

(1960) 01 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1029 of 1958

Gandham Nagabhushanam and Another	APPELLANT
Vs	
Mohd. Asharafunnisa Bahebani and Others	RESPONDENT

Date of Decision : 29-01-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 148, 149, 151

Citation : AIR 1960 AP 602

Hon'ble Judges : Munikanniah, J

Bench : Single Bench

Advocate : T. Veerabhadrayya, for the Appellant;

Final Decision : Dismissed

Judgement

Munikanniah, J.—An interesting question concerning the act of acceptance of a document, viz., plaint after the date for representation with full court-fee has been fixed but exceeded, is involved in this revision petition. The plaint in the instant case was filed on 6-1-1958 based upon a promissory note executed on 21-6-1952. The promissory note had in it an endorsement of payment of Rs. 5/- on 5-1-1955. As 5-1-1958 was a public holiday, the plaint was in time even though it was presented on 6-1-1958. But, as it was insufficiently stamped because it was affix-ed with Re. 1/- stamp while the correct court-tee being Rs. 12/-, it was returned on 7-1-1958, giving time for representation with full court-fee till the next day, viz., 8-1-1958.

The plaint was actually represented on 5-2-1958 and accepted by the Court. While representing the plaint, the plaintiff filed I. A. No. 95 of 1958 to excuse the delay in re-presentation. However," the court by its order dated 25-4-1958 made it clear that it accepted the plaint acting upon the powers vested in it u/s 149, C. P. C. and thereby purported to follow the rule laid down in Kolisetti Basavayya and Others Vs. Mittapalli Venkatappayya and Another, . As against that order this revision petition is filed.

2. The above facts relating to the return of the plaint and re-presentation bring out that at the time when the plaint was returned on 7-1-1958, the learned Munsif acted u/s 149, C. P. C. The question therefore is that when time is granted and the plaint is not represented within that time, whether the Court can still purport to act u/s 149 C. P. C. and accept such a plaint, even though there has been delay in representation, or should it accept the plaint only after excusing the delay u/s 5 of the Limitation Act. The courses to be followed under each of these provisions, in my view, are distinct and distinguishable. Section 149, C. P. C. lays down:

"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".

This section would seem to leave no room for the ascertainment of any sufficient cause for any delay in representation, but to allow the deficit court-fee to be paid at any stage once the plaint has been filed within time. Therefore, the further argument advanced by the learned counsel for the petitioner that the liability to pay the court-fee would not be construed or considered as sufficient cause basing upon the decision in *S. Wajid Ali Vs. Mt. Isar Bano Urf Isar Fatma*, and *In Re: S.M. Khatumennessa Bibi*, has in my view no force and these decisions are inapplicable to the facts of the instant case.

3. The next point for consideration is whether it is always necessary in every case where time for re-presentation has been granted, an order granting time should be made u/s 148, C. P. C. It would be indeed not only desirable, but necessary that this step should be pursued, for such a course is calculated to avoid needless complications. But, when that has not been specifically done but there has been acceptance on the part of the court of the plaint, as in this case, the exact legal position arising therefrom needs to be ascertained. A reference to inherent powers of Court thus becomes inevitable.

It is not as though condonation of delay is altogether alien to the exercise of the powers conferred u/s 151 and that calling in aid of this inherent power is not unprecedented in such circumstances. So viewing the case, that is where the time has been granted u/s 149, C. P. C, and re-presentation had been made after a delay of a few days but in fact there has been acceptance of that document as if full court-fee has been paid as from the date of filing, it appears to me that the lower court has acted u/s 151 C. P.C. and it cannot, therefore, be said to have acted outside its jurisdiction or with material irregularity so as to call for interference by this court.

4. In this view this petition fails and is dismissed. The other side is not represented and there will be no order as to costs.