

Dr. Jana Rama Rao vs Karma Phanindra on 24 February, 2022

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

CRP No.3140 of 2019

ORDER:

1. The petitioner/defendant has filed this Civil Revision Petition under Article 227 of the Constitution of India, assailing the docket order dated 07.11.2019 in IA No.2041 of 2019 in OS (SR) No.9645 of 2019 (OS No.409 of 2019) on the file of the learned XV Additional District Judge, Ranga Reddy District at Kukatpally.

2. This application in IA No.2041 of 2019 is filed by the plaintiff under Section 149 of the Civil Procedure Code (for short 'CPC') to permit him for filing the present suit with deficit court fee of Rs.20,50,426/-, which was paid on 23.09.2019 by condoning the delay and pass any such other orders. This application was allowed by the XV Additional District Judge. Aggrieved by the said orders, the defendant has filed this civil revision petition.

3. Notice was served on the respondent/plaintiff. Heard learned counsel on both sides. Perused the material available on record. For the sake of convenience, the parties are hereinafter referred to as plaintiff and defendant as arrayed in the original suit. ` AVRJ

4. a) The brief facts of the case that the plaintiff has filed the original suit against the defendant for recovery of an amount of Rs.20,58,00,000/-, based on a loan agreement dated 16.04.2016 stating that the plaintiff and the defendant are known to each other, they are having good acquaintance. As a proprietor of Sri Balaji Art Printers, the defendant approached the plaintiff and requested for an amount of Rs.14 crores to meet his financial needs for his business requirements. Accordingly, the plaintiff advanced the said amount of Rs.14 crores to the defendant during May 2015 to January 2016 in four instalments by pooling from his own sources, his friends and relatives. On receiving the said mount, the defendant has executed the loan agreement dated 16.04.2016 on Rs.100/- stamp paper in favour of the plaintiff at Chandana Brothers Showroom, Gachibowli, Hyderabad, promising to repay the said amount in seven instalments with interest at 12% per annum.

b) The defendant also issued two post dated cheques each for Rs.7 crores towards security. The defendant has paid Rs.17.50 lakhs to the plaintiff towards interest, but failed to repay the amount as agreed. The plaintiff also presented the cheques issued AVRJ by the defendant, they were returned unpaid with an endorsement "payment stopped by the drawer". Thereafter, on complying the required procedure under Section 138 of the Negotiable Instrument Act (for short 'N.I. Act'), the plaintiff has filed CC No.537 of 2016 for the offence punishable u/s.138 of N.I. Act on the file of Special Mobile Magistrate's Court, Guntur. In the meanwhile, the defendant filed a false suit OS No.390 of 2016 against the plaintiff before the Chief Judge, City Civil Court, Hyderabad for recovery of Rs.25,50,000/-. The plaintiff also filed a criminal case before the police at S.R. Nagar and a case in Crime No.666 of 2016 for the offences punishable under Sections 420, 467, 468, 471, 203, 192 and 182 of the Indian Penal Code (for short 'IPC') was registered.

c) Thus, the plaintiff has filed the original suit for recovery of Rs.14.58 crores initially on the file of the District Court, Ranga Reddy at L.B. Nagar by paying an amount of Rs.10,000/- towards court fee, later it was returned for presentation before the appropriate Court on point of territorial jurisdiction. It was represented before the learned XV Additional District Judge, Ranga Reddy at Kukatpally. In the meanwhile, he has procured the amount for payment of court fee and paid the entire court fee of AVRJ Rs.20,58,426/- on 23.09.2019 and accordingly this application filed u/s.149 of CPC was allowed, through the order impugned dated 07.11.2019.

5. Aggrieved by the said order, the defendant has preferred this revision petition on the following grounds:

a) that the docket order under revision is contrary to law and material on record;

b) that the learned Additional District Judge is not justified in permitting the plaintiff to file the suit with deficit court fee at belated stage;

c) that the learned Additional District Judge ought to have seen that the suit was filed initially on 15.04.2019 based on the alleged loan agreement dated 16.04.2016 on the last date of limitation. The plaintiff has only paid Rs.10,000/- towards court fee out of Rs.20,60,426/- and did not file any petition u/s.149 of IPC seeking permission to pay correct court fee at a later stage explaining the compelling circumstances;

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d) that the learned Additional District Judge ought to have seen that the plaintiff paid deficit court fee on 23.09.2019 without seeking permission and without there being an application u/s.149 of CPC. Under these circumstances, it is deemed that the suit was filed only on 23.09.2019 beyond the limitation;

e) that the learned Additional District Judge ought to have seen that in the affidavit filed by the plaintiff in support of the petition that he did not pay the sufficient court fee, as he could not withdraw more than Rs.50,000/- per day from the bank, as per the RBI guidelines as he was in financial troubles, which is a vague reason; and

f) that the reasons assigned in the petition are not justifiable, petition was allowed without issuing any notice as it is filed under section 149 of CPC beyond limitation of the suit and the defendant is entitled for a notice and opportunity and accordingly prayed to set AVRJ aside the order dated 07.11.2019 in IA No.2041 of 2019 in OS (SR) No.9465 of 2019.

6. The learned counsel for the defendant seeks to submit that though initially the suit was filed on the last date of limitation i.e., on 16.04.2016 only an amount of Rs.10,000/- towards court fee was paid against an amount of Rs.20,60,426/- without any application u/s.149 of CPC. Thereafter, when the suit was returned for presentation before the appropriate Court, without filing an application u/s.149 of CPC, the plaintiff has paid the remaining court fee of Rs.20,50,426/- on 23.09.2019,

thereafter, an application u/s.149 of CPC was filed on 25.09.2019 before the Court below. The trial Court ought to have dismissed the said application and by rejecting the suit. The order impugned is erroneous against the spirit of Section 149 of CPC and relied on the following judgments.

a) Buta Singh (dead) by LRs v. Union of India¹;

b) Sivisni Associates & Others v. Jagadeeshwari Agencies²;

c) K. Natarajan v. P.K. Rajasekaran³; and (1995) 5 SCC 284 = AIR 1995 SC 1945 (2006) 3 ALD 135 AVRJ

d) S.A. Khadeer v. G.V.R. Anjaneyulu⁴.

7. Per contra, the learned counsel for the plaintiff seeks to submit that the suit was filed well within the limitation before the District Court, Ranga Reddy at L.B. Nagar on the last date of limitation by paying the amount of Rs.10,000/- court fee. In those days, due to demonetisation, there was restriction in withdrawing the amount from the banks. Accordingly, the plaintiff could not withdraw more than Rs.50,000/- per day, he could not secure the amount of Rs.20,60,426/- to pay the entire court fee. In the meanwhile, the District Court has returned the suit with a direction to present before the appropriate Court having territorial jurisdiction. Accordingly, the suit was represented before the learned XV Additional District Court at Kukatpally. The plaintiff has secured the amount and paid the entire court fee of Rs.20,60,426/- on 23.09.2019. Accordingly, an application was filed u/s.149 of CPC on 25.09.2019 to condone the delay in payment of court fee.

2003 SCC Online Mad 344 (2003) 5 ALD 577 AVRJ

8. It is further submitted by the learned counsel for the plaintiff that the delay in payment of court fee was not at all intentional, as huge amount of court fee was required to be paid, it was difficult for the plaintiff to secure the amount of more than Rs.20 lakhs at once and that, the delay was beyond the control of plaintiff. Accordingly, relied on the principles laid in the following decisions:

a) Buta Singh (dead) by LRs v. Union of India (first cited supra);

b) Oruganti Bhaskara Rao and others v. Angara Saibabu and another⁵;

c) Sushil Kumar Raut v. M/s. Virender Bhatnagar Sansathan and another⁶.

9. Section 149 of CPC deals with the power to make up the deficiency of court fees 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."

1993 (2) ALT 475 2003 (4) AD (Delhi) 537 AVRJ

10. From a plain reading of the provision, it is clear that the Court may at any stage allow a party to pay the court fee, which was not paid earlier when the document or suit was presented. In other words, Section 149 of CPC empowers the Court to permit a party at any stage to pay requisite court fee after the institution of suit and that such payment shall have same effect as if it has been paid in the first instance itself.

11. The learned counsel for the defendant strenuously contends that the plaintiff is entitled to pay deficit court fee at any time subject to permission of the Court, but if such payment is made after expiry of limitation in the original suit, the defendant is entitled for a notice and allowing any such application filed beyond the period of limitation in the original suit without notice to the defendant is bad in law and in the present case, no such notice was issued or the defendant was given an opportunity to resist the application.

12. In Buta Singh's case (first supra) relied by the petitioner, it was a land acquisition matter, the claimants after gaining an impression that the appeal was likely to be allowed, filed an AVRJ application for permission to pay additional court fee claiming enhanced compensation. In such circumstances, the Hon'ble Supreme Court held that such applications are not bona fide and should not have been allowed. In para-9 of the judgment, it was held by the Apex Court that 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 of CPC. Bona fide mistake on the part of the appellant or applicant in making deficit court fee may be a ground to exercise discretion in favour of the appellant.

13. In Sivisni Associates's case (second supra), this Court while dealing with similar facts held that, from the facts and circumstances of the case, the only inference that could be drawn is that the Court below has not exercised the power vested in it under Section 149 of CPC judiciously and for meeting the ends of justice. On the other hand, it shows that the discretion vested in the Court below under Section 149 of CPC has been exercised showing undue favour to the plaintiff, which cannot be said to be either discretion exercised within the parameters of Section 149 of CPC or for the cause of exceptional nature after recording reasons. Since AVRJ both these things are absent, one cannot come to any other conclusion than to say that the return of the plaint for 13 times in a span of about 15 months only for payment of deficit court fee is unreasonable and the discretion exercised by the Court below is illegal, since no notice was issued to the defendant nor any reasons were furnished for showing such undue favour to the respondent/plaintiff.

14. In the above decision, a learned single Judge of this Court has placed reliance on the decision of a Division Bench of Madras High Court in K. Natarajan's case (third supra) and observed that the Division Bench has rightly held, if the suit is presented on the last day of limitation affixing less

Court fee than 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 fee and in such cases, the Court shall before exercising its discretion and granting time to pay the deficit Court fee, shall order notice to the defendants and consider their objections, if any.

15. In S.A. Khadeer's case (fourth supra), this Court at paras 5 & 6 held as under:

AVRJ "5. The only reason stated by the plaintiff in the applications was that he could not secure the money and in the last application filed by him it is stated that he secured the money for the Court fee but the stamp vendor did not provide any Court fee stamps. The case of the plaintiff was that from 2.11.2000 to 6.12.2000 i.e., he was not having money and on 6.12.2000 he came up with further application to grant three more days time to pay the Court fee.

6. Under Order VII, Rule 1 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 one 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 to 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 CPC by the Court below. Section 149 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."

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16. In the present case, it is a fact that the suit was filed on the last date of limitation i.e., 16.04.2019 before the District Court at Ranga Reddy at L.B. Nagar. It is also a fact that along with the suit, the plaintiff has not filed any application as required under Section 149 of CPC, he has only paid an amount of Rs.10,000/- at the time of initial presentation of the suit. Later, the original suit was returned by the Principal District Judge, Ranga Reddy at L.B. Nagar, with a direction to present

before the appropriate Court. In the meanwhile, the plaintiff has secured the amount, paid deficit court fee of Rs.20,58,426/- making a total court fee of Rs.20,60,420/- on 23.09.2019, filed an application on 25.09.2019 before the learned XV Additional District Judge, Ranga Reddy at Kukatpally. It is also a fact that the learned XV Additional District Judge has not issued any notice to the defendant in the said application.

17. Be it stated that the original suit is filed for recovery of an amount of Rs.20.58 crores. The claim of the plaintiff is that he waited till the last date of limitation with a hope that the defendant may come for compromise, accordingly he was forced to file the suit with the available court fee. In those days, due to AVRJ demonetisation, he could not secure the amount and the bankers were not permitting for withdrawal of more than Rs.50,000/- per day. Though no such proof is filed before the trial Court to that effect, in my considered opinion, the averments in his sworn affidavit which remain uncontroverted, may be sufficient for the purpose of 149 of CPC. The suit was only once returned by the Principal District Judge, Ranga Reddy at L.B. Nagar, thereafter it was represented along with the required court fee of Rs.20,60,426/- though in the order impugned it is mentioned as Rs.20,58,000/-.

18. Thus, only once the suit was returned that too with an endorsement for filing before the appropriate Court, accordingly by the time of representation, the plaintiff has secured the amount, paid the entire court fee and filed the application u/s.149 of CPC. No doubt there are laches on the part of the plaintiff, he ought to have filed the application u/s.149 of CPC on 16.04.2019 itself at the initial presentation assigning the reasons, but no such application is filed.

19. The another defect is on the part of the Court. The learned XV Additional District Judge ought to have issued notice to the AVRJ defendant, since such application u/s.149 of CPC is filed on 25.09.2019 i.e., after expiry of period of limitation on 16.04.2019, and the defendant ought to have been given an opportunity of hearing and resisting the said application. Thus, on these two grounds, the learned counsel for the defendant is challenging the order impugned and requested to reject the suit by setting aside the order impugned.

20. The learned counsel for the plaintiff by relying on certain decisions urged that there was no mala fide intention and as huge amount of court fee need to be paid, the plaintiff could not secure the amount and that rules of procedure are not intended to be punitive to render the Court powerless on expiry of limitation. He relied on Buta Singh's case (first supra) where the claimant has taken aid of Section 149 of CPC and the Hon'ble Supreme Court held that party is entitled for the aid of Section 149 of CPC only when the party was not able to pay court fee. In such circumstances beyond his control or unavoidable circumstances, the Court is justified in an appropriate case to exercise the discretionary power u/s.149 after giving due notice to the affected party.

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21. At this stage, it is pertinent to note that the affected party was not given any notice in the present case. This issue involved before the Hon'ble Supreme Court was in a land acquisition matter where the claimants after gaining an impression that the appeal is likely to be allowed made efforts for

enhancing the compensation. In that context, the Hon'ble Supreme Court held that there were no bona fides on the part of the claimants, such application cannot be allowed.

22. In Sushil Kumar Raut's case (sixth supra), the Delhi High Court took a view that whenever money was not available for payment of court fee and it could not be arranged within the stipulated time, Section 149 of CPC comes with the aid of the plaintiff and held that effect of allowing the application u/s.149 of CPC is that the deficit court fee stood paid on the date of initial presentation and also observed that rules of procedure are not intended to be punitive to render the court powerless on expiry of limitation to do justice whenever required.

23. In this context, it is apt to refer to the judgment of the Hon'ble Supreme Court in the case of Sital Prasad Saxena v. Union AVRJ of India⁷ wherein it was held that the rules of procedure under Order-22 of CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing the erring parties and that procedure is only to facilitate the administration of justice and not to defeat the same. The same principles were reiterated in the judgment of the Hon'ble Supreme Court in Banwari Lal (dead) by LRs and another v. Balbir Singh⁸.

24. Reverting back to the facts of the present case, as indicated above, undisputedly the suit was filed on 16.04.2016 i.e., on the last date of limitation, it was filed before the Principal District Judge, Ranga Reddy at L.B. Nagar with payment of Rs.10,000/- court fee without filing an application u/s.149 of CPC, later the suit was returned. No such record is available as to how and when exactly the suit was returned and nothing is discernible from the pleadings either side to that effect. The plaintiff has represented the suit along with the required court fee of Rs.20,60,426/- on 23.09.2019 and the application was filed on 25.09.2019, it was (1985) 1 SCC 163 (2016) 1 SCC 607 AVRJ allowed by the court below on 07.11.2019. Undisputedly, no notice of this application was issued to the defendant.

25. Considering the fact that the procedure is made only to facilitate the administration of justice and not to defeat the same, as observed by the Hon'ble Supreme Court in Sital Prasad Saxena's case (seventh supra), though the petitioner initially failed to file an application u/s.149 of CPC, at a later stage filed the same along with the suit represented and paid the entire court fee. On representation the Court below failed to issue notice u/s.149 of CPC to the defendant.

26. The plaintiff has categorically stated that during the relevant period, he could not secure the huge amount of Rs.20,60,000/- for payment of court fee due to various restrictions including the RBI guidelines and on the last date of limitation, the suit was presented before the Principal District Judge by paying Rs.10,000/- court fee, on returning of the plaint by the Principal District Judge, Ranga Reddy at L.B. Nagar, it was represented before the learned XV Additional District Judge, Ranga Reddy at Kukatpally along with payment of required fee and requisite application u/s.149 of CPC, AVRJ which was considered by that court, without any notice to the other side.

27. Since the original suit is filed within limitation, huge amount of court fee was required to be paid and minimum court fee was paid when it was presented before the Principal District Judge, later it was returned, represented before the appropriate Court along with required court fee. The rules of

procedure are not intended to be punitive to render the court powerless on expiry of limitation to do justice whenever required, as held by the Hon'ble Supreme Court in Sital Prasad Saxena's case (seventh supra), I hold that the mere fact that no such application was filed along with the original suit at the time of filing and that on represented no notice was issued to the defendant, this by itself is not sufficient to penalise the plaintiff, that too when heavy stakes are involved and the suit is filed for recovery of Rs.20.58 crores.

28. Be it stated that as per the Case Status Information, in the original suit, written statement was filed on 11.03.2020, issues were settled and the case is being posted for trial since 15.06.2021, accordingly, it is kept open to the defendant to raise all such issues AVRJ that are raised in the civil revision petition in his defence before the trial Court and the trial Court may decide all such issues on merits being not influenced by the findings recorded by this Court.

29. Therefore, I do not find any irregularity or infirmity in the order impugned and it does not warrant interference by this Court. Accordingly, the Civil Revision Petition is dismissed confirming the order impugned dated 07.11.2019 in IA No.2041 of 2019 in OS (SR) No.9645 of 2019 (OS No.409 of 2019) on the file of the learned XV Additional District Judge, Ranga Reddy District at Kukatpally. However, in the circumstances of the case, there shall be no order as to costs.

30. As a sequel, interlocutory applications, if any pending shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 24.02.2022 Isn