

(2002) 04 MAD CK 0008

In the Madras High Court

Case No : Civil Revision Petition (P.D) No. 3182 of 2001 and C.M.P. No. 16770 of 2001

State Bank of Travancore

APPELLANT

Vs

A.R. Thirumurthy, Chandra Bai, Ramesh and Lalitha

RESPONDENT

Date of Decision : 03-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 17, Order 41 Rule 19, Order 7 Rule 11, Order 7 Rule 12, Order 7 Rule 13
Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 10 , 14, 16

Citation : (2002) 3 LW 603 : (2002) 2 MLJ 312

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : R. Rajashree, for the Appellant; A.U. Ilango, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The only short point arises for consideration in the above revision is whether the revision petitioner/respondent in

A.S.No.66 of 1997 before the learned District Judge, Nilgiris at Ootacamund, filed against the decree and judgment dated 01.08.1997, made in

O.S.No.237 of 1996, on the file of the learned Subordinate Judge, Nilgiris, at Ootacamund, is aggrieved by an order dated 14.8.2001, made in

I.A.No.57 of 2000 in A.S.No.66 of 1997, restoring the suit, which was dismissed on 9.2.2000 for default of non payment of deficit court fees in

time.

2. The learned counsel for the petitioner seriously contends that only an appeal lies against the order of dismissal dated 9.2.2000 made in

A.S.No.66 of 1997, and that the respondents are not entitled to seek restoration of the suit by filing an interim application in I.A.No.57 of 2000,

invoking Order 9, Rule 9, CPC, read with Order 41, Rule 19, CPC.

3. Per contra, learned counsel for the respondents contends that the very order of dismissal for want of payment of deficit court fee is without

jurisdiction, as the learned District Judge should have only returned the memorandum of appeal for want of sufficient Court fee, but should not have

dismissed the suit itself, by order dated 9.2.2000.

4. The relevant provisions under the Code of Civil Procedure, which govern the situation of non payment of required court fees, are Order 7 Rule

11 C.P.C. read with Section 16 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, which are referred to as follows:

Order 7 Rule 11 C.P.C.:— Rejection of plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the

Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper 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.

(d) where the suit appears from the statement in the plaint to be barred by any law.

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless

the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the

valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would

cause grave injustice to the plaintiff.]

HIGH COURT AMENDMENT (MADRAS):

For clause (c) substitute the following:

(c) where the relief claimed is properly valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the

deficiency within the time, if any, granted by the Court".

Order 7 Rule 12 C.P.C. Procedure on rejecting plaint:-

Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.

Order 7 Rule 13 C.P.C. Where rejection of plaint does not preclude presentation of fresh plaint:-

The rejection of the plaint on any of the grounds herein before mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

Section 16 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955:-

Fee payable on appeals etc.,:- The provisions of Sections 10 to 14 relating to the determination and levy of fee on plaints in suits shall apply

mutatis mutandis to the determination and levy of fee in respect of a memorandum of appeal, cross objection or other proceeding in second appeal

or under the Letters Patent.

5.1 Section 16 of the Tamil Nadu Court Fees and Suits Valuation Act, referred to above, makes it clear that the Court fees determined on the

plaint in the suit shall be mutatis mutandis in respect of the memorandum of appeal, cross objections, etc.

5.2 Order 7 Rule 11 of the CPC empowers the Court to reject the plaint if the plaint in the suit or the memorandum of grounds in the appeal are

not sufficiently stamped with court fees. Order 7 Rule 13 of the Code of Civil Procedure, referred to above, makes it clear that the rejection of the

plaint on any of the grounds for want of sufficient court fees shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect

of the same cause of action. If the principle behind Order 7 Rule 13 C.P.C. is applied to the appeals in view of Section 16 of the Tamil Nadu

Court Fees and Suits Valuation Act, 1955, it is clear that the learned District Judge ought not to have dismissed the suit for want of deficit court

fee, but only returned the memorandum of appeal, in which event, I do not find any difficulty in exercising the jurisdiction for restoring the appeal on

payment of deficit court fee.

5.3 That apart, if the appeal preferred by the respondents/appellants herein was dismissed for default either for their non appearance under Order

41 Rule 17 C.P.C. or failure to deposit costs under Order 41 Rule 18 C.P.C., the Code provides for re-admission of the appeal dismissed for

default under Order 41 Rule 19 C.P.C. In either circumstance, it cannot be construed that for non payment of such deficit court fees, the parties should be shut out on technical grounds.

5.4 It is, in order to meet the ends of justice, the learned District Judge, Nilgiris at Ootacamund, by order dated 14.8.2001 restored the appeal,

which was dismissed for default on 9.2.2000 for non payment of deficit court fees and allowed I.A.No.57 of 2000.

6. Therefore, in my considered opinion, the interest of justice, requires that the parties should be heard instead of shutting them on technical

grounds, as rightly weighed by the learned District Judge, the civil revision petition is dismissed. No costs. Consequently, C.M.P.No.16770 of

2001 is also dismissed.