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Court : Kerala

Decided On : Nov-03-2000

Reported in : AIR2001Ker353

Judge : Mr. P.K. Balasubramanyan and; Mr. T.M. Hassan Pillai, JJ.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 2(2), 96, 149 and 151 - Order 7, Rules 11 and 13 - Order 9, Rule 4; Kerala Court Fees and Suits Valuation Act, 1959 - Sections 4A

Appeal No. : C.R.P. No. 2281 of 1998

Appellant : Mable

Respondent : Dolores

Advocate for Def. : M.V. Bose, Adv.

Advocate for Pet/Ap. : K.G. Balasubramanian, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

P.K. Balasubramanyan, J.

1. This Civil Revision Petition has come up before us before us on a reference being made by a learned single Judge, in view of the doubt he felt about the ambit of the decision rendered by another learned single Judge reported in Varghese v. Devi Academy (1999 (1) KLT 440).

2. The plaintiff in a suit filed in the Subordinate Judge's Court of Cochin is the petitioner in this Civil Revision Petition. She originally filed the suit in the Munsiff's Court, Cochin for recovery of possession of a building from the defendants on the strength of her title and for consequential reliefs. On objection regarding jurisdiction based on valuation being taken and after an adjudication, the Munsiff's Court returned the plaint to the plaintiff for presentation to the proper court. Thereafter, the plaintiff amended the valuation and presented the plaint before the Subordinate Judge's Court. In the light of S. 4A of the Kerala Court Fees and Suits Valuation Act, the plaintiff and 1/10th of the amount of fee chargeable as court fee under the Kerala Court Fees and Suits Valuation Act. The defendants filed a written statement resisting the suit. Based on the pleadings, the court ultimately framed issued in the suit on 13.1.1995. In terms of S. 4A of the Kerala Court Fees and Suits Valuation Act, the balance 9/10 court fee payable on the plaint, as per valuation, had to be paid within 15 days of 13.1.1995, the date on which the issues were framed. It is said that the trial court posted the suit on 17.2.1995 for payment of the balance court fee. How the court could do this in the face of the specific provision in S. 4A of the Court Fees and Suits Valuation Act is not clear. For, under the section, the balance curt fee a had to be paid within 15 days of framing of issues and the court itself had the power to extend time beyond the 15 days only by such a period as not to exceed 30 days from the date of settlement of issues. In other words, the trial court on the terms of S. 4A of the Court Fees and Suits Valuation Act, could not have extended the time for payment of balance court fee beyond 30 days of the framing of issues and that too only for sufficient reasons to be recorded in writing. It is no doubt true that it has been held by this Court that the power available under S. 149 of the Code of Civil Procedure would still be available with the Court to extend the time. But, when the court, after framing the issues posts the case for payment of court fee, it has necessarily to fix a date, which can only be the last date of the 15 days, as contemplated in S. 4A of the Court Fees and Suits Valuation Act and it cannot certainly be beyond 30 days.

But probably what the court her did was not to fix a date for payment, but only to post the suit to 17.2.95 to verify whether the court fee has been paid in time.

3. Whatever it be, the balance court fee was not paid by the plaintiff either within 15 days or within 30 days. In fact it was never paid. But the court did not notice it or take any actio based on it. The suit was posted on a number of occasions. It was included in the list for trial. Evidence was commenced. Then it was discovered that the balance court fee had not been paid. On 9.3.1995 it was represented on behalf of the plaintiff that the balance court fee was paid. The Court accepted that submission. Only on 27.11.1996 the court realised that he submission that was made on 9.3.1995 that the balance court fee was paid was not a correct one and in fact no balance court fee had been paid. The Court therefore rejected the plaint under O. VII R. 11(c) of the Code of Civil Procedure.

4. Rejection of a plaint under O. VII R. 11(c) of the Code is a decree as defined in S. 2(2) of the Code of Civil Procedure and it is hence appealable under S. 96 of the Code. The plaintiff filed an appeal. The plaintiff also filed an application, I.A. No. 56/1997, purporting to invoke S. 151 and O. IX R. 4 of the Code of Civil Procedure seeking restoration of the suit atleast on payment of the balance court fee. There was no tender of the balance court fee along with that application. The trial court held that an appeal had been filed by the plaintiff against the decree rejecting the plaint and since an appeal was pending, it as not clear how far the application was maintainable. The court also held that O. IX R. 4 of the Code of Civil Procedure had no application since it was not a dismissal of the suit for default. Thus the trial court dismissed the application. This is what is challenged in this revision.

5. Learned counsel for the revision petitioner contended that in the light of the decision of this Court in Varghese v. Devi Academy (1999 (1) KLT 440), the court had inherent jurisdiction under S. 151 of the Code to restore a suit dismissed for non-payment of balance court fee and hence the trial court was in error in refusing to entertain the application filed by the plaintiff. It was not disputed that the plaintiff has also filed an appeal before this court challenging the rejection of the plaint on the ground that though the relief claimed is properly valued, the plaint was written

upon paper insufficiently stamped. The question whether any interference is called for in that appeal will be considered by us separately. For the present what we are concerned with is whether the application made under O. IX R. 4 of the Code of Civil Procedure by the plaintiff was maintainable in the trial court and whether the trial court could restore the suit already rejected for non-payment of court fee on that application.

6. The power under O. VII R. 11 of the Code, whether it be Cl. (b) or Cl. (c) inhers in the court, the moment the plaint is filed. But, in view of the introduction of S. 4A in the Kerala Court Fees and Suits Valuation Act, the power under Cl. (c) of O. VII R. 11 is under eclipse for the time specified by S. 4A of the Court Fees and Suit Valuation Act. S. 4A of the Court Fees Act specifically provides that while filing the plaint, the plaintiff need not pay the entire court fee as per the valuation shown in the plaint and the need only pay one-tenth of the court fee. It further provides that the balance court fe has o be paid within 15 days of the settlement of issues. The court has the power to extend the time upon 30 days from the date of settlement of issues for sufficient reasons to be recorded in writing. It is during this period that the power of the court under O. VII R. 11(c) of the Code remains suspended. The moment the 15 days period is over in terms of S. 4A of the Court Fees Act, the power of the court revives and the court is entitled to act in terms of O. VII R. 11(c) of the Code of Civil Procedure. In other words, the power under O. VII R. 11 of the Code comes out of the eclipse. In this case therefore, the trial court was entitled to reject the plaint on the expiry of 15 days from 13.1.1995. The court, as a matter of fact, rejected the plaint only on 27.11.1996, more than one year and 10 months of the date of settlement of issues. There cannot therefore be any complaint against the rejection of the plaint as such.

7. The question then is whether, a plaintiff whose plaint has been rejected under O.VII R.11(c) of the Code, can seek to invoke the jurisdiction of the Court under O.IX of the Code. Obviously, rejection of the plaint in terms of O. VII R. 11 of the Code of Civil procedure is not dismissal of the suit under O. IX of the Code.

8. Then the question is whether the court could exercise the so called inherent power available to it when the plaintiff invokes its jurisdiction under S. 151 of the

Code of Civil Procedure. It is now well settled that the court can exercise its inherent power, which is saved by S. 151 of the Code of Civil Procedure, in situations where there is no specific provision in the Code for grant of relief to a party in appropriate cases. When a rejection of the plaint under O. VII R. 11(c) of the Code is a decree and the party has a substantive right to appeal under S. 96 of the Code of Civil Procedure and, in cases where he is able to make out a case for a review under O. XLVII of the Code, the question of exercise of the inherent jurisdiction of the court, normally does not arise. In a case where there is another remedy provided to the party by the Code, the court cannot ordinarily resort to its inherent power in substitution of that remedy. A remedy by way of appeal has necessarily to be understood as a substantive remedy available to a party. When an appeal is provided, the party aggrieved gets an opportunity to have his whole case reconsidered by the appellate court. It is therefore clear that there is no occasion for the court to exercise its inherent power in such a situation. The Supreme Court in Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal (AIR 1962 SC 527) had laid down that the inherent power of the court can be exercised only in the absence of a specific provision in the Code and if a matter is covered by any of the specific provisions of the Code, no question of the court exercising its inherent jurisdiction would arise. It is therefore clear that the plaintiff is not entitled to invoke the jurisdiction of the Court under S. 151 of the Code of Civil Procedure when a plaint gets rejected in terms of O. VII R. 11 of the Code. In Varghese v. Devi Academy (1999 (1) KLT 440), the learned single Judge of followed a decision of this Court to Gopalakrishna Pillai v. Narayanan (AIR 1959 Kerala 406). The decision, in turn, was rendered following a decision of the Travancore High Court in John v. Kuriyan (26 Travancore L.J. 932). It has to be noted that both these decisions were rendered before the Supreme Court clarified the scope of S. 151 of the Code of Civil Procedure or the entitlement of the court to exercise its inherent power in the face of other specific provisions in the Code in Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal (AIR 1962 SC 527). This principle is reiterated also in Arjun Singh v. Mohindra Kumar (AIR 1963 SC 993) and in Ram Chand and Sons Sugar Mills v. Kanhayalal (AIR 1966 SC 1899). With respect, it is not possible to accept the principle laid down in the decisions in Gopalakrishna Pillai v. Narayanan (AIR 1959 Kerala 406) and in Varghese v. Devi

Academy (1999 (1) KLT 440) in the light of decision of the Supreme Court. We may notice here that some of the High Courts have taken the view that the power under S. 151 of the Code cannot be invoked to restore the suit in a case where a plaint has been rejected under O. VII R. 11(b) or (c) of the Code of Civil Procedure. With respect, we feel that it is the correct view to take. We are therefore of the view that the decisions in Gopalakrishna Pillai v. Narayanan (AIR 1959 Kerala 406) and in Varghese v. Devi Academy (1999 (1) KLT 440) do not lay down the correct law.

9. We have now to consider the decision in Narayanan v. Madhavan (1999 (2) KLJ 84) relied on. In that decision, a learned single Judge of this Court in revision directed the trial court to restore the suit to file in a case in which that court had rejected the plaint under O. VII R. 11(c) of the Code of Civil Procedure. The reasoning that such a suit cannot be restored, was brushed aside by the learned Judge by stating that hypertechnical stand should not be adopted to defeat the course of justice. We find it difficult to agree with that approach. The said decision runs counter to the statutory scheme. To the extent it goes against what we have stated here, the said decision must be held to be not laying down the correct law. We must remember that a rejection of the plaint under O. VII R. 11 of the Code of Civil Procedure does not even preclude the presentation of a fresh plaint as can be seen from O. VII R.13 of the Code (See also Delhi Wakf Board v. Jagdish Kumar Narang (1997) 10 SCC 192).

10. The doubt felt by the learned single Judge was whether in view of the fact that the plaintiff has filed an appeal against the rejection of the plaint, he could contemporaneously maintain an application under S. 151 of the Code, before the trial court. In the view we have taken on the scope of the inherent power of the trial court in such matters, no specific answer is needed in respect of the doubt expressed by the learned single Judge. But the principle, that when a party has resorted to a substantive remedy available to him under law, there would be no occasion for the court to exercise its inherent power, will have application. The plaintiff having invoked the statutory remedy available to him in terms of the Code of Civil Procedure, it has necessarily to be held that there would be no occasion for the trial court to exercise its inherent power to modify its own order or to nullify

its own order in an application under S. 151 of the Code. In this situation we cannot also ignore the proviso O.VII R.11 introduced by the Amendment Act of 1972. We are of the view that the inherent power of he court cannot be exercised by the trial court when the party aggrieved by the rejection of the plaint has already approached the appellate court with an appeal under S. 96 of the Code.

11. In the light of our conclusions as above, the trial court is right in holding that the petition before it is not maintainable and in dismissing it. We confirm that dismissal and dismiss this Civil Revision Petition.

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