SUPREME COURT OF INDIA

A.Nawab John

Vs.

V.N.Subramaniyam

C.A.No.4838-4840 of 2012

(P.Sathasivam and J.Chelameswar,JJ.)

03.07.2012

JUDGMENT

J.Chelameswar,J.

1. Leave granted.

2. The 5 petitioners herein filed O.S.No.100 of 2004, against one Sengoda Gounder, who is not a party to the Special Leave Petition, essentially, for the specific performance of a registered agreement dated 22-03-1995, of sale of the suit scheduled land admeasuring approximately Acs.2-00 and delivery of possession of the same; in the alternative, it was prayed that the defendant be directed to refund the amount of Rs.12,15,125/- with interest, etc.

3. The parties are referred to in this Judgment as they are arrayed in the abovementioned Suit.

4. It is the case of the Plaintiffs that the abovementioned defendant was indebted to one Mr. Radhakrishnan and also to the Tamil Nadu Industrial Investment Corporation Limited (for short 'TNIIC"). It is alleged in the plaint that Sengoda Gounder wanted to clear the debts to the abovementioned two persons before the property is actually conveyed to the plaintiffs. For the said purpose, Sengoda Gounder collected an amount of Rs.12,15,125/- in installments from the plaintiffs. In spite of receipt of such payment, Sengoda Gounder did not execute the sale deed, on some pretext or other. Therefore, the Suit.

5. During the pendency of the Suit, the sole respondent herein, filed an Application praying that he be imp leaded as a party defendant to the said Suit, on the ground that he purchased the suit scheduled property on 08-03-1999 for a consideration of Rs.3,93,560/-. It appears from the record that the said I.A. was allowed and the sole respondent herein was imp leaded as the second defendant in the abovementioned Suit. Consequent upon the said impalement,

the plaint came to be amended by inserting para 10A, the details of which are not necessary for the present purpose.

6. Initially, the Suit was valued at Rs.13,31,663-00 ps. on which the plaintiff calculated that a court-fee of Rs.99,875-75 ps. is payable, under Section 42 of The Tamil Nadu Court Fees and Suits Valuation Act, 1955" (hereinafter referred to as the 'Tamil Nadu Act' for the sake of convenience). The plaint was presented on 20-08-1998 with deficit court- fee. Only an amount of Rs.2,000/- was paid. The plaint was returned by the Court on 24-08-1998 with various objections including the deficiency in the court- fee. The plaintiffs represented (1st representation) the plaint after a long delay on 03-05-2002 along with a court-fee of Rs.96,000/-, with an Application to condone the delay in representation. On 03-06-2002, the plaint was again returned, inter alia, on the ground that there still was a deficit of the court-fee. Eventually, the plaint was represented on 22-01- 2004 (2nd representation) remitting a further amount of Rs.2,875/- court-fee along with Applications to condone the delay in representation, etc. On the same day, the plaint was once again returned with certain objections. On 09-04-2004, the plaint was once again represented (3rd representation) with an application to condone the delay of 70 days in representation. On 15-04-2004, the Suit was numbered as 0.5.No.100 of 2004 by the Court. On 05-10-2004, Sengoda Gounder was set ex parte. On the same day, however, the sole respondent herein filed implead-petition in I.A.No.1532 of 2004, which was allowed by an order dated 09-03-2005.

7. The respondent herein filed C.R.P.(PD) No.658 of 2006, before the High Court of Madras, challenging the decision of the Trial Court in I.A.No.76 of 2004 to condone the delay of 1328 days in the first of the abovementioned three representations of the plaint. Another C.R.P.(PD) No.657 of 2006 was filed challenging the order of the Trial Court I.A.No.75 of 2004, dated 22-01-2004, by which, the Trial Court condoned the delay of 585 days in the second of the abovementioned representations.

8. During the pendency of the abovementioned two C.R.Ps., the 2nd defendant (sole respondent herein) filed his written statement and also filed Application in 1.A.No.3 of 2006, invoking Order-7 Rule-11 of the Code of Civil Procedure to reject the plaint. A week thereafter, on 29-12-2005, the plaintiffs filed I.A.No.1 of 2006, seeking amendment of the plaint.

9. I.A.No.1 of 2006 filed by the plaintiffs was allowed by an order dated 16-02-2006. Aggrieved by the same, the sole respondent carried the matter in Revision to the High Court in C.R.P.(PD) No.769 of 2006, which was dismissed by an order dated 25-04-2006. I.A.No.3 of 2006 filed by the 2nd defendant/ respondent herein, was dismissed by an order dated 31-03-2006, and a Revision in C.R.P.(PD)No.797 of 2006, filed challenging the same.

10. Eventually, in C.R.P.(PD)No.797 of 2006 along with C.R.P.Nos.658 657 of 2006, were heard together and allowed by the High Court by a common order dated 22-12-2006, setting aside the orders passed in I.A.Nos.76, 75 of 2004 and 3 of 2006. The operative portion of the order is as under:

> "In the result, all the three CRPs are allowed. The numbering of the suit No. 100 of 2004 by the District Court, Erode and renumbering the same as O.S.No.4 of 2005 on its transfer by the Additional District Judge (FTC-IV), Erode at Bhavani is set aside the consequently the trial Court is directed to struck off the said suit from its file." Hence, the S.L.P.

11. Initially, the Suit was presented before the Sub-Court, Bhavani, but finally represented (3rd representation) to the District Court, Erode, due to the change brought about in the pecuniary jurisdiction of the Civil Courts by Tamil Nadu Act No.1 of 2004, which came into force w.e.f., 29-12-2003 and numbered as O.S.No.100 of 2004. Subsequently, the same was transferred to Additional District Court (FTC-IV), Bhavani and renumbered as O.S.No.4 of 2005. The initial presentation and the 1st two representations, mentioned earlier, of the Suit were to the Sub Court, Bhavani, and the final representation was to the District Court, Erode. The delay in representation, on the 1st two occasions, was condoned by the Sub Court, Bhavani.

12. The 2nd defendant made the following submissions before the High Court and before us also:

> "(1) That the Sub Court, Bhavani lacked jurisdiction to consider and order the 1st of the two delay condonation petitions (I.A.Nos. 76 and 75 of 2004) in view of the fact that there was no Suit pending, in the eye of law, before the Sub Court as on 22-01-2004 (the date on which the abovementioned IAs were allowed) because of the Amendment to the Civil Courts Act;
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> (2) the plaintiffs did not invoke Section 149 of the Code, while seeking the condonation of delay in representing the plaint and making good the deficit court-fee, therefore, the plaint ought to have been rejected;
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> (3) The delay in representation was condoned without notice to the defendant. In view of the decision of the High Court of Madras in K. Natarajan v. P.K. Rajasekaran, (2003) 2 M.L.J. 305, such a procedure, when the court fee is paid beyond the period of limitation for filing the Suit, is illegal; and

(4) The Trial Court mechanically condoned the delay without appreciating the legal position that, condonation of a huge delay without any proper explanation is uncalled for and militates against the provisions of the C.P.C.

13. Whereas the plaintiffs argued before the High Court;

"(1) That the 2nd defendant is a purchaser pendente lite (plaint initially presented on 20-08-1998 and the 2nd defendant, admittedly, purchased the suit scheduled property on 08-03-1999) and, therefore, has no locus standi to contest the suit in view of the fact that the 1st defendant chose not to contest the suit;

(2) The sale in favor of the 2nd defendant is sham and nominal; and

(3) Payment of court-fee is purely a matter between the State and the plaintiffs and, therefore, the 2nd defendant has no locus to raise any objection on that count."

14. In order to examine the correctness of the High Court's findings, two preliminary questions / objections raised by the plaintiffs regarding the locus standi of the 2nd defendant to maintain the three Civil Revision Petitions, which were disposed of by the common Judgment under challenge, is required to be examined first.

15. The first preliminary objection is that the 2nd defendant, being a pendente lite purchaser, has no locus standi to question the correctness of the decision of the Trial Court to condone the delay in representation of the plaint. To understand the legal rights and obligations of a pendente lite purchaser, it is necessary to examine the jurisprudential background of the doctrine of lis pendens and its statutory expression.

16. This Court in *Jayaram Mudaliar v. Ayyaswami and Others*[1](paras 42 to 44) quoted with approval a passage from the Commentaries on the Laws of Scotland, by Bell, which explains the doctrine of lis pendens:

"43Bell, in his commentaries on the Laws of Scotland, said that it was grounded on the maxim: "Pendent elite nibil innovandum". He observed:

"It is a general rule which seems to have been recognised in all regular systems of , that during the pendence of an action, of which the object is to vest the property or obtain the possession of real estate, a purchaser shall be held to take that estate as it stands in the person of the seller, and to be bound by the claims which shall ultimately be pronounced."

Section 52* of the Transfer of Property Act, (for short 'the T.P.Act') incorporates doctrine of lis pendens and it stipulates that during the pendency of any suit or

proceeding in which any right to immovable property is, directly or specifically, in question, the property, which is the subject matter of such suit or proceeding cannot be "transferred or otherwise dealt with", so as to affect the rights of any other party to such a suit or proceeding. The Section is based on the principle that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject to be defeated by the some course of proceeding. *Belkamy v. Subina*[2]*Quoted with approval by this Court in Vinod Seth v. Devinder Bajaj*[3]*"*

17. It is settled legal position that the effect of Section 52 is not to render transfers affected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court.

"The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court. [*Sanjay Verma v. Manik Roy*[4]*."*

18. Such being the scope of Section 52, two questions arise: whether a pendente lite purchaser (1) is entitled to be imploded as a party to the suit; (2) once impeded what are the grounds on which he is entitled to contest the suit.

19. This Court on more than one occasion held that when a pendente lite purchaser seeks to impaled himself as a party - defendant to the suit, such application should be liberally considered. This Court also held in Smt. *Saila Bala Dassi v. Smt. Nirmala Sundari Dassi and Another*[5]that, "justice requires", a pendente lite purchaser "should be given an opportunity to protect his rights". It was a case, where the property in dispute had been mortgaged by one of the respondents to another respondent. The mortgagee filed a suit, obtained a decree and 'commenced proceedings for sale of the mortgaged property'. The appellant Saila Bala, who purchased the property from the judgment-debtor subsequent to the decree sought to impaled herself in the execution proceedings and resist the execution. That application was opposed on various counts. This Court opined that Saila Bala was entitled (under Section 146 of the C.P.C.) to be brought on record to defend her interest because, as a purchaser pendent elite,

she would be bound by the decree against her vendor. There is some divergence of opinion regarding the question, whether a 26pendent elite purchaser is entitled, as a matter of right, to get imploded in the suit, this Court in held that : "Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee indent elite can be added as a proper party if his interest in the subject- matter of the suit is substantial and not just peripheral. A transferee 26endent elite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee 26endent elite may be joined as party. As already noticed, the court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The court has held that transferee 26endent elite of an interest in immovable property is a representative- in-interest of the party from whom he has acquired that interest. He is entitled to be impeded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case." [Emphasis supplied] The preponderance of opinion of this Court is that a pendente lite purchaser's application for impalement should normally be allowed or "considered liberally".

20. That the question of court fee is a matter between the plaintiff and the Court is a principle which has been followed for a long time. The *Madras High Court in SL Lakshmana Ayyar vs. TSPLP Palaniappa Chettiar*[6]held " under the prevailing usage, the court fully goes into the question relating to the Court fee, only upon an objection taken in the written statement by the defendant, but as the judicial committee points out in 36 M.L.1437 the Court fees Act was passed not to arm a litigant with a weapon of technicality against his opponent, and from that view it follows, that although in actual practice a defendant is permitted to object that the proper Court fee has not been paid, he has, strictly speaking, no legal right to raise such a plea, but his function must be deemed to be, subject to the court's leave, merely to assist in it coming to a proper decision. Though this judgment does not refer to any statutory provisions, Section 12 of the Court Fees Act, 1870 supports this view. Sub section 1 gives finality to the decision of the trial court on the questions relating to valuation.

> "(1) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this Chapter on a plaint or memorandum of appeal, shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit Sub-Section 2 however provides that the appellate or provisional Court can direct the deficiency to

be made good if it comes to the conclusion that the lower court had decided the issue to the detriment of the revenue.

(2) "But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph (ii), shall apply."

21. In view of the finality attached under sub-section (1) to the decision of the trial court and the time of the limited scope of the appellate court's power to examine whether the lower court wrongly decided the question to the detriment of the revenue, the conclusion obviously is inevitable the defendant has no right to file a revision petition against the decision of the trial court.

22. However the position under the Madras Court fees act, 1955 is different. Section 12(2) expressly provides for the defendant's right to raise the question of the court fees:-

"(2) Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding sub-section, not later, plead that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the Court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit."[Emphasis supplied]

Section 12(4)(a) provides that even the appellate Court can go into the question of the correctness of the decision of the lower court (rendered under Section 12(2)) either on its own motion or on the application of any of the parties. (Obviously including the defendants) (4)(a)Whenever a case comes up before a Court of Appeal, it shall be lawful for the Court, either of its own motion or on the application of any of the parties, to consider the correctness of any order passed by the lower Court affecting the fee payable on the plaint or in any other proceeding in the lower Court and determine the proper fee payable thereon. Explanation.-

"A case shall be deemed to come before3 a Court of appeal even if the appeal relates only to a part of the subject matter of the suit. [Emphasis supplied] If the Court comes to the conclusion that the court fee paid in the lower court is not sufficient, the court shall require the party to make good the deficiency.

(b) If the Court of Appeal decides that the fee paid in the lower Court is not sufficient, the Court shall require the party liable to pay the deficit fee within such time as may be fixed by it."

However, this Court in *Rathnavarma Raja v. Smt. Vimala*[7]held:-

2. The Court Fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defense to obstruct the trial of an action. By recognizing that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revision jurisdiction against the order adjudging court fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the provisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court fee on his plaint. Whether proper court fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. Again, the jurisdiction in revision exercised by the High Court under Section 115 of the Code of Civil Procedure is strictly conditioned by clauses (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the court does not possess or on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction. The defendant who may believe and even honestly that proper court fee has not been paid by the plaintiff has still no right to move the superior courts by appeal or in revision against the order adjudging payment of court fee payable on the plaint. But counsel for the defendant says that by Act 14 of 1955 enacted by the Madras Legislature which applied to the suit in question, the defendant has been invested with a right not only to contest in the trial court the issue whether adequate court fee has been paid by the plaintiff, but also to move the High Court in revision if an order contrary to his submission is passed by the court. Reliance in support of that

contention is placed upon sub-section (2) of Section 12. That sub-section, insofar as it is material, provides:

3.But this section only enables the defendant to raise a contention as to the proper court fee payable on a plaint and to assist the court in arriving at a just decision on that question. Our attention has not been invited to any provision of the Madras Court Fees Act or any other statute which enables the defendant to move the High Court in revision against the decision of the Court of first instance on the matter of court fee payable in a plaint. The Act, it is true by Section 19, provides that for the purpose of deciding whether the subject-matter of the suit or other proceeding has been properly valued or whether the fee paid is sufficient, the court may hold such enquiry as it considers proper and issue a commission to any other person directing him to make such local or other investigation as may be necessary and report thereon. The anxiety of the Legislature to collect court fee due from the litigant is manifest from the detailed provisions made in Chapter Ill of the Act, but those provisions do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision against an order determining the court fee payable."[Emphasis supplied]In our opinion the above conclusion is clearly supportable from the language of sub-section (4)(c).(c) If the deficit fee is not paid within the time fixed and the default is in respect of a relief which has been dismissed by the lower Court and which the appellant seeks in appeal, the appeal shall be dismissed, but if the default is in respect of a relief which has been decreed by the lower Court, the deficit fee shall be recoverable as if it were an arrear of land revenue. It can be seen, the sub-section (c) provides for the dismissal of only the appeal in case of the failure to make good the deficit of Court fee if the same pertains to that portion of the decree by which a portion of the plaintiff's claim stood dismissed by the trial court. However in the case of the default in making good portion of the court fee pertaining decree in favor of the plaintiff, the Section only mandates the recovery of the amount by resort to the Revenue Recovery Act but does not command the Suit to be dismissed. Obviously the legislature did not intend to give any advantage to the defendants on account of the payment of the inadequate Court fee by the plaintiffs. Therefore the law is clear that though a defendant is entitled under the Tamil Nadu Act to bring it to the notice of the Court that the amount of court fee paid by the plaintiff is not in accordance with law, the defendant cannot succeed in the suit only on that count. But the dispute of the 2nd defendant is not regarding the amount of the court fee but the acceptance of the court fee after the expiry of the period of limitation applicable to the suit."

23. The next question that is required to be examined is that if appropriate court fee is not paid at the time of the filing of the plaint, can the suit be said to be a valid suit in the eye of law. A further question arising out of the above is - what is the effect of the payment of appropriate court fee subsequent to the expiry of the period of limitation prescribed by law for the filing of a suit in a case where the plaint is filed within the period of limitation applicable to such case. Ancillary to the above question is the question whether, in such a case, the defendant is entitled to notice before the Court accepts the payment of the deficit Court fee.

24. The law relating to the valuation of the suits and the payment of court fees in the State of Tamil Nadu is "The Tamil Nadu Court Fees and Suits Valuation Act, 1955". By Section 87 of the said Act, two enactments known as The Court Fees Act 1870 and The Suits Valuation Act 1887 (which governed the field of the valuation of suits and payment of court fees) are repealed. It may not be either necessary or profitable to go into the scheme of the repealed enactments except to take note of the historical fact for certain limited purpose.

25. The Tamil Nadu Act prescribes the method and manner of the determination of valuation of the suits and the appropriate court fee payable with reference to various kinds of suits and appeals etc. Section 4 of the Act stipulates that no document which is chargeable with a fee under the said Act shall be acted on by any court or any public office unless the appropriate fee payable under the Act (Court fee) in respect of such a document is paid. 4. Levy of fee in Courts and public offices No document which is chargeable with fee under this Act shall -

> "(i) Be filed, exhibited or recorded in, or be acted on or furnished by, any Court including the High Court, or
>
> (ii) Be filed, exhibited or recorded in any public office, or be acted on or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated as chargeable under this Act:
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> Provided that, whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is in the opinion of the Court necessary to prevent a failure of justice, nothing contained in this section shall be deemed to prohibit such filing or exhibition."

26. Section 5 stipulates when a document on which court fee is payable is received in any court or public office, though the whole or any part of the appropriate court fee payable on such document has not been paid, either because of a mistake or inadvertence of the Court, the Court, in its discretion, may allow the payment of the deficit court fee within such time as may be fixed. Section 5 further declares that upon such payment, such document —shall have

the same force and effect" as if the court fee had been paid in the first instance. Indisputably, the expression —document" appearing under Section 4 and 5 takes within its sweep a plaint contemplated under the Code of Civil Procedure (hereinafter 'the Code' for short). It may be pertinent to mention that under Section 28[1] of the Court Fees Act 1870, it is categorically declared that —no document which ought to bear a stamp under this Act shall be of any validity unless and until it is properly stamped". However, it is further provided in the same Section that a Court may permit the payment of appropriate court fee in its discretion and if the deficit is made good —every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance". The language of the Tamil Nadu Act is different. Though Section 4 declares no document in respect to which court fee is required to be paid under the Act but not paid shall be acted upon, it does not declare the document to be without any validity.

27. Order VII Rule 11 CPC requires a plaint to be rejected, inter alia, where the relief claimed is undervalued and/or the plaint is written on a paper insufficiently stamped, and, in either case, the plaintiff fails to either correct the valuation and/or pay the requisite court fee by supplying the stamp paper within the time fixed by the court. Rule 13 categorically declares that the rejection of a plaint shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. However, Section 149 of the Code stipulates as follows:

> "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. It can be seen from the language of Section 149, it does not deal only with court fees payable on a plaint. The said Section also deals with every document with respect to which court fee is required to be paid under the appropriate law. It may be further mentioned that Order VIII of the Code provides for set-off and counter claims under Rule 6 and 6A. Under Section 8 of the Tamil Nadu Act, it is declared that —a written statement pleading a set-off or counter claim shall be chargeable with fee in the same manner as a plaint". Therefore, when Section 149 of the Code speaks about a document with respect to which court fee is required to be paid, it takes within its sweep not only plaints but various other documents with respect to which court fee is required to be paid under the appropriate law including written statements in a suit.

28. Therefore, from the language of Section 149 CPC it follows that when a plaint is presented to a Court without the payment of appropriate court fee payable thereon, undoubtedly the Court has the authority to call upon the plaintiff to make payment of the necessary court fee. Such an authority of the Court can be exercised at any stage of the suit. It, therefore, appears to us that any amount of lapse of time does not fetter the authority of the Court to direct the payment of such deficit court fee. As a logical corollary, even the plaintiff cannot be said to be barred from paying the deficit court fee because of the lapse of time.

29. This *Court in Mannan Lal v. Mst. Chhotka Bibi (dead) by Lrs. Ors*.[8]interpreting Sec. 149 CPC held:- "The above section therefore mitigates the rigour of Section 4 of the Court Fees Act and it is for the Court in its discretion to allow a person who has filed a memorandum of appeal with deficient court-fee to make good the deficiency and the making good of such deficiency cures the defect in the memorandum not from the time when it is made but from the time when it was first presented in Court. In our view in considering the question as to the maintainability of an appeal when the Court fee paid was insufficient to start with but the deficiency is made good later on the provisions of the Court Fees Act and the Code of Civil Procedure have to be read together to form a harmonious whole and no effect should be made to give precedence to provisions in one over those of the other unless the express words of a statute clearly override those of the other. It was further held at para 14:-

> "There can in our opinion be no doubt that Sec.4 of the Court Fees Act is not the last word on the subject and the Court must consider the provisions of both the Act and the Code to harmonise the two sets of provisions which can only be done by reading Section 149 as a proviso to Section 4 of the Court Fees Act by allowing the deficiency to be made good within a period of time fixed by it. If the deficiency is made good no possible objection can be raised on the ground of the bar of limitation: the memorandum of appeal must be treated as one filed within the period fixed by the Limitation Act subject to any express provision to the contrary in that Act and the appeal must be treated as pending from the date when the memorandum of appeal was presented in court. In our view it must be treated as pending from the date of presentation not only for the purpose of limitation but also for the purpose of sufficiency as to court-fee under Section 149 of the Code." [Emphasis supplied]

30. It was a case where by an Act of the U.P. Legislature the appellate jurisdiction provided under the Letters Patent of Her Majesty dated 17th March, 1866 was abolished. However, Sec.3 of the U.P. Act saved the pending Letters Patent appeals. The question before this Court was whether Letters Patent appeal presented to the Allahabad High Court prior to the commencement of the Abolition. Act but without affixing appropriate court fees stamp can be said to be a pending appeal. This Court on a consideration of the relevant provisions of the

law and also the decisions of the Madras High Court in *Gavaranga Sahu Vs. Batakrishna Patro*[9]*and Faizullah Vs.Mauladad*[10]reached the conclusion that such an appeal was a 'pending appeal' for the purpose of the Abolition Act.

31. We may mention here that the subject matter of dispute in the above mentioned case was a Letters Patent Appeal. However, the Full Bench decision of the Madras High Court, quoted with approval by this Court (supra), dealt with the question whether the payment of deficit in court fee beyond the period of limitation prescribed for filing the suit would retrospectively render the plaint (originally presented within the period of limitation but with deficit court fee) a validly presented plaint: —The argument advanced in that case before the Court appears to have been to the effect that a plaint which was not sufficiently stamped within the period of limitation was not a valid plaint at all. In the order of reference the law on the subject was set forth in some detail and the learned referring Judge opined that an insufficiently stamped plaint did not become a new plaint when the deficiency was supplied. The learned Judges of the Full Bench fully agreed with the view taken in the order of reference and with the reasons upon which it was based and merely added that Section 149 of the Civil Procedure Code of 1908 was in accordance with this view." In substance, the Full Bench Madras High Court held that such a plaint would be a validly presented plaint. This Court approved the said decision.

32. The question whether there is a deficit of court fee paid with respect to a plaint depends on two factors: (1) the valuation of the suit, and (2) the determination of the appropriate court fee payable thereupon. There can occur an error (either advertently or otherwise), on either of the abovementioned counts. Under Section 12(1) of the Tamil Nadu Act (which is relevant for our purpose), primarily it is the obligation of the Court to examine all the relevant material and determine whether the proper fee payable on the plaint is paid or not. As already noticed, under Section 12(2)[2] of the Tamil Nadu Act, the defendant can also raise objections to either the valuation of the suit or the determination of the court fee payable. The determination of the accuracy of the valuation of the suit and/or the appropriate court fee payable thereon, in either of the contingencies mentioned above, is required to be made by the Court. If the Court reaches the conclusion that the appropriate court fee is not paid, the consequences stipulated in Section 12(2) to (4) should follow.

33. If such conclusion is reached by the trial Court, the trial Court is mandated to reject the plaint if the plaintiff fails to pay the necessary court fee even after being called upon by the trial Court - necessarily meaning that no adjudication on the merits of the case can be made. The consequences of such a conclusion if reached by the appellate Court, in the course of

hearing of the appeal, are stipulated under Section 12(4)(c), which is already taken note of earlier.

34. That leads us to the next question regarding the legal character of Section 149. Is it a provision conferring authority on the Court to call upon a plaintiff to make payment of court fee which was found to be due but short paid on the plaint or is it a provision conferring a right on the plaintiff to make good the deficit court fee at any point of time irrespective of the provisions of the law of limitation and other provisions and principles of law.

35. We have already noticed that under Order VII Rule 11, a plaint, which has not properly valued the relief claimed therein or is insufficiently stamped, is liable to be rejected. However, under Rule 13, such a rejection by itself does not preclude the plaintiff from presenting a fresh plaint. It naturally follows that in a given case where the plaint is rejected under Order VII Rule 11 and the plaintiff chooses to present a fresh plaint, necessarily the question arises whether such a fresh plaint is within the period of limitation prescribed for the filing of the suit. If it is to be found by the Court that such a suit is barred by limitation, once again it is required to be rejected under Order VII Rule 11 Clause (d). However, Section 149 CPC, as interpreted by this Court in Mannan Lal (supra), confers power on the Court to accept the payment of deficit court fee even beyond the period of limitation prescribed for the filing of a suit, if the plaint is otherwise filed within the period of limitation. Therefore, the rigour of Order VII Rule 11 CPC and also Section 4 of the Tamil Nadu Act is mitigated to some extent by the Parliament when it enacted Section 149 CPC. We may not forget that Limitation is only a prescription of law; and Legislature can always carve out exceptions to the general rules of limitation, such as Section 5 of the Limitation Act which enables the Court to condone the delay in preferring the appeals etc.

36. This court on more than one occasion held that the jurisdiction under Section 149 CPC is discretionary in nature. [See P.*K. Palanisamy Vs. N. Arumugham Anr*[11]

37. It is well settled that the judicial discretion is required to be exercised in accordance with the settled principles of law. It must not be exercised in a manner to confer an unfair advantage on one of the parties to the litigation. In a case where the plaint is filed within the period of limitation prescribed by law but with deficit court fee and the plaintiff seeks to make good the deficit of the court fee beyond the period of limitation, the Court, though has discretion under Section 149 CPC, must scrutinize the explanation offered for the delayed payment of the deficit court fee carefully because exercise of such discretion would certainly have some bearing on the rights and obligations of the defendants or persons claiming through the defendants. (The case on hand is a classic example of such a situation.) It necessarily follows from the above that Section 149 CPC does not confer an absolute right in

favour of a plaintiff to pay the court fee as and when it pleases the plaintiff. It only enables a plaintiff to seek the indulgence of the Court to permit the payment of court fee at a point of time later than the presentation of the plaint. The exercise of the discretion by the Court is conditional upon the satisfaction of the Court that the plaintiff offered a legally acceptable explanation for not paying the court fee within the period of limitation.

38. On the facts of the case on hand, the High Court recorded its conclusion as follows:

> "The Subordinate Judge has erred in allowing the I.A. Nos.75 and 76 of 2004 by exercising the discretion without analyzing the bona fides of the plaintiff's case and without giving notice to the defendant."
>
> Such a conclusion was recorded on the basis of the finding: "Apart from that sufficient cause was not shown in the two affidavits filed in support of the application to condone the delay of representation in I.A. No.76/2004 the reason given was that due to non availability of stamp paper, proper court fee could not be paid. In I.A. No.75/2004 no reason has been stated for such deficit court fee. Even for the delay also the conventional reason of jaundice has been stated and the plaintiffs alleged that they have been taking Siddha treatment for such ailment. Even such affidavits have been filed only by the counsels and not by the parties. But accepting such reasons, the delay in representation as well as the payment of deficit court fee has been accepted by the court below." [Emphasis supplied]

39. We do not see any reason to take a different view than those are taken by the High Court. The discretion under Section 149 was not exercised by the trial Court in accordance with the principles of law. The appeal is, therefore, required to be Dismissed on that count alone. In view of such a conclusion, we do not think it necessary to examine the other questions raised by the 2nd defendant.

40. The appeal is dismissed.

Judgment Referred

[1](1972) 2 SCC 200
[2](1857) De. GEJ 566 at 0588
[3](2010)8 SCC 0001.
[4] AIR 2007 SC 1332, para 0012
[5] AIR 1958 SC 0394
[6] AIR 1935 Mad.0927
[7]AIR 1961 SC 1299
[8]AIR 1971 SC 1374-

[9]*(1909) ILR 32 Mad 305 (FB)*
[10]*AIR 1929 PC 0147*
[11]*(2009) 9 SCC 0173*