

(1937) 10 MAD CK 0024
In the Madras High Court

Pamidimukkala Sitharamayya and Others	APPELLANT
Vs	
Ivaturi Ramayya and Another	RESPONDENT

Date of Decision : 29-10-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 149

Citation : AIR 1938 Mad 316 : (1938) 47 LW 211 : (1938) 1 MLJ 514

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This case though numbered as an appeal comes up before us for disposal on the question whether the appeal is to be

treated as having been presented in time or should be dismissed as not having been presented in time.

2. The memorandum of appeal was filed in this Court on the 21st of March, 1935, which was within the time allowed by law, but it was presented

on a court-fee of Rs. 5, while in the valuation, memo, attached to the memorandum it was stated that Rs. 224-15-0 was the court-fee payable.

The papers were returned on more than one occasion to the party for various purposes and on the 15th of July, 1935, the appellant's counsel

revised the memo, of valuation with the result that Rs. 111-5-0 was shown as the court-fee payable. Even this amount was not paid for a long time

and the appellants ultimately filed an application u/s 149, CPC (C.M.P. No. 327 of 1936) for extension of time to pay the deficient court-fee. This

application was rejected by one of us on the ground that the reasons assigned in support of the application for extension of time were palpably

false and the appellants had no other reason for non-payment of the court-fee in time than their inability to find the money. The case was then

directed to be posted for argument on the question whether in view of the fact that the deficient court-fee was paid long after the expiry of the

period of limitation the appeal should not be dismissed as not presented in time. Notice was given to the respondent to be present at the argument

of this question so that the decision on the point may be final between the parties.

3. It has now been contended before us that in spite of the dismissal of the application u/s 149, Civil Procedure Code, the memorandum of appeal

cannot be held not to have been presented in time because on the analogy of the provisions of Order 7, Rule 11 (in the case of plaints) the

appellants ought to have been called upon within a fixed period to pay the deficient court-fee and until that has been done it is not open to the

Court to reject the appeal. This argument seems to us to ignore the real point for consideration. We may however mention in passing that the

applicability of the provision in Order 7, Rule 11(c), Civil Procedure Code, to appeals is by no means so clear as the learned Counsel for the

appellants assumes. On the other hand, the weight of authority is decidedly against its applicability. Except the Bombay High Court, nearly all the

other High Courts have held that the provision in Order 7, Rule 11, Clause (c) does not apply to appeals. In this Court that view was expressed

as early as in *Akkaraju Narayana Rao and Namburi Venkatakrishna Rao Vs. Akkaraju Seshamma and Others*, and quite recently the Calcutta

High Court has expressed the same view in *Khatumannessa Bibi v. Durjyodhan Ray Chaudhuri* ILR (1934) Cal. 663. See also *Lekh Ram v.*

Ramji Das ILR (1919) Lah. 234, *Ram Sahay Ram Pande v. Kumar Lachmi Narayan Singh* (1917) 3 Pat.L.J. 74 and *Brijbhukhan v. Tota Ram*

ILR (1928) All. 980. There are obvious reasons for drawing a distinction in this respect between plaints and memoranda of appeal. In the case of

a plaint, there is no power in the Court to excuse delay on grounds which are available u/s 5 of the Limitation Act in the case of appeals. Other

cases of possible hardship are sufficiently provided for by the discretion vested in the Court u/s 149 of the Code. So far as memoranda of appeal

are concerned, express provision is made in Order 41, Rule 3 for their rejection on grounds specified in that rule. But as we have indicated already

the question now is not one relating to the rejection of the memorandum of appeal but a point of limitation.

4. In view of the provisions of Section 4 of the Court-Fees Act, it cannot be said that a mere filing of a paper without the proper court-fee amounts to a proper presentation of the appeal for all purposes. The observations in *Nellavadivu Ammal Vs. Subramaniya Pillai and Others*, must be read in the light of the facts of the case where the Court was dealing with a pauper petition and the court-fee had been paid within the time fixed after the dismissal of the pauper petition. The language of Section 149, Civil Procedure Code, itself seems to imply that in the absence of an order granting time under that section the presentation of the unstamped or insufficiently stamped memorandum of appeal will not amount to a valid presentation. The concluding words of Section 149 provide that where proper court-fee is paid in terms of an order u/s 149 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. The application u/s 149 having been dismissed in this case, it is impossible to maintain that the appeal has been presented in time. We see no reason to excuse the delay because the considerations urged in the order on C.M.P. No. 327 of 1936 are equally applicable to this aspect of the matter. The result is that this appeal must be dismissed as not presented in time. The respondent will be entitled to costs as on an application to excuse delay.