(2003) 10 AP CK 0059

In the Andhra Pradesh High Court

Case No : CRP No''s. 4915 and 4962 of 2002

Giridhari Auto Finance Private Limited — APPELLANT

Vs

Gudla Hari Babu and Others — RESPONDENT

Date of Decision : 17-10-2003

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 148, 149

Citation : (2003) 6 ALD 682 : (2004) 1 APLJ 306 : (2004) 2 BC 582

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : J. Prabhakar, for the Appellant; Ramesh Babu, for the Respondent

Final Decision : Allowed

Judgement

Gopala Krishna Tamada, J.—The plaintiff-petitioner herein has preferred the above two CRPs., against the common order passed in IA Nos. 1217 of 2001 and 1218 of 2002 in an unnumbered Original Suit, on 7-8-2002 by the learned Senior Civil Judge, Khammam.

2. The backdrop of the case leading to the filing of these revision petitions, is that the plaintiff-petitioner filed the suit for recovery of Rs. 2,00,120/- under the Hire purchase agreement, dated 25-7-1997 against the defendants. The plaintiff-petitioner filed the suit on 2-6-2001 and the plaint was returned on 6-6-2001 to comply the following defects by granting 10 days time.

1. Document No. 9 not filed.

2. Document Serial numbers be correctly noted.

3. DCFof Rs. 110/- be paid.

4. Documents showing the payments shall be filed.

5. Summons, R.P. and process be filed.

6. Date of all documents be mentioned in list of documents.

3. The plaintiff-petitioner represented the plaint on 10-6-2001 stating that the objections were complied with. The said plaint was again returned on 21-6-2001 pointing out that objections 1 to 6 were not complied with and 10 days time was granted for compliance of the same. But, the plaintiff-petitioner resubmitted that plaint on 10-7-2001 stating that he complied the objections and paid Rs. 110/- towards deficit Court fee. The petitioner filed IA No. 1217 for condoning the delay in complying the objections. In that petition, he has noted the days of delay to be condoned. The said petition was returned on 16-7-2001 to note down the correct days of delay, by granting 10 days time. The plaint was also returned to comply the objections 1, 2, 4 and 6. The petitioner resubmitted the plaint along with IA No. 1218 of 2002 on 8-8-2001 for condoning the delay of 11 days. In IA No. 1217 of 2001, he noted the days of delay as 10 days. On 3-9-2001, both the I.As were numbered and notices were ordered to the respondents. The reason assigned in the petitions to condone the delay, is that due to oversight, he could not represent the plaint within time.

4. On receipt of the notices, 2nd defendant-2nd respondent remained ex parte and 1st and 3rd defendants-respondents having appeared through Counsel, filed their counter stating that the petition itself is not maintainable and condoning the delay is not applicable to the suits and the reasons assigned in the petition, is not at all a valid ground.

5. The Trial Court after hearing both sides and having held that the plaintiff-petitioner is not entitled for condonation of delay as sought for in both the petitions dismissed them. Having aggrieved by them, the present CR.Ps. have been preferred.

6. Heard Mr, J. Prabhakar, the learned Counsel for the petitioner and the learned Counsel for the respondents.

7. It is contended by the learned Counsel for the petitioner that the petitioner has paid major portion of the Court fee and the remaining deficit Court fee payable by the petitioner is a paltry one and that payment of the deficit Court fee subsequently, cannot be a ground to reject the applications of the petitioner. In support of his contention, he relied on a decision reported in Prem Narain Vs. Vishnu Exchange Charitable Trust and Others, , wherein the Apex Court has held thus:

"This is a matter in which the conduct of the respondents calls for severe condemnation for the reason that on a question of paltry deficit in payment of Court fees instead of inviting decision of the issues involved in the dispute by adjudication on merits, the matter has been brought to this Court which from our point of view is a criminal waste of this Court''s valuable time and for which the respondents are solely responsible. .... As the respondents contested a very reasonable request of the appellant, they seem to be revelling in litigation and therefore they should be made liable to pay the costs. Respondent No. 1 shall pay Rs. 500/- to the appellant as costs within four weeks from today."

8. On the other hand, it is contended by the learned Counsel for the respondents that the reasoning assigned by the Court below in arriving at the conclusion, is clear and clinching and as such, the order impugned, does not call for interference by this Court.

9. On the rival contentions, a short but interesting point which falls for consideration in this revision and which will be of immense guidance to the Subordinate Courts, is as to whether the plaints represented by paying the deficit Court fee with delay are to be rejected in limini or they can be accepted by the Courts.

10. At this juncture, it is relevant to have a glance at the provisions of Section 149 IPC, which deals with the powers conferred on the Courts to allow the party at any stage to pay the Court fee.

"Section 149 Power to make up deficiency of Court fee :--When 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."

11. Section 148 CPC deals with the powers conferred on the Courts in extending time in its discretion. Section 148 reads thus:

"Section 148 Enlargement of time :--When any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may in its discretion, from time to time, enlarge such period not exceeding thirty days in total, even though the period originally fixed or granted may have expired."

12. The duty to verify as to whether the Court fee is paid in consonance with the provisions of the Court Fee Act and whether there is any deficit Court fee to be paid by the party, is case upon the Court at the time when the plaint is presented by the plaintiff. At this point of time, this issue revolves only around the plaintiff and the scrutiny authority/Court/the Government in regard to the payment of exact quantum of Court fee. Unless and until the said plaint is numbered, the party against whom the said plaint or suit is intended to be presented, cannot have the locus standi or cause of action to question that there is delay in payment of deficit Court fee and at the same time, cannot step into the shoes of litigation at the preliminary stage of presentation of the plaint, with a plea that due to the delay in payment of deficit Court fee, the suit claim becomes time barred, inasmuch as after the suit is numbered and notices are ordered, the defendant/opposite party would always be at liberty to enter into the litigation and then nothing will prevent him/her to file a written statement and seek for an issue to be framed as to "Whether the Court fee paid is correct or not?", which requires to be proved by adducing evidence on either side. Therefore, in my considered opinion, the opposite party/defendant cannot, at this stage, have the

locus standi or any cause of action to question as to whether Court fee paid is correct or not or whether there is any delay in payment of deficit Court fee or whether it reflects on the validity of the suit claim.

13. Apart from that, as could be seen from the above provisions, it is apparent, that the Court may in its discretion, at any stage of the proceedings, allow the party to pay the whole or part of the Court fee and upon such payment, the document shall have the same force and effect as if such fee was paid in the first instance. It is also further clear that the Court may in its discretion, from time to time enlarge such period not exceeding 30 days in total enabling the party to comply with the objections, if any, even though the period originally fixed or granted may have expired.

14. I have perused the order of the Court below. The Court below without applying its mind and. drawing its attention to the provisions of Sections 148 and 149 CPC having arrived at a general notion on mere assumptions that the plaintiff has not presented the plaint with the requisite Court fees as contemplated under the provisions of Court Fee Act, within limitation and has not paid the deficit Court fee within the time fixed by the Court, rejected the claim of the plaintiff.

15. In Mahasay Ganesh Prasad Ray and Another Vs. Narendra Nath Sen and Others, , the Apex Court has held that:

"The payment of the Court Fee is essentially a matter between the Government and the plaintiff and the opposite party cannot oppose the same on the ground of limitation and cannot claim to have derived a vested right by non-payment of the Court Fee"

16. In the above judgment, the Apex Court had an occasion to test the validity of the order passed by the High Court wherein the High Court permitted the appellant to pay the Court fee by granting time. In the said case requisite Court fee was not affixed on the memorandum of appeals. A preliminary objection was taken by the respondent about the maintainability of appeal. The High Court upheld the objection but granted time to pay the deficit fee. Aggrieved by that order, the respondent approached the Supreme Court. Dismissing the appeal, the Apex Court observed that the question of payment of Court-fee was primarily a matter between the Government and the appellant and when the High Court, in its discretion, granted time for payment of deficit Court-fee u/s 149, the other party could not contend that the said order took away his valuable right to plead the bar of limitation.

17. In Mahanth Ram Das Vs. Ganga Das, :

"The Apex Court while dealing with the scope of Section 149 CPC, held that the words "at any stage" contemplates that the Court may permit payment of Court fee even after the period of limitation for filing a proceeding had expired.

18. In Mannan Lal Vs. Chhotaka Bibi, (Dead) by Lrs. B. Sharda Shankar and

Others, , the Supreme Court observed that the object of Section 149 is to mitigate the rigour of Court Fee Act to allow the party to make good deficiency in payment of Court fees and to save from onslaughts of the limitation. The Supreme Court further held that Section 149 of the Code enacts that where a Court fee is payable on a plaint, memorandum of appeal or an application and there is deficiency in payment of such fee even after the expiry of the period of limitation for filing such suit, appeals or application. Such payment shall have the same force and effect as if it had been paid in the first instance.

19. In the present facts and circumstances and in view of the provisions of Sections 148 and 149 CPC and relying on the principles laid down by the Apex Court in the above decisions, I am of the considered opinion that the question of period of limitation does not arise in respect of payment of deficit Court fee and consequently, the order impugned, is liable to be set aside.

20. Accordingly, both the CRPs. are allowed setting aside orders impugned herein. There shall be no order as to costs.

