amount, for his family expenses and business, promising to repay the same, on demand, failed to do so and therefore, he should be directed to pay the said amount.

3. The revision petitioner/defendant, in his written statement, has stated that the suit promissory note is a forged, fabricated and concocted by the plaintiff's husband and this vexatious suit is filed, in her name, thereby denying, not only the execution of the promissory note, but also disputing the liability.

4. The revision petitioner/defendant, after going through the presentation of the plaint in the Court, felt that the suit itself should not have been numbered, whereas it should have been rejected, as contemplated under Order 7, Rule 11(c), C.P.C. In this view, he has filed an application, in I.A. No. 521 of 2003 in O.S. No. 153 of 2003, to reject the plaint, contending that within the period of limitation for the suit, sufficient Court Fees has not been paid, whereas, the Court Fees has been paid after the period of limitation is over, which was also condoned, even without issuing notice to the revision petitioner/defendant and in this view the plaint should be rejected.

5. The petition, for rejecting the plaint, was opposed by the respondent/ plaintiff, contending that within the time extended by the Court, which is competent to extend the time for payment of Court Fees, deficit Court Fees has been paid, thereby, taking back the case, to the date of original filing, which was in time, and therefore, rejection of the plaint is not permissible.

6. The trial Court, considering the rival contentions of the parties, came to the conclusion, that only on the basis of the permission granted by the Court, deficit Court Fees has been paid, thereby, bringing the suit within the time, which is not liable to be rejected. Thus, taking the view, the petition came to be dismissed, on 9.1.2004, which is under challenge in this revision.

7. Heard both sides.

8. In order to solve the dispute raised in this case, certain dates and events should be remembered. The suit is based upon a promissory note dated 30.12.1999. There is no endorsement of any subsequent payment, acknowledging the debt. Therefore, in the ordinary course, the suit should have been filed, within three years, from the date of execution of the promissory note that is on or before 30.12.2002. Admittedly, in this case, the suit was filed on 26.12.2002, within the period of three years, thereby, filing the suit in time, whether it is sufficiently stamped or not. It is also an admitted position, that at the time of filing the suit, the plaintiff has not paid the requisite Court Fees of Rs. 32,188.25, whereas, he had affixed stamp only for a sum of Rs. 100. The plaint was returned on 30.12.2002, with an endorsement "deficit Court Fees to be paid. Returned. Time one month". The plaintiff, without complying the direction of the Court, re-presented the plaint on 27.1.2003. Because of the non-compliance of the return dated 30.12.2002, once again, the plaint was returned on 28.1.2003, with an endorsement "previous direction not complied with. Hence, returned. Time one month". Once again, the adamant plaintiff, who is expected to pay the deficit Court Fees, failed to comply with the direction of the Court and

represented the plaint on 26.2.2003, without paying the Court Fees. Because of the non-compliance, once again, the plaint was returned on 27.2.2003 with an endorsement "previous return holds good. Returned. Time one month". Once again, the plaint was re-presented on 26.3.2003, without the compliance of the direction of the Court, resulting return of the plaint, as fifth time, on 25.4.2003, giving one month time, as last chance. Taking advantage of the summer vacation of the Court, the plaint was once again represented on 2.6.2003, without compliance viz., not paying the Court Fees, thereby compelling the Court to return the plaint, once again, on 6.6.2003 with an endorsement "previous return holds good. Returned. Time one month as last chance". Only thereafter, paying the deficit Court Fees, the plaint was re-presented on 13.6.2003, on which date, the plaint was taken on file as O.S. No. 153 of 2003.

9. The returns, as seen from the Xerox copy of the original plaint filed and the re-presentation made by the plaintiff, failed to make out a case, that for the payment of deficit Court Fees, time was sought for, and considering the inability of the plaintiff to pay the Court Fees, Court has granted time. It appears, even without any application, seeking time for payment of Court Fees, as routine work, mechanically, the plaint was returned, re-presented and the Court also, without applying the mind, failing in its duty to be loyal to the provisions of law, probably to oblige the plaintiff, granted time, without recording reasons, by returning the plaint. It is not the case of the plaintiff, that because of some unavoidable, circumstances, she was unable to pay sufficient Court Fees and sought time, invoking Section 148 or 149 of C.P.C. for the payment of the deficit Court Fees, thus, it is seen, the plaintiff has not filed any application, seeking time to pay the deficit Court Fees and the Court has also not recorded any reason, for granting extension of time, that too, for payment of deficit Court Fees. Because of the slackness and failure of duty, by the Court, after the period of limitation is over for filing the suit, Court Fees came to be paid on 13.6.2003, thereby, compelling the defendant to take a stand, that on the, date of payment of entire Court Fees, the suit was barred by limitation and the deficit Court Fees paid will not save the limitation, since, admittedly, on the date of filing of the suit, entire Court Fees has not been paid. In this view alone, as stated above, invoking Order 7, Rule 11(c), C.P.C., petition was filed by the defendant, not accepted by the trial Court. In this context, we have to see certain provisions, which are to be followed, while admitting the plaint, especially when sufficient Court Fees was not paid.

10. Section 148 of Code of Civil Procedure, empowers the Court to grant time or enlargement of time, wherein also, the period is restricted, viz., not exceeding 30 days, in total. Therefore, the Court has no power to grant extension of time, u/s 148, C.P.C., for the payment of Court Fees and in fact, this provision may not be applicable for extending the time for payment of Court Fees and the appropriate provision must be Section 149, C.P.C.

11. Section 149 of the Code reads:

"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 Fees 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".

(emphasis supplied)

Under this provision, the Court has every power, to allow the plaintiff to pay the Court Fees in whole or in part at any stage, and on payment of such Court Fees, it will have the same force and effect, as if, such fee had been paid in the first instance. In this view, if the Court had granted time, invoking Section 149 of the Code, then, the defendant cannot have any grievance, the position being, on payment of the deficit Court Fees, it will have the same force and effect, as if, such fee had been paid in the first instance itself, though on the date of payment of the Court Fees, the suit might have been barred by limitation, thereby, saving the limitation itself.

12. Rule 11 of Order 7 of the Code, catalogue the grounds, on which a plaint could be rejected and one of the grounds i.e. (c), reads:

"where the relief claimed is properly valued but the plaint is written upon paper 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;

By introducing a proviso by Act 104 of 1976, a duty is cast upon the Court to record reasons, while granting the time and the proviso reads:

"Provided that the time fixed by the Court for the correction of the valuation or supplying of the-requisite stamp-papers shall not be extended, unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

Thus, it is implied, when the plaintiff was unable to pay the requisite Court Fees, he should invoke Section 149 of the C.P.C. and upon invoking that section, the Court may extend the time, for the reasons to be recorded, not otherwise. It is stated in the proviso that the Court shall not extend the time, without assigning and recording the reasons, thereby showing, if time has been granted, without any application or without recording the reasons, it is not valid, under law, since it would offend and infringe, not only Section 149 of the Code, but also the above said proviso. In this view, if the Court had extended time, without recording reason, without the plaintiff seeking time to pay Court Fees, assigning reason, then, that extension, itself, should be held illegal and if it is so, if any Court Fees is paid later

on, that will not have the effect as if, such Court Fees had been paid in the first instance, as saved in Section 149 of the Code.

13. In the case on hand, admittedly, as disclosed by the records, at least, no application has been filed, at any point of time, though six months had been extended, without seeking time for payment of Court Fees, assigning reasons and the Court also has not extended the time for payment of Court Fees, recording the reason, as contemplated under the proviso to Rule 11 of Order 7 of the Code. After return, when re-presented, at least, the plaintiff should have prayed for extension of time, for payment of deficit Court Fees. As seen from the representation endorsement, it is stated, "re-presented", presumably, complying the return, which is not so, admittedly. The return of the plaint, by the Court, saying "previous return holds good", then giving a time of one month, periodically, may not amount to compliance of Rule 11 of Order 7, proviso. In this view, it is to be held, time was not granted by the Court, as contemplated under law. Having the above provisions of law and facts established, the law on this point, as declared by the Courts, have to be seen to reject or accept the plaint.

14. In view of the fact that the plaint was not sufficiently stamped, as per the valuation, even in the absence of any application by the plaintiff, the trial Court returned the plaint, directing the plaintiff, to pay the deficit Court Fees, granting one month time, which cannot be find fault with, generally, though the period is on the higher side. As indicated above, the plaintiff, periodically, even after number of returns, failed to pay the sufficient Court Fees and the Court also returned the plaint, reiterating "the previous return holds good", thereby implying, time has not been granted for the payment of sufficient Court Fees, recording reasons, as contemplated under Order 7, Rule 11, proviso. However, the fact remains, the Court has returned the plaint and at one stage, within the time fixed by the Court, the plaintiff paid the Court Fees.

15. On the above basis, the learned Counsel for the respondent/plaintiff would contend that since the Court Fees has been paid, within the time stipulated by the Court, though it is after the prescribed period of limitation, it should be held that the deficiency is supplied, within the time fixed by the Court and though it is after the period of limitation, the suit is not barred by limitation, in view of the Full Bench decision of this Court in *Gavaranga Sahu v. Botokrishna Patro and Ors.* 1909 (32) ILR Mad. 305. In the case involved in the above decision also, it is seen, the plaint was presented on a paper, insufficiently stamped, within the prescribed period of limitation, as in our case. But, as seen from the judgment of the Full Bench, the time was given by the Court, u/s 54(b) of the C.P.C. (old) to make good the deficiency and the deficiency is also supplied, within the period fixed by the Court. In this view, the Full Bench has quoted, "though the suit was not filed with sufficient stamp, at the first instance, when the plaint was returned, deficiency is supplied, though after the period of limitation and under the saving clause available, the suit should be held, in

time, which principle may not be applicable to the case on hand."

16. It is not the case of the learned Counsel for the respondent/plaintiff or it is not the order of the Court also, as seen from the return of the plaint, that on the application filed by the plaintiff, time was extended, for paying the deficit Court Fees, and on that strength, deficit Court Fees was supplied, though after the limitation period is over, thereby to attract the last portion of Section 149, C.P.C. In this view alone, I am of the opinion, the above ruling may not be helpful to the plaintiff, to save the suit in time, in view of the admitted position that deficit Court Fees was supplied, only after the period of limitation is over, for filing the suit, without valid extension of him, for payment of Court Fees.

17. In [Venugopal Pillai and Others Vs. Thirugnanavalli Ammal](#), a Division Bench of this Court has held that "even" where the Court improperly and without sufficient cause grants time for payment of Court Fees after the plaint has been presented, the effect of the grant of such time is that the plaint takes effect as if it had been presented along with the full Court Fees on the date of its first presentation and no question of limitation can arise, probably, applying the principles, available u/s 149, C.P.C., that too, considering the fact, the grant of time by the Court, u/s 149, C.P.C., which is not available in our case. Therefore, this decision also, in my considered opinion, fails to support the case of the plaintiff.

18. The submission of the learned Counsel for the respondent that payment of Court Fees is primarily a matter between the Government and the person concerned, based upon a decision of the Apex Court in [Mahasay Ganesh Prasad Ray and Another Vs. Narendra Nath Sen and Others](#), which cannot be questioned by the other side, is not applicable to the case on hand, because of the fact, in the case involved in the above decision, time was granted for payment of deficit Court Fees u/s 149, C.P.C. In this view alone, the Apex Court has ruled:

"The question of payment of Court Fees is primarily a matter between the Government and the person concerned and therefore where the High Court in the exercise of its discretion allows the appellant to amend his memorandum of appeal and grants time for payment of deficient Court Fees u/s 149, the other party cannot attack the order on ground that it takes away his valuable right to plead the bar of limitation."

This decision is distinguishable on facts.

19. In [Mannan Lal Vs. Chhotaka Bibi, \(Dead\) by Lrs. B. Sharda Shankar and Others](#), the Apex Court, approving the Full Bench decision of this Court in Gavaranga Sahu v. Botokrishna Patro and Ors. 1909 ILR (32) Mad. 305, which I have already cited, has held:

"Section 149 of C.P.C. mitigates the rigour of Section 4 of the Court Fees Act and it is for the Court to harmonise the provisions of both the Court Fees Act and C.P.C. by

reading Section 149 of C.P.C. as proviso to Section 4 of Court Fees Act and allowing the deficit to be made good within a period of time fixed by it. If the deficit is made good, no possible objection can be raised on the ground of bar of limitation, as Section 149 expressly provides that the document is to have validity with retrospective effect."

Here also, u/s 149, C.P.C., time has been granted by the Court, which is not the case on hand, as recorded by me, as seen from the return of the plaint. If there had been a valid extension of time by the Court, complying Section 149 and Order 7, Rule 11, proviso, all the above Rulings, certainly, would come to the aid of the plaintiff, and not otherwise.

20. It is also held by the Apex Court in [Mohammad Mahibulla and another Vs. Seth Chaman Lal \(dead\) by L.Rs. and others](#), 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 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 u/s 149, C.P.C., which can be seen from the decision of the Division Bench of this Court in [K. Natarajan Vs. P.K. Rajasekaran](#).

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. Analysing the previous rulings, including the Full Bench decision of this Court in Gavaranga Sahu v. Botokrishna Patro and Ors. 1909 (32) ILR 305, relied on by the respondent/plaintiff, this Court has framed various guidelines and the relevant guidelines for the purpose of this case, are:

"(1)...

(2)...

(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 Fees, 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 Fees.

(5) In such cases, the Court shall, before exercising its discretion and granting time to pay the deficit Court Fees, 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 Fees 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.

(6) The discretion referred to in Section 149 of CPC is a judicial discretion and the same has to be exercised in accordance with the well established principles of law.

(7-A) In case where the plaint is presented well within the period of limitation with deficit Court Fees 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 Fees after the period of limitation, the Court is bound to hear the defendant, notwithstanding the fact that the plaintiff has paid substantial Court Fees (not almost entirety) at the first instance, before condoning the delay in paying the deficit Court Fees."

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 Others Vs. Ivaturi Ramayya and Another , 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 u/s 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.

24. The Apex Court has considered, in Buta Singh (Dead) by L. Rs. Vs. Union of India, , under what circumstances, Section 149 CPC could be taken into consideration for payment of Court Fees, wherein it is said:

"The aid of Section 149, could be taken only when the party was not able to pay Court Fees in circumstances beyond his control or under unavoidable circumstances and the Court would be justified in and appropriate case to exercise the discretionary power u/s 149 after giving due notice" to the affected party...."

On which basis also, this Court has already given guidelines, as indicated by me, in the Division Bench case K. Natarajan Vs. P.K. Rajasekaran, . The above dictum would indicate that it is incumbent upon the plaintiff, to invoke Section 149, C.P.C., cataloguing under what circumstances, he was unable to pay the Court Fees, then obtain an order, satisfying the Court for extension of time, which is also absent in our case.

25. The Andhra Pradesh High Court, while considering Section 149 and Order 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 u/s 149 or under Order 7, Rule 11(d), C.P.C. Under the above circumstances, it should be held, that an 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 Courfee 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.

For the foregoing reasons, the revision deserves acceptance.

In the result, this Civil Revision Petition is allowed.

The numbering of the suit in O.S. No. 153 of 2003 by the Subordinate Judge, Srivilliothur, is set aside, as time barred. Consequently, the trial Court is directed to struck-off the said suit from its file. No costs.