

(1990) 07 MAD CK 0089
In the Madras High Court

Knitting and Textiles Machinery Works and Another	APPELLANT
Vs	
Karunabbal and Others	RESPONDENT

Date of Decision : 24-07-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 149

Citation : (1991) 1 LW 560 : (1990) 2 MLJ 350

Hon'ble Judges : Ratnam, J

Bench : Division Bench

Judgement

Ratnam, J.—This Civil Revision petition, at the instance of the defendants in O.S.No.519 of 1984, Sub Court, Coimbatore, is directed against the order passed in I.A.No.339 of 1989 in O.S.No.519 of 1984 dismissing that application filed by the petitioners under Sections 149 and 151 C.P.C. praying that the petitioners may be allowed to pay the court-fee of Rs.360.50.

2. In the suit O.S.No.519 of 1984 instituted by the respondent herein, they have prayed for the recovery of a sum of Rs.28,100 from the petitioners as per the claim made in the plaint. In the written statement filed by the petitioners, they not only disputed the claim made by the respondents in the plaint, but also put forward a counter claim against the respondents for the recovery of a sum of Rs.13,668.10. In Paragraph 11 of the written statement, the petitioners set out the details of the counter claim and in paragraph 21, the petitioners also expressed their willingness to pay the court-fee on the amount of Rs.13,668.10 when their counter claim is allowed by Court. It is now common ground that the petitioners did not pay the Court-fee payable on the counter claim made by them in the written statement, but that issue No. 13 framed in the suit related to the counter claim so made by the petitioners. It is also not in controversy that the examination of the witnesses on both sides had been completed. It was at that stage that the petitioners came forward with an application in I.A.No.339 of 1989 stating that though they had earlier stated in their written statement that they were willing to pay the Court-fee on the counter claim of Rs.13,668.10, they had

since restricted their counter claim to Rs.4,795/- and that the court-fee was omitted to be paid by oversight and mistake and they should be permitted to pay the Court-fee as the omission to pay the court fee was only due to a bona fide and honest mistake and not due to any negligence. In their counter, the respondents contended that after having taken a stand in paragraph 21 of the written statement that they were willing to pay the Court-fee if and when the counter claim is allowed and not having paid the Court-fee as undertaken, it was not open to the petitioners to seek the exercise of a discretion in their favour for payment of the Court-fee at that stage of the proceedings. It was also stated by the respondents that the application was barred by limitation. The Court below took the view that though the petitioners had stated in their written statement that they would pay the Court-fee on the counter claim, yet, they had not paid the same despite the framing of an issue in that regard and that the petitioners had also not made the application bonafide and in time. In that view, the application was dismissed, the correctness of which is questioned in this Civil Revision Petition.

3. Learned Counsel for the petitioners, inviting attention to Section 149, C.P.C. and the decision of the Supreme Court reported in Mannan Lal Vs. Chhotaka Bibi, (Dead) by Lrs. B. Sharda Shankar and Others, , contended that the very object of Section 149 C.P.C. is to mitigate the rigour of Section 4 of the Tamil Nadu Court-fees and Suits Valuation Act (hereinafter referred to as "The Court Fees Act", for short) and that the Court below was in error in having proceeded to dismiss the application on the ground that the application was not bona fide and in time. On the other hand, learned Counsel for the respondents submitted that though the petitioners had expressed their willingness to pay the Court-fee on the counter claim even in paragraph 21 of their written statement, they had not done so in spite of an issue in that regard having been framed and the application filed by the petitioners was not at all bona fide and the exercise of discretion by the Court below in the manner done did not deserve to be interfered with, as it would also deprive the respondents of a valuable plea of limitation. Reference was also made in this connection to some decisions relating to the manner in which the discretion should be exercised u/s 149, C.P.C. and how a discretion once exercised in a particular manner should not be ordinarily interfered with.

4. Before proceeding to consider the submissions so made, it would be necessary to refer to a few facts which are not a controversy. In the written statement filed by the petitioners, in paragraphs 6 to 11, the petitioners had given the details of their claim for the recovery of a sum of Rs.13,668.10 from the respondents herein and in paragraph 21, the petitioners had also stated that they were willing to pay the Court-fee on that amount, when their counter claim is allowed by Court. Despite this, the petitioners did not pay any Court-fee on the counter claim made by them in the aforesaid manner in their written statement. On the basis of the counter claim, the Court had also proceeded to frame issue No. 13 to the effect whether the petitioners are entitled to recover from the respondents

the sum of Rs.13,668.10 and whether the petitioners can secure that relief without payment of Court-fee. The trial of the suit had proceeded and the oral evidence had concluded and it was at this stage that the petitioners had come forward with the application restricting their counter claim to Rs.4,795/- as against Rs.13,668.10 originally made and for being allowed to pay the Court-fees of Rs.360.50. Along with the application, the petitioners had also submitted the requisite stamp papers. It is in the background of the aforesaid undisputed facts, the question whether the petitioners can now be permitted to pay the Court-fees of Rs.360.50 and seek to recover amounts from the respondents on the basis of the counter claim now restricted to Rs.4,795/-has to be considered.

5. It would be appropriate at this stage to refer to the relevant provisions of the Court-fees Act and the Code of Civil Procedure. u/s 4 of the Court-fees Act, no document which is chargeable with fee under this Act shall be filed, exhibited or recorded in, or be acted on or furnished by, any court including the High Court, unless in respect of such document, there be paid a fee on an amount not less than that indicated as chargeable under this Act. Section 8 of the Court-fees Act states that a written statement pleading a counter claim shall be chargeable with fee in the same manner as a plaint. Under Article I of Schedule I to the Court-fees Act, on a written statement making a counter claim, when the amount or the value of the subject-matter in dispute exceeds one hundred rupees, ad valorem Court-fee is payable at seventy-five paise for every ten rupees, or part thereof, in excess of one hundred rupees. Section 5 of the Court-fees Act provides that when a document on which the whole or any part of the fee prescribed by that Act has not been paid is produced or has, through mistake or inadvertence, been received in any Court or Public Office, the Court or the head of the office may, in its or his discretion at any time, allow the person by whom such fee is payable to pay the fee or part thereof, as the case may be, within such time as may be fixed; and upon such payment, the document shall have the same force and effect as if the full fee had been paid in the first instance. Under Order 8, Rule 6A (2) and (4), C.P.C, a counter claim shall have the same effect as a counter-claim so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter claim and the counter claim shall be treated as plaint and governed by the rules applicable to plaints.

Order 7, Rule 11(c), C.P.C. makes provision for the rejection of a plaint in a case where the relief claimed is properly valued, but the plaint is written upon papers 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. Section 149, C.P.C. empowers the Court, in its discretion, at any stage, to allow a person by whom Court-fee is payable, to pay the whole or any part, as the case may be, of such fee, 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 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. From the provisions of the Court-fees Act and the CPC referred to

above, it follows that the counter claim made by the petitioner in their written statement ought to have been treated as a plaint in a coarse-suit without the payment of any Court-fee. When such a counter claim contained in the written statement of the petitioners was presented before Court, it was plainly the duty of the Court to have called upon the petitioners to pay the Court-fee payable on the counter claim in accordance with the provisions of the Court-fees Act. That, for reasons which are not very clear, was not done with the result that the Court below had proceeded to entertain the counter claim, framed an issue thereon and also allowed evidence to be let in. This, however, was not due to any fault on the part of the petitioners, for, had the Court realised that the petitioners had not paid the requisite Court-fee on the counter claim made in their written statement, then, the court ought to have brought this to the notice of the petitioners and granted some time to pay the Court-fee and on their failure to do so, should have further proceeded to reject the counter claim, -as though it was a plaint, under Order 7, Rule 11(c), C.P.C. Inasmuch as there was an omission on the part of the Court to do its duty, the petitioners also had not realised the non-payment of the Court-fee and a mistake of Court cannot be permitted to prejudice the petitioners. Besides, Section 5 of the Court-fees Act and Section 149 C.P.C. are intended to mitigate the rigour of Section 4 of the Court-fees Act providing for the Court not acting upon the counter claim made in the written statement filed by the petitioners without the payment of requisite court-fee and remedy the rejection of claims made for non-payment of Court-fee. u/s 149, C.P.C., the Court has a discretion to allow the payment of the whole or any part of the Court-fee, as the case may be, by the person by whom such fee is payable. Earlier, it has been noticed that the Court had failed in its duty in the first instance in not drawing the attention of the petitioners to the Counter claim and the nonpayment of the Court-fee due thereon and give the petitioners some time to pay the Court-fee and the Court had also proceeded with the trial of the suit and the petitioners cannot at all be blamed for the manner in which the counter claim had been dealt with by the Court below. It is, therefore, quite probable that the petitioners were also under a bona fide and honest mistake regarding the payment of Court-fee, especially when they had not been called upon by the Court to do so. The Court below was, therefore, not correct in observing that the petitioners cannot be stated to have committed a bona fide and honest mistake. The circumstance that issue No. 13 relating to the counter claim had been framed in the suit or that evidence had been let in, would not make any difference to this. Thus, on the undisputed facts earlier referred to and the omission on the part of the Court to deal with the counter claim made in the written statement of the petitioners in a manner required by law, the case of the petitioners that there was a bona fide and honest mistake in the non-payment of Court-fee on the counter claim has to be accepted and the petitioners, in the interest of justice; should also be permitted to pay the Court-fee, though on a lesser amount now claimed by way of counter claim, upon which, the counter claim, u/s 5 of the Court-fees Act and Section 149, C.P.C., shall have the same force and effect, as if it had been paid in the first instance, that is, on the date

on which the written statement containing the counter claim was put into court. The Court below in its order has also made a reference to limitation, which is rather difficult to accept or appreciate. If the Court-fee on the counter claim is now permitted to be paid by the petitioners, that will give the counter claim force and effect, as if the Court-fee had been paid in the first instance. In such a case, the question of limitation recedes to the background and pales into insignificance. It is in this context that a reference may be made to *Faizullah v. Mauladad* 57 MLJ 281 : 117 I.C. 483 : AIR 1929 PC 147 where it was laid down that the discretion exercisable by Court u/s 149, C.P.C. extends to the whole or any part of any fee prescribed and can be exercised at any stage in the case and upon the extra payment being made, the document is to have the same effect as if it had been paid in the first instance. This principle was reiterated in *Mannan Lal v. Chhotka Bibi* (1971) 1 SCJ 474 : (1971) 1 SCR. 558 : AIR 1971 1373 where it was pointed out that Section 149, C.P.C. mitigates the rigour of Section 4 of the Court-fees Act, 1870 and it is for the Court to harmonise the provisions of both the Court-fees Act and the CPC by reading Section 149, C.P.C. as a proviso to Section 4 of the Court-fees Act, 1870 and allowing the deficit to be made good within a period of time fixed by it, which, if done, no possible objection can be raised on the ground of bar of limitation, as Section 149, C.P.C. expressly provides that the document is to have validity with retrospective effect. Again, in *Jugal Kishore Vs. Dhanno Devi (Dead) by Lrs.*, the Supreme Court pointed out that the withdrawal of an application to sue as an indigent person and a redundant order dismissing that application, would not amount to a rejection of the plaint in the suit so that the suit continued to remain on file and if the Court-fee was paid, then, by virtue of Section 149, C.P.C, the plaint would have the same force and effect, as if the fee had been paid on the day when it was presented to the Court. Reference may also be made to another decision of the Supreme Court reported in *Mahasay Ganesh Prasad Ray and Another Vs. Narendra Nath Sen and Others*, where the Supreme Court had in clear terms laid down that the power of the court to allow payment of Court-fee u/s 149, C.P.C is one under which the plea of the bar of limitation may be ignored and, therefore, the contention that by allowing an application u/s 149, C.P.C. a valuable right to plead bar of limitation is lost, cannot be accepted. It was also further pointed out that the payment of Court-fee is a matter primarily between the Government and the party obliged to pay and the other party cannot attack the order on the ground that a valuable right to plead bar of limitation is lost. Earlier, it had been pointed out how there was a bona fide and honest mistake on the part of the petitioner in the non-payment of Court-fee on the counter claim made in their written statement and a careful Consideration of the available materials clearly shows that the petitioners had been misled by an omission on the part of the Court do to its duty according to law and that had resulted in the non-payment of the Court-fee by the petitioners till a very Late stage of the proceedings and for that the petitioners cannot at all be penalised. Even as a matter of exercise of discretion, the court below has not adverted to this aspect at all and under those circumstances, the exercise of discretion by the Court below in the manner done

cannot be stated to be proper or just. In that view, it is not necessary to make a detailed reference to some of the decisions relied on by learned Counsel for the respondents to establish that if there are no bona fides, the discretion cannot be exercised. Thus, on a careful consideration of the facts and circumstances, it has to be held that the court below was in error in dismissing the application filed by the petitioners seeking permission to pay the Court-fee on the reduced amount of counter claim. The Civil Revision petition is, therefore, allowed and the order of the court below is set aside and the application in I.A.No.339 of 1989 in O.S.No.519 of 1984 will stand allowed and the court below is directed to accept the stamp papers filed by the petitioners and treat it as payment of Court-fee paid by them, which would have the effect of payment full fee even in the first instance, and thereafter to proceed to deal with the suit and counter claim for Rs.4,795/- on merits in accordance with law, from the stage at which it stands now. There will be no order as to costs.