

Patcha Mahendra Vs. Koduru Penchalaiah

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Court : Andhra Pradesh

Decided On : Apr-29-2005

Reported in : 2005(4)ALD151; 2005(4)ALT55; I(2006)BC257

Judge : V.V.S. Rao, J.

Acts : Andhra Pradesh Court Fee and Suits Valuation Act, 1956 - Sections 20;
[Code of Civil Procedure \(CPC\) , 1908](#) - Sections 148 and 149 - Order 7, Rule 11;
[Constitution of India](#) - Article 227

Appeal No. : CRP No. 6638 of 2003

Appellant : Patcha Mahendra

Respondent : Koduru Penchalaiah

Advocate for Def. : P. Sridhar Reddy, Adv.

Advocate for Pet/Ap. : P. Ganga Rami Reddy, Adv.

Judgement :

ORDER

V.V.S. Rao, J.

1. The petitioner is defendant in O.S. No. 442 of 2003. The respondent filed the above suit on the file of the Court of the Junior Civil Judge, Nellore for recovery of

sum of Rs. 73,200/- based on a pronote dated 30-12-1996 allegedly executed by the petitioner. The plaint was presented with a Court fee of Rs. 1/- accompanied by a petition praying time to pay proper Court fee. The Trial Court accordingly allowed the time on three occasions and the respondent herein paid the Court fee of Rs. 2,866/- on 28-4-2003 and the plaint was registered as O.S.No. 442 of 2003. After receiving the summons and noticing the above position, present civil revision petition is filed.

2. The learned Counsel for the petitioner Sri. P. Ganga Rami Reddy, contends that the action of the Trial Court in permitting the plaintiff to pay the Court fee with long delay after presentation of the plaint without valid reasons is bad in law. He would also urge that while exercising power under Section 149 of the Code of Civil Procedure, 1908 (C.P.C), the learned Trial Judge did not give any reasons and therefore the order is unsustainable. The learned Counsel placed reliance on S.A. Khadeer v. G. V.R. Anjaneyulu, : 2003(5)ALD577 and Buta Singh v. Union of India, : [1995]3SCR359 . Per contra, the learned Counsel for the respondent/plaintiff Sri. P. Sridhar Reddy, contends that matter of Court fee is essential between the plaintiff and the Government and the defendant has no locus standi to impugn the orders of the Court insofar as the Court fee is concerned. He would place reliance on the decision of Supreme Court in Ganesh Prasad v. Narendra Nath, : AIR 1953 SC431 and Mahanth Ram Das v. Ganga Das, : [1961]3SCR763 . He would further urge that when the Court exercised its discretion under Section 149 of C.P.C., the exercise of discretion cannot be interfered under Article 227 of the [Constitution of India](#). For this he relies on the judgment of Supreme Court in Sadhana Lodh v. National Insurance Co. Ltd., : [2003]1SCR567 .

3. There is no denial of the fact that the plaintiff filed a suit for recovery of money in a sum of Rs. 73,200/-. There is also no denial of the fact that the Court fee payable as per Section 20 of the A.P. Court Fee and Suits Valuation Act, 1956, as Rs. 2,866/-. There is also no denial of the fact that the plaint was presented only with a Court fee of Re. 1/-. In these circumstances, the same cannot amount to proper presentation of the plaint. Nonetheless, the plaintiff filed an application seeking leave of the Court to pay the Court fee after sometime. The said

application was moved invoking the powers of the Court under Section 149 of C.P.C, which reads as under.

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.

4. A plain reading would suggest that in its discretion the Court may at any stage allow a person to pay the Court fee which was not initially paid when the document was presented. So to say, the defect of paying deficient Court fee can be allowed to be rectified by the Court at any stage of the proceedings. Payment of the Court fee falling short of prescribed amount is a curable defect at the discretion of the Court. Section 149 of C.P.C does not specifically refer to the word/term 'plaint' or 'written statement' or 'pleadings'. It only refers to the word 'document'. Ex facie the power which inheres the Court under Section 149 of C.P.C would not apply when a plaint is presented with deficit Court fee. But by reason of the judgment of Supreme Court in Mahanth Ram Das's case (supra) we can interpret the power of Section 149 of C.P.C as enabling the Court to permit either parties to the proceedings to cure the defect of deficit Court fee prescribed under law. It is now axiomatic that the discretion conferred on the Court is judicial discretion which has to be exercised in an objective manner. When the discretion is to be exercised in an objective manner avoiding any ipse dixit or subjectivity in the consideration, the law requires every judicial forum to record reasons as evidence of consideration of the matter objectively.

5. While permitting the respondent/ plaintiff the Trial Court did not pass any separate order. Time was extended to enable the plaintiff to pay the Court fee. Though the plaintiff on different occasions has shown different reasons for not paying the requisite Court fee in time, be that as it is, there cannot be any doubt that the lower Court allowed the plaintiff to pay the deficit Court fee without there

being any valid reasons. In Buta Singh's case (supra), dealing with the power vested in the Court under Sections 147 and 148 and dealing with the situation of penury of the person in not paying the Court fee, the Apex Court ruled thus: The discretion conferred on the Court by Section 149 is a judicial discretion. The Court is not bound to exercise the discretion unless the applicant shows sufficient cause for the failure to pay deficit Court fee or he was under bona fide mistake in payment thereof. Mere poverty or ignorance or inability to pay the Court fee at the time of presenting the appeal is not always a good ground for indulgence under Section 149. Bona fide mistake on the part of the appellant or applicant in making the deficit Court fee may be a ground to exercise discretion in favour of the appellant. It is the duty of the Registry before admitting the appeal to point out to the appellant or his Counsel that deficit Court fee is payable on the MOA and some reasonable time may be given for payment of the Court fee. The MOA would be returned to do the needful. If the deficit Court fee is not made up and presented within the time enlarged under Section 148 of CPC, there would be no appeal in the eye of law unless the delay is condoned. If the party deliberately to suit his convenience paid insufficient Court fee, the mistake is not a bona fide but one of choice made by the party in making the deficit Court fee. In that situation, even after pointing out the need to make the Court fee and given time, if the Court fee is not paid and MOA is represented within the enlarged time, it would be open to the Court either to reject the MOA or refuse to condone the delay for not showing sufficient cause thereon. Therefore, the Court is required to exercise its judicial discretion keeping the facts and circumstances in each case and not automatically for mere asking that indulgence be shown to the party to make good the deficit Court fee. In the latter event, it is not the exercise of the judicial discretion but showing undue indulgence...

6. My learned brother Justice Eswaraiah in S.A. Khadeer's case (supra) invalidated the order of the Trial Court in allowing the plaintiff to pay the deficit Court fee without reasons. His Lordship observed as under:

Under Order VII Rule 11 of CPC the plaint shall be rejected if the requisite Court fee is not paid within the time fixed by the Court. Under proviso to Clause (d) of Rule 11 of Order VII, the Court shall not extend the time for payment of Court fee

unless reasons are recorded and there are satisfactory reasons to the effect that the plaintiff was prevented by a cause of an exceptional nature from paying the Court fee. In the instant case, the only reason put forth by the plaintiff was that in spite of his best efforts, he could not secure the money for the payment of Court fee and he has filed the applications one after another and the Court below, without recording any reasons, simply extended the time from time to time. The reasons put forth by the plaintiff before the Court below are altogether different from that of the reasons stated in the counter that he could not pay the Court fee mainly due to the non-availability of the stamps at Vijayawada which is contrary to his own affidavit filed before the Court below. Under Order VII Rule 11 proviso Clause (d) the power given to the Court to extend the time for payment of the Court fee is for the cause of an exceptional nature and after recording the reasons. In the instant case, no cause of an exceptional nature has been put forth by the plaintiff and the Court below has not recorded any reasons. Inability to raise money is not a reason to exercise the discretion under Section 149 of CPC by the Court below. Section 149 of CPC has to be read together with Order VII Rule 11 and the orders made by the Court below extending the time for payment of deficit Court fee from time to time are illegal, without any reasons and without any cause whatsoever.

7. In this case the Court of the Junior Civil Judge, Nellore, did not disclose any reasons and did not pass any orders though the plaintiff presented the plaint on 26-12-2002 but paid Court fee only on 28-4-2003, no reasons were recorded for permitting the plaintiff to do so. For these reasons this Court finds grave error in exercise of discretion by the learned Junior Civil Judge in this regard.

8. Therefore, the civil revision petition is allowed and the matter is remitted back to the Court of the Junior Civil Judge, Nellore, to properly appreciate the background of the case in the light of the judgment of the Supreme Court in Buta Singh's case (supra), as well as this Court in S.A. Khadeer 's case (supra) and pass appropriate orders. This exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.