SUPREME COURT OF INDIA

P.K.Palanisamy

Vs.

N.Arumugham

(S.B. Sinha and Deepak Verma JJ.)

23.07.2009

JUDGMENT

S.B. SINHA, J:

1. Leave granted.

2. This appeal is directed against a judgment and order dated 28th November, 2008 passed by a learned single judge of the High Court of Judicature at Madras whereby and whereunder a Civil Revision Petition filed under Article 227 of the Constitution of India against the Order dated 05th February, 2008 passed by the Additional District Munsif cum Fast Track Court No.II, Salem in I.A. No. 22 of 2008 in O.S. No. 114 of 2004 has been allowed.

3. The brief facts necessary to be noted for the purpose of disposal of this case are as under:

The appellant allegedly advanced a loan for a sum of Rs.5,90,000/- to the respondent No.1 on 29th January, 1995. As the respondent No.1 failed to refund the amount despite repeated demands from the appellant, a Promissory Note was got executed by her on or about 2nd October, 1995. The respondent No. 1 issued two cheques for a sum of Rs.1,00,000/- each on 8th June, 1996 towards partial discharge of his obligation. However, the cheques when presented to the Banks were returned with the remarks No fund.

The appellant caused a legal notice to be served on the respondents on 29th August, 1998, which was received by them on 2nd September, 1998. The appellant instituted a suit for recovery of money against the respondents on or about 4th October, 1998 before the Subordinate Judge, Salem. The plaint was presented on 5th October, 1998 as the 2nd, 3rd and 4th October, 1998 were holidays

for the courts. The plaint was accompanied by a court fee of Re.1/- only. He also filed an application purported to be in terms of Section 148 read with Section 151 of the Code of Civil Procedure (for short, the Code) seeking six weeks time for payment of the deficit court fees. The trial court granted six weeks' time for payment of the deficit court fees by an order dated 7.10.1998.

On or about 8th November, 2008, another petition was filed by the appellant seeking eight weeks' time for payment of deficit court fees on the premise that the stamp fee papers were not yet available in the Sub-Treasury. The trial court granted eight weeks' time by an order dated 20th November, 1998. Another eight weeks' time was granted by the trial court by an order dated 21st January, 1999. He, however, deposited the deficit court fee stamp on 17th February, 1999, which was accepted by the learned Subordinate Judge.

Indisputably, an application marked as I.A. No. 838 of 2000 under Section 151 of the Code to condone the delay of 272 days in representing the plaint filed by the appellant was allowed by the trial court by an order dated 2nd November, 2000. The plaint was represented with the application for attachment before judgment and an application for condonation of delay in re-filing.

The respondents entered appearance upon receipt of summons on 10th January 2001. Indisputably, on the same day, an order of attachment before judgment was also passed with regard to the scheduled property. On 17th February 2003, written statement was filed by the respondent. In the said written statement, no objection was raised with regard to the delay in payment of court fee. No issue in that behalf was framed. Indisputably, thereafter, the respondents remained absent and an ex parte decree came to be passed in favour of the appellant on 29th September, 2004 by the trial court.

An application marked as I.A. No. 1138 of 2005 filed on behalf of the respondents after a gap of 289 days to set aside the ex parte decree was allowed by the trial court with a condition to pay Rs.1000/- as costs. Feeling aggrieved by and dissatisfied with the said order, the appellant preferred Revision Petition under Article 227 of the Constitution of India before the High Court on or about 8th June, 2007. The learned single judge of the High Court after observing that the modus operandi of the respondents is to protract the suit proceedings, ruled a conditional order, viz., the suit would be revived only if the respondents deposit Rs. 3,00,000/- by order dated 8th June, 2007. That order became final. Even at that stage no objection as regards non-deposit of court fees within reasonable time was raised by the respondents.

Indisputably, the respondents deposited the money after getting an extension as well and the suit was revived. The appellant was examined and cross-examined so also his witness. However, It may be noticed that no suggestion to impeach the credibility as to non-availability of court fee or limitation was put to him.

Indisputably, an application marked as I.A. No. 22 of 2008 under Order VII Rule 11(c) was moved by the respondents on or about 4 th January 2008 seeking for rejection of the plaint urging for the first time that the suit presented on 5th October 1998 was barred by limitation as the extension of time granted by the trial court under Section 149 read with Section 151 of the Code and condonation of delay in re-filing was passed without issuing notice to them. The appellant contested the said application by filing a counter affidavit thereto.

The trial court by reason of order dated 5th February, 2008 dismissed the said application filed by the respondents. Aggrieved thereby, the respondents preferred a Revision Petition marked as Civil

Revision Petition No. 815 of 2008 under Article 227 of the Constitution of India before the High Court, which has been allowed by reason of the impugned judgment.

4. Appellant is, thus, before us.

5. Mr. E. Padmanabhan, learned Senior Counsel in support of the appeal urged:

(i) The High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that the legality of the orders dated 7.10.1998, 8.11.1998, 20.11.1998 and 21.1.1999 having not been questioned, the same in effect and substance could not have been set aside by reason of the impugned judgment. (ii) The appellant having acted bona fide inasmuch as court fee stamp papers being not available in the treasury, the learned trial court must be held to have exercised its jurisdiction judiciously in terms of Section 149 of the Code. (iii) Although the application for grant of time was filed under Section 148 of the Code of Civil Procedure read with Section 151 thereof, the same ought to have been held to have been filed under Section 149 of the Code.

(iv) The respondents having not raised any issue with regard to delayed filing of the court fee stamp in their written statement or thereafter, the application filed by them purported to be under Order VII Rule 11(c) of the Code at the stage when the evidence had been adduced by the parties ought not to have been entertained.

6. Mr. Krishnan Venugopal, learned Senior Counsel appearing on behalf of the respondents, on the other hand, would urge: (i) Keeping in view the long line of decisions of Madras High Court whereupon strong reliance has been placed by the High Court, the learned trial court was legally bound to serve a notice upon the respondents before passing of the orders dated 7.10.1998, 8.11.1998, 20.11.1998 and 21.1.1999. (ii) The jurisdiction of the trial court contained in Section 149 of the Code being limited, it was obligatory on its part to assign sufficient and cogent reasons therefor.

(iii) Non-grant of opportunity of hearing to the respondents by the trial court and non-recording of reasons rendered the orders in question as nullities and in that view of the matter, an application under Order VII Rule 11(c) for rejection of plaint must be held to have been maintainable.

(iv) The trial court had the jurisdiction to entertain the said application at any stage of the suit

(v) Order VII Rule 11(c) being not dependent upon an order passed by the trial court under Section 149 of the Code, the latter shall prevail over the earlier.

(vi) The instant case being not the one where additional court fee was required to be filed, the High Court must be correctly and rightly held to have exercised its jurisdiction.

7. When a plaint is presented ordinarily it should be accompanied with the requisite court fees payable thereupon. Section 4 of the Court Fees' Act, 1870 mandates the same in the following terms: 4. Fees on documents filed, etc., in High Courts in their extraordinary jurisdiction:- No document of any of the kinds specified in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its

extraordinary original civil jurisdiction; or in the exercise of its extraordinary original criminal jurisdiction; in their appellate jurisdiction; -- or in the exercise of its jurisdiction as regards appeals from the judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one or more Judges of the said Court, or of a division Court; or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence; as Courts of reference and revision.- or in the exercise of its jurisdiction as a Court of reference or revision; unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.

It, however, does not mean that whenever a plaint is presented with deficit court fee, the same has to be rejected outrightly. Section 149 of the Code provides for the court's power to extend the period. It reads as under: 149. Power to make up deficiency of Court- fees.- 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. Section 149 raises a legal fiction in terms whereof as and when such deficit court fee is paid, the same would be deemed to have been paid in the first instance.

8. Appellant while presenting the plaint inter alia contended that sufficient court fee stamps were not available in the sub-treasury. The Presiding Officers of the local Civil Courts in a given situation would be aware thereof. It may, therefore, consider the prayers made in that behalf by a suitor liberally. If court fees are not available in a sub-treasury for one reason or the other, the court having regard to the maxim `lex non cogit ad impossibilia would not reject such a prayer. Payment of court fees furthermore is a matter between the State and the suitor. Indisputably, in the event a plaint is rejected, the defendant would be benefited thereby, but if an objection is to be raised in that behalf or an application is to be entertained by the court at the behest of a defendant for rejection of the plaint in terms of Order VII rule 11(c) of the Code, several aspects of the matter are required to be considered. Once an application under Section 149 is allowed, Order VII Rule 11(c) of Code will have no application.

It is for that additional reason, the orders extending the time to deposit deficit court fee should have been challenged. Filing of an application for rejection of plaint in a case of this nature as also having regard to the events which have taken place subsequent to registration of the suit appears to us to be mala fide. If the learned trial judge did not entertain the said plea, the High Court should not have interfered therewith.

9. The respondents in their written statement did not raise any issue with regard to the correctness or otherwise of the orders dated 7th October, 1998, 8th November 1998, 20th November, 1998 and 21st January, 1999. Rightly or wrongly, the plaint was accepted. The deficit court fee has been paid. The court was satisfied with regard to the bona fide of the plaintiff. Hearing of the suit proceeded; not only issues were framed but the witnesses on behalf of the parties were also examined by both the parties. It is difficult to believe that from 10th January 2001 to 4th January 2008, the respondents or their counsel did not have any occasion to inspect the records. Any counsel worth itself would not only do so but even without doing so would address himself a question as to why a suit filed on 4th October 1998 was entertained in the year 2000. The suit was at one point of time decreed ex parte. The same was set aside on certain conditions. Evidently, the conditions laid down had been satisfied only upon obtaining an extension of time. In the aforementioned backdrop of

events, we may not have to go into the correctness or otherwise of the decision rendered by the Madras High Court in K. Natarajan vs. P.K. Rajasekaran [(2003) 2 M.L.J. 305], which has been followed in Ramiah Anr. vs. R. Palaniappan Ors. [(2007) 5 MLJ 559], S.V. Arjunaraja vs.P. Vasantha [2005 (5) CTC 401] and V.N. Subramaniyam vs. A. Nawab John Ors. [(2007) 1 MLJ 669].

10. We have, however, serious reservations as to whether the civil court could hear a defendant before registering a plaint. The Code does not envisage such a situation. When a suit is filed, the Civil Court is bound by the procedures laid down in the Code. The defendant upon appearing, however, in certain situations, may question the orders passed by the Civil Court at a later stage.

11. We would assume that the respondents were entitled to a notice before registration of plaint under Section 149 of the Code. Indisputably, the courts were required to assign reasons in support of their orders. Had the validity and/or legality of those orders been challenged before an appropriate court, it would have been possible by the plaintiffs to contend that the defendants had waived their right by their subsequent conduct and they would be deemed to have accepted the same. Even on later occasion, the courts would assign reasons upon satisfying itself once over again. If an order has been passed without hearing the one side, he may be heard but by reason thereof, the plaint would not be rejected outrightly. Before doing so, the applications of the plaintiff under Section 149 of the Code have to be rejected. In Buta Singh (Dead) By LRs. v. Union of India [(1995) 5 SCC 284], it was held:

The aid of Section 149 could be taken only when the party was not able to pay court fee in circumstances beyond his control or under unavoidable circumstances and the court would be justified in an appropriate case to exercise the discretionary power under Section 149, after giving due notice to the affected party. But that was not the situation in this case. Under the relevant provisions of the Court Fee Act applicable to appeals filed in the High Court of the Punjab Haryana, the claimants are required to value the appeals in the MOAs and need to pay the required court fee. Thereafter the appeal would be admitted and the notice would go to the respondents. The respondents would be put on notice of the amount, the appellant would be claiming so as to properly canvass the correctness of the claim or entitlement.

The claim cannot be kept in uncertainty. If in an appeal under Section 54 of the Land Acquisition Act the amount is initially kept low and then depending upon the mood of the appellate court, payment of deficit court fee is sought to be made, it would create unhealthy practice and would become a game of chess and a matter of chance. That practice would not be conducive and proper for orderly conduct of litigation.

12. It is now a well settled principle of law that an order passed by a court having jurisdiction shall remain valid unless it is set aside. In State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) Ors. [AIR 1996 SC 906], it is stated: 7. In Halsbury's Laws of England, 4th edition, (Reissue) Volume 1(1) in paragraph 26, page 31, it is stated, thus:

If an act or decision, or an order or other instrument is invalid, it should, in principle be null and void for all purposes: and it has been said that there are no degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a Court of competent jurisdiction. Until its validity is challenged, its legality is preserved. In the Judicial Review of Administrative Action De Smith, Wolf and Jowell, 1995

edition, at pages 259-260 the law is stated, thus:

The erosion of the distinction between jurisdictional errors and non-jurisdictional errors has, as we have seen, correspondingly eroded the distinction between void and voidable decisions. The courts have become increasingly impatient with the distinction, to the extent that the situation today can be summarised as follows:

(1) All official decisions are presumed to be valid until set aside of otherwise held to be invalid by a court of competent jurisdiction. Similarly, Wade and Forsyth in Administrative Law, Seventh edition -1994, have stated the law thus at pages 341-342: ...every unlawful administrative act, however invalid, is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well- known passage Lord Radcliffe said:
An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.

This must be equally true even where the brand of invalidity is plainly visible : for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed put repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects. {See also Baljinder Singh vs. Rattan Singh [2008 (11) SCALE 198]}

13. A contention has been raised that the applications filed by the appellant herein having regard to the decisions of the Madras High Court could not have been entertained which were filed under Section 148 of the Code. Section 148 of the Code is a general provision and Section 149 thereof is special. The first application should have been filed in terms of Section 149 of the code. Once the court granted time for payment of deficit court fee within the period specified therefor, it would have been possible to extend the same by the court in exercise of its power under Section 148 of the Code. Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity.

It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor.

Ors. [2007 (9) SCALE 197], it was held:

.....It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law [see N. Mani v. Sangeetha Theatre and Ors. (2004) 12 SCC 278]. Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under

Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the Learned Counsel for the appellant.

In N. Mani v. Sangeetha Theatres Ors. [(2004) 12 SCC 278], it is stated:

9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.

14. An application for rejection of the plaint was filed only in the year 2008. Evidently, that was not the stage for entertaining the application. Order VII rule 11(c) of the Code could not have been invoked at that point of time.

15. Mr. Venugopal, however, would rely upon a decision of this Court in Saleem Bhai Ors., v. State of Maharashtra Ors. [(2003) 1 SCC 557]. We would assume that the said decision lays down the law correctly. But we may notice that therein the court was concerned with an application filed under Order VII Rule 11(a) and (d) of the Code to hold that the therefor exercising the jurisdiction thereunder the averments in the plaint are germane and the pleas taken by the defendants in the written statement would be wholly irrelevant at that stage. Therein, a direction to file the written statement was given without deciding the application under Order VII rule 11 of the Code. It was held to be a procedural irregularity touching the exercise of jurisdiction by the trial court. It was, therefore, not a case even on facts where the jurisdiction was exercised after the evidence had been adduced. The observation made must be held to be confined to the fact of that case only and it does not lay down a general proposition of law that even after the evidence are led, an application for rejection of the plaint under Order VII Rule 11(c) is maintainable as by that time the suit has already been registered by the court upon exercising its jurisdiction under Section 149 of the Code.

We may, however, notice that in Ors.[(2007) 10 SCC 59], it was held :- 22. It is also relevant to mention that after filing of the written statement, framing of the issues including on limitation, evidence was led, the plaintiff was cross-examined, thereafter before conclusion of the trial, the application under Order 7 Rule 11 was filed for rejection of the plaint. It is also pertinent to mention that there was not even a suggestion to the appellant-plaintiff to the effect that the suit filed by him is barred by limitation.

23. On going through the entire plaint averments, we are of the view that the trial court has committed an error in rejecting the same at the belated stage that too without adverting to all the materials which are available in the plaint. The High Court has also committed the same error in affirming the order of the trial court.

16. The question which survives for consideration is as to what is the scope of Section 149 of the Code?

In Mahasay Ganesh Prasad Ray Anr. v. Narendra Nath Sen Ors. [AIR 1953 SC 431], this Court held that the court fee is a matter between the State and the suitor.

Mr. Venugopal would urge that the said observations were made keeping in view the fact that the contention in that behalf had been raised at the appellate stage. It may be so, but it is well known that the appeal is continuation of the suit.

Yet again in Mahanth Ram Das v. Ganga Das, [AIR 1961 SC 882), this Court held:-

5. The case is an unfortunate and unusual one. The application for extension of time was made before the time fixed by the High Court for payment of deficit court fee had actually run out. That application appears not to have been considered at all, in view of the peremptory order which had been passed earlier by the Division Bench hearing the appeal, mainly because on the date of the hearing of the petition for extension of time, the period had expired. The short question is whether the High Court, in the circumstances of the case, was powerless to enlarge the time, even though it had peremptorily fixed the period for payment. If the Court had considered the application and rejected it on merits, other considerations might have arisen; but the High Court in the order quoted, went by the letter of the original order under which time for payment had been fixed. Section 148 of the Code, in terms, allows extension of time, even if the original period fixed has expired, and Section 149 is equally liberal. A fortiori, those sections could be invoked by the applicant, when the time had not actually expired. That the application was filed in the vacation when a Division Bench was not sitting should have been considered in dealing with it even on 13-7-1954, when it was actually heard. The order, though passed after the expiry of the time fixed by the original judgment, would have operated from 8-7-1954. How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out, often enough to be inexpedient. Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians. Cases are known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding, even though a final order had been passed. We need cite only one such case, and that is Lachmi Narain Marwari v. Balmakund Marwari. No doubt, as observed by Lord Phillimore, we do not wish to place an impediment in the way of Courts in enforcing prompt obedience and avoidance of delay, any more than did the Privy Council. But we are of opinion that in this case the Court could have exercised its powers first on 13-7-1954, when the petition filed within time was before it, and again under the exercise of its inherent powers, when the two petitions under Section 151 of the Code of Civil Procedure were filed. If the High Court had felt disposed to take action on any of these occasions, Sections 148 and 149 would have clothed them with ample power to do justice to a litigant for whom it entertained considerable sympathy, but to whose aid it erroneously felt unable to come. In Mannan Lal v. Mst. Chhotaka Bibi (Dead) by LRs. B. Sharda Shankar Ors. [(1970) 1 SCC 769], it was held: 17. On a parity of reasoning it is difficult to see why if a memorandum of appeal insufficiently stamped is not to be rejected as barred under the Limitation Act, why a different conclusion should flow as regards compliance with the Court Fees Act in view of the express provisions of Section 149 of the Code. In our opinion Section 149 will cure the defect as from the date when the memorandum of appeal was filed alike for the purpose of Limitation Act and the Court Fees Act and the appeal must be treated as one pending on 9th November 1962 and as such unaffected by Section 3 of the U.P. Act of 1952.

In Wajid Ali v. Isar Bano, Section 149 was interpreted as a proviso to Section 4 of the Court Fees Act in order to avoid contradiction between the two sections. The court was, however, careful to lay down that discretion had to be exercised in allowing deficiency of court fees to be made good but once it was done a document was to be deemed to have been presented and received on the date on which it was originally filed. This was a case of a plaint.

The said dicta was reiterated by a three judge bench of this Court in Ganapathy Hegde v. Krishnakudva, [(2005) 13 SCC 539] in the following words :-

5. In our opinion, the High Court was not right in forming the opinion which it did. The proviso to Order 7 Rule 11 CPC is attracted when the time for payment of court fee has been fixed by the court and the court fee is not supplied within the time appointed by the court. In the case at hand, though the plaint as originally filed was not affixed with the requisite court fee stamps, but before the suit was registered, the deficit court fee was supplied. The present one is not a case where the court had fixed the time for payment of requisite stamp paper which was not done within the time fixed and thereafter the plaintiff was called upon to seek an extension of time. Had that been the case, then, under the proviso, the plaintiff would have been called upon to assign and show the availability of any cause of an exceptional nature for delay in supplying the requisite stamp paper within the time fixed by the court. The trial court was also empowered under Section 149 CPC to extend the time. In the present case, the order passed by the trial court accepting the deficit court fee paid on 23-2-2000, thereafter registering the suit on 10-4- 2000 and consequently the order dated 3-11-2001 rejecting the defendant-respondents' application under Order 7 Rule 11 CPC were perfectly in accordance with law and within the discretion conferred on the trial court with which the High Court ought not to have interfered in exercise of the jurisdiction vested in the High Court under Section 115 CPC. The order of the High Court, if allowed to stand, is likely to occasion failure of justice.

Yet again in Anr. [(2006) 2 SCC 285], it was held:

20. The appellant next attempted to press into service Section 149 CPC to contend that he ought to have been given an opportunity to pay the deficit court fee on the total amount due for the work done. Section 149 provides that where the whole or any part of court fee prescribed for any document 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 court fee had been paid in the first instance. Section 4 of the Court Fees Act bars the court from receiving the plaint if it does not bear the proper court fee. Section 149 acts as an exception to the said bar, and enables the court to permit the plaintiff to pay the deficit court fee at a stage subsequent to the filing of the suit and provides that such payment, if permitted by the court, shall have the same effect as if it had been paid in the first instance. Interpreting Section 149, this Court in Mannan Lal v. Chhotaka Bibi held that Section 149 CPC mitigates the rigour of Section 4 of the CF Act, and the courts should harmonise the provisions of the CF Act and CPC by reading Section 149 as a proviso to Section 4 of the CF Act, and allowing the deficit to be made good within the period to be fixed by it. This Court further held that if the deficit is made good, no objection could be raised on the ground of bar of limitation, as Section 149 specifically provides that the document is to have validity with retrospective effect.

Mr. Venugopal would, however, contend that those observations in that case were made holding that the conduct on the part of the complainant was not bona fide.

17. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.