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Court : Delhi

Decided On : Apr-26-2010

Judge : S. Ravindra Bhat, J.

Acts : Code of Civil Procedure (CPC) - Section 149 - Order 7, Rules 9 and 11

Appeal No. : IA Nos. 12236, 12237 and 12267/2009 and CS (OS) 2209/2006

Appellant : Jappreet K. Kitty

Respondent : Cheil Communications India Pvt. Ltd. and ors.

Advocate for Def. : Mala Narayan, Adv.

Advocate for Pet/Ap. : Viraj R. Datar and; Chetan Lokur, Advs.

Disposition : Appeal dismissed

Judgement :

S. Ravindra Bhat, J.

I.A. Nos. 12237/2009 & 12267/2009

1. The present order will dispose of two applications, i.e IA 12237/2009 and IA 12267/2009.

2. The suit seeks declaration that a report dated 29-6-2006 is motivated and mala fide and further for a money decree for Rs. One crore, and also a decree for permanent injunction. The suit was filed on 28th November 2006. This Court felt, on the first date of hearing, that insufficient court fee was paid. The plaintiff therefore, stated, on 29th November, 2006, that deficiency in court fee to the extent of Rs. 50,000/- would be made good and that the balance amount would be paid 60 days thereafter.

3. It is a matter of record that the Rs. 50,000/- (required to be deposited in court within 10 days) was in fact deposited in July, 2007. The balance was concededly not paid, in accordance with the directions, within the time stipulated, (i.e by 25th February, 2007) but in fact deposited on 25th August, 2009. In between during the proceedings, the defendant pointed out this inadequacy - as evidenced by orders dated 12th July, 2007, and 29th October, 2007 and 23th October, 2008. On 30th April, 2009 it was mentioned on behalf of the plaintiff that the court fee was deposited the previous day, i.e. 29th April, 2009.

4. It is urged by the plaintiff that the delay in depositing court fee was unintentional, and purely due to the inadvertence of her counsel. It is submitted that the counsel was under the bona fide belief that the court fee had been deposited, in January, 2008, and in fact had said so on 29th October, 2007. Had the intention been to deliberately flout the court's order, submitted counsel, no balance amount would have been deposited, even though the record discloses otherwise as the amount was paid, albeit belatedly.

5. The plaintiff relies on the decisions reported as Kalipada Das v. Bimal Krishna : 1983 (1) SCC 14; Indian Statistical Institute v. Associated Builders AIR 1978 SC 335; Manan Lal v. Chhotka Bibi : AIR 1971 SC 1374; Mahant Ram v. Ganga : AIR 1961 SC 882, Goburdhan v. Barsati : AIR 1972 All 246; and Rashtriya Printing Press v. Gian Chand : 1998 (71) DLT 137 and submits that Courts have inherent power, under Section 149, Civil Procedure Code, which confers wide and inherent discretion, to extend or enlarge the time for deposit of court fee, to avoid miscarriage of justice. It is argued that the authorities also establish that deposit of court fee, or taking some similar steps are procedural in nature, and that default by

a party in that regard should not prejudice or foreclose his substantial rights in law. The plaintiff also submits that depositing court fee is a matter between the court and the litigant, and the fault of counsel, if proven, should not visit the litigant, with adverse consequences.

6. The defendant opposes the plaintiff's request for enlargement of time, and urges that the suit should be rejected, by reason of the fact that the plaintiff defaulted in the condition imposed during the pendency of proceedings. It is urged that while the court may have power to extend or enlarge time, for the doing of something which is originally directed, the power under Section 149 is expressly limited by Order VII Rule 11(c). The defendant submits that the plaintiff was made aware at all material times about the default in paying deficient court fee, and despite this aspect, he continued to contest the proceedings, in violation of the order. It is submitted that in these circumstances, the Proviso to Order VII, Rule 11(c) becomes operative. The defendant argues that the effect of the proviso was never considered by this Court, or in any other decision cited by the plaintiff, and therefore, the suit is deemed to have been rejected, once the plaintiff defaulted in depositing the court fee balance within the time prescribed.

7. The relevant provisions of the Code of Civil Procedure, read as follows:

Order VII Rule 11 Rejection of Plaint.

The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) 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;

(d) where the suit appears from the statement in the plaint to be barred by any law:

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9

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.

Section 149, which deals with payment of court fees, or part thereof, reads as follows:

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.

8. The question which arises, from the above discussion is whether the court has any discretion in extending the time permitted originally, for payment of deficient court fee. There is no dispute that the whole of the court fee has been paid, and that the first installment, of Rs. 50,000/- required to be paid within 10 days, was paid in July 2008.

9. The judgments cited by the plaintiff no doubt disclose that the court has wide discretion in regard to payment of deficit court fee. This also appears to be the intent of Section 149 when it says that such discretion can be exercised 'at any stage' of the proceedings. Yet, the court cannot be unmindful of the circumstances, in this case where despite specific time granted, and the plaintiff was reminded repeatedly that the deficient court fees were not paid, no steps were taken. The first instalment of Rs. 50,000/- was paid almost 8 months after the time

granted by the court. Here too, the plaintiff did not seek any waiver or extension of time, but deposited it in July. Despite repeated protests by the defendant that the plaintiff had not paid the court fee, the latter never cared to take remedial action.

10. No doubt, there are some judgments cited by the plaintiff, which say that court has wide discretion, in regard to excusing the delay depositing the court fee, yet, the impact of the peremptory nature of Order VII Rule 11 which mandates that in the event the litigant defaults in paying the court fees, within the time granted, the court 'shall not' extend the time. This, in the opinion of the court, fetters the discretion under Section 149. It is also noteworthy that the proviso was introduced by an amendment; none of the case law cited by the plaintiff states that discretion of the court to extend the time, is preserved. Textually, the court can extend the time, provided the cause shown, i.e. the plaintiff was prevented from paying the court fee, for some exceptional reason.

11. The court here notices that the plaintiff has cited the reason that due to counsel's mistake, the court fee could not be deposited. While it is undoubtedly a circumstance - even an important one (since it has been ruled by courts in India that counsel's fault should not adversely impact the litigant) yet on the other hand, it can be discerned from the record that the defendant had been repeatedly pointing out non-compliance with the directions to pay the balance court fee. The plaintiff, on the other hand, kept on insisting that the amount had been paid - in reality only Rs. 50,000/- had been paid belatedly in July, 2007. The balance court fee was deposited two years later. In these circumstances, the argument that the plaintiff's counsel's inadvertent omission led to delay, cannot be accepted. 'Exceptional' under the proviso to Order VII, Rule 11(c) cannot mean persistent default, when the litigant could have reasonably appraised herself whether the amounts had been paid in fact.

12. In view of the above discussion, the court sees no reason to condone the delay occasioned in depositing the requisite court fee; the defendant's application for rejection of the plaint has to succeed, and is, therefore, allowed. Suit No. CS (OS) 2209/2006 is therefore, rejected, with all pending applications.

Order Dasti.

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