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**SooperKanoon Citation :** [sooperkanoon.com/753227](http://sooperkanoon.com/753227)

**Court :** Rajasthan

**Decided On :** Mar-19-1956

**Reported in :** AIR1956Raj164

**Judge :** Dave, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 2(2), 96, 151 and 152 - Order 7, Rules 11 and 13 - Order 47, Rule 1

**Appeal No. :** Civil Misc. Appeal No. 7 of 1954

**Appellant :** Kishorelal

**Respondent :** Surajmal

**Advocate for Def. :** B.K. Acharya, Adv.

**Advocate for Pet/Ap. :** Abdul Majid, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**Dave, J.**

1. This is a second appeal by the defendant in a money suit and arises in the following circumstances :

2. The plaintiff-respondent Surajmal filed a money suit for Rs. 781/4/- in the court of Munsif, Hanumangarh on 10-11-1952. It was based on a bond alleged to have been executed by the appellant on 10-11-1949. Thus, it would appear that the plaint was presented just a day before the period of limitation was to expire. The plaintiff affixed court-fee stamps of Rs. 1/4/- only although the proper court-fees reported by the office on that day was Rs. 79/-.

On the date of presentation of this plaint there was no Munsif at Hanumangarh and, therefore, the office kept the matter pending till the arrival of the Presiding Officer. It appears that this case was later on transferred by the District Judge, Ganganagar to the court of the Civil Judge, Suratgarh where it was registered on 18-4-1953.

The Civil Judge then issued notice to the plaintiff and his counsel to 'make up the deficiency in court-fees on 2-5-1953. That notice was not served and so a fresh notice was issued for 20-5-1953. That notice was also not served and a third notice was again issued for 5-7-1953. On this date, Birbaldas, counsel for the plaintiff appeared in the court and requested for a short adjournment to enable him to make up the deficiency in court-fees. The case was therefore adjourned to 5-7-1953. On that date, neither the plaintiff nor his counsel put in appearance and, therefore, the court dismissed the claim under Order 17 Rule 3.

The plaintiff then presented an application on 13-7-1953 for the restoration of his suit. It was allowed by the trial court and the suit was restored to its original number. Thereafter, the defendant was called upon to present a written-statement. One of the objections raised by the defendant was that although the trial court had proceeded to dismiss the suit under Order 17 Rule 3, its order was in fact covered by Order 7 Rule 11 and that it had no jurisdiction to restore the suit. This objection was allowed by the court and the plaintiff's suit was dismissed on 28-9-1953. The plaintiff went in appeal which was heard by the Senior Civil Judge, Ganganagar.

The learned Judge has also held that the trial court's order dated 10-7-1953 should be deemed to have been made under Order 7 Rule 11. But it is further held by him that the plaintiff was not informed by his counsel to pay the court-fees on 10-7-1953, that it should therefore be presumed that no time was fixed by the

court to pay the court-fees and its order rejecting the plaint was therefore wrong. He has allowed the appeal and remanded the case with direction to dispose of the case on merits. It is against this decision that the present appeal has been filed.

3. Learned counsel for the appellant has urged that the trial court had rightly held that it had no jurisdiction to restore a suit when the plaint was rejected on account of deficiency in court-fees under Order 7 Rule 11, Civil P. C. It is contended that there was no appeal against that order and the appellate court could not therefore go into the question whether the plaint was rightly rejected or not.

It is further urged that the appellate court had committed a mistake in holding that the trial court had jurisdiction to restore the suit. It is not denied by learned counsel for the respondent that the plaintiff had not filed any appeal against the order rejecting his plaint. He has however tried to support the judgment of the learned Senior Civil Judge to the effect that the trial court could restore the suit even though the plaint was rejected under Order 7, Rule 11, C. P. C.

4. The main question for determination in this case is whether the trial court could legally restore the suit when the plaint was rejected under Order 7 Rule 11 on account of its being insufficiently stamped. It may be observed that the rejection of the plaint comes within the definition of a decree and, therefore once the court has passed a decree, there is no power left in it to correct the same except on review or under Section 152 if the mistake is covered by that section.

It is conceded by learned counsel for the respondent that Order 9 Rule 9 which specifically provides for restoration of a suit could not be applicable to the present case. The trial court could not exercise even its inherent powers under Section 151, Civil P. C. because there was no question of prevention of the abuse of the process of the court. That court had informed the plaintiff's counsel on 5-5-1953 that the court-fees must be deposited by 10-5-1953 and when the plaint was rejected on account of the non-payment of court-fees on that date, there was no power left in it to restore the suit under its inherent powers when other remedies are provided by law.

If the plaintiff wanted to move the same court, he could request it for reviewing its decree under Order 47, Civil P. C. Another remedy left open to him was to go in appeal against the rejection of the plaint since it amounted to a decree. A third course was to present a fresh plaint under Order 7, Rule 13. He did not take recourse to any of these remedies.

An application for restoration of the suit in the above circumstances is not covered by any of the provisions of the Civil Procedure Code and the trial court had taken the right view that it had no power to restore the suit, in the case 'Rameshwardhari Singh v. Sadhu Saran', 1923 Fat 354 (AIR V 10) (A), a similar question had arisen and it was held that

'The order rejecting the plaint under Order 7, Rule 11(c) of the Code operated as a decree, and Order 20, Rule 3 provides :

'that a judgment once signed shall not afterwards be altered or added to save as provided by Section 152 or on review.' There can be no doubt, in my opinion that once an order of the Court is perfected there is absolutely no power in that Court under its inherent jurisdiction either to alter, or add to, that order, save as provided by Section 152 or on re-view.' With these remarks, the order of restoration which was passed in that case by the Subordinate Judge under Section 161 was set aside. I respectfully agree with the view taken in the above case. It may be pointed out that this view was again confirmed by the same court in a subsequent case 'Ganga Prasad v. Szn. Girja Devi', 1949 Pat 366 (AIR V 36) (B). A similar view was taken by learned Judges of the Calcutta High Court in 'S.M. Bose v. Hauz Md. Fa-ten Nasib', 1934 Cal 62-3 (AIR V 21) (C). There also it was observed that 'The order of 17-1-1933 no matter whether it was a decision rightly or wrongly given was an order of rejection of a plaint and an order of rejection of a plaint is a decree as defined in Section 2 of the Code. If the plaintiff felt aggrieved by this order, his remedy lay either by an application under Order 47, Rule 1 or by filing an appeal against it. The plaintiff did not choose to take either of these two courses open to him under the Code. It is well settled that a Court cannot make use of the special provisions of Section 151 When the applicant has his remedy prescribed elsewhere in the Code and has neglected to avail himself of such a remedy.'

5. Learned counsel for the respondent has cited 'Anaht Prasad Singh v. Chunnu Tewari', 1939 All 452 (AIR V 26) (D), in support of a contrary view. In that case, the plaint was rejected by the trial court and was restored later on because it was found that the plaintiff could not make up the deficit court-fees as he was taken ill. On a revision application being filed against that order, it was observed by a learned Single Judge that

'The learned Judge of the Court of Small Causes who passed the order of restoration had jurisdiction under Section 151, Civil Procedure Code.' It may be pointed out that the learned Judge did not discuss the question as to how the trial court could amend its decree without a review when Order 20 Rule 3 specifically debars the courts from altering or adding to its judgment after it is once signed and dated save as provided by Section 152 or on review. It appears that the learned Judge was guided by equitable considerations and he refused to exercise his revisional discretion because he proceeded to remark as follows :

'Even if the trial Court had no jurisdiction there is no reason why I should exercise my discretion in revision to discharge the applicant from his liability to pay the debt which he incurred when he executed the promissory note.' The above view cannot be accepted because where a law is definite, the court cannot ignore it and proceed on its own notions of justice.

6. Learned counsel has next referred to 'Bachansingh v. Dasrath Singh', 1935 All 985 (AIR V 22) (E). In that case, plaint was filed without putting adequate court-fees. The court allowed time to make good the deficiency but since the plaintiff did not comply, the plaint was rejected under Order 7 Rule 11. An application for restoration was made and it was also allowed. When this order was challenged in revision, it was observed that on the date the fresh application was made and deficiency of court fees was made up, the suit was still within time and, therefore, there was not much difference between asking that the suit be restored on the former plaint and filing a fresh plaint. It is obvious that the facts of that 'case were very different.

Order 7 Rule 13, Civil P. C. clearly lays down that the rejection of a plaint does not preclude the plaintiff from presenting a fresh plaint on the same cause of action. In

the above case, the suit was still within time when the application was made and the deficiency in court fees was made up and, therefore, the court considered it as a fresh plaint. In the present case, the plaint was filed on the last date of limitation and it was clearly time-barred. When the plaintiff presented his application for restoration. This case also does not help the respondent.

Learned counsel has also referred to 'Munshi Ram v. Sun Life Assurance Co. Canada', 1944 Oudh 327 (AIR V 31) (F). In that case, the view expressed in the foregoing case was accepted in similar circumstances. But as remarked above, the circumstances of the present case are very different. Here the plaintiff presented his plaint on a ridiculously low court-fees. It was not a question of mistake in calculation. The plaintiff must have known that he was filing a suit for more than Rs. 700/- and a court-fee of Rs. 1/4/- was grossly deficient. He also took the risk of filing the suit on the last date of limitation. The application for restoration cannot, therefore, help him even if it were treated as a fresh plaint.

Learned counsel has vehemently urged that the plaintiff's counsel had really forgotten to inform the respondent that the court had given a certain date for the deficiency to be made up and, therefore, the plaintiff should not be made to suffer for his counsel's fault. It would suffice to say that the plaintiff himself has been grossly negligent in this case. He knew full well that he had filed his plaint on a nominal court-fee stamp. Still he did not care to make up the deficiency for about a year and a half.

The court gave three notices to him and ultimately his counsel took time for paying the court-fees. The court allowed the time asked for and still the deficiency was not made up. The question whether the plaintiff's counsel did not inform him of the last date could be gone into if proper proceedings were taken against the order rejecting the plaint. The plaintiff did not avail of the remedies which were open to him under the law. The appellate court's order cannot be maintained in such circumstances.

7. The appeal is therefore allowed with costs. The judgment of the first appellate court is set aside and that of the trial court is restored.

