



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR JUSTICE R DEVDAS

CIVIL REVISION PETITION NO. 4 OF 2021

BETWEEN:

- 1 . N H POORNIMA
AGED ABOUT 53 YEARS,
W/O LATE H SRINIVASA MURTHY
R/AT NO.337, 10TH MAIN,
SRINIVASANAGARA BSK 1ST STAGE
BENGALURU - 560 050.
PETITIONER NO.1 DEAD LR'S
ARE ALREADY ON RECORD
AS PETITIONERS NO.2 AND 3
- 2 . SUSHMITHA S
AGED ABOUT 26 YEARS,
D/O LATE H SRINIVASA MURTHY
R/AT NO.337, 10TH MAIN,
SRINIVASANAGARA, BSK 1ST STAGE,
BENGALURU - 560 050.
- 3 . S HEMANTH BHARADWAJ
AGED ABOUT 25 YEARS
S/O LATE H SRINIVASA MURTHY
R/AT NO.337, 10TH MAIN,
SRINIVASANAGARA BSK 1ST STAGE,
BENGALURU - 560 050.

...PETITIONERS

(BY SRI. D.R. RAVISHANKAR., SR. COUNSEL FOR
SRI. SARAVANA.S., ADVOCATE)

AND

PADMAJA S
AGED ABOUT 36 YEARS,
D/O LATE SRI P SAI PRASAD
R/AT NO.495, 9TH CROSS,
RAJMAHAL VILAS EXTENSION
BENGALURU - 560 080.

....RESPONDENT

(BY SRI. N.RAVINDRANATH KAMATH., SR. COUNSEL FOR
SRI. KAUSHIKA U., ADVOCATE)

THIS CRP FILED UNDER SEC.115 OF CPC., PRAYING TO
CALL FOR THE RECORDS IN O.S. NO. 2092/2020 ON THE FILE
OF THE XXIX ADDL. CITY CIVIL JUDGE (CCH30) AT
BENGALURU AND SET ASIDE THE ORDERS DATED 09.06.2020
PASSED IN O.S.NO.2092/2020 AND CONSEQUENTLY DISMISS
THE SUIT IN O.S.NO.2092/2020 ON THE FILE OF THE CITY
CIVIL JUDGE , BENGALURU AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON
22.01.2026 AND COMING ON FOR PRONOUNCEMENT OF
ORDERS, THIS DAY, THIS COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE R DEVDAS

CAV ORDER

(PER: HON'BLE MR JUSTICE R DEVDAS)

This Civil Revision Petition is filed under Section 115
of the Code of Civil Procedure, at the hands of the
defendants in O.S.No.2092/2020 on the file of the learned

XXIX Addl. City Civil Judge (CCH-30) at Bengaluru, with the following prayers:

- (i) Call for the records in O.S.No.2092/2020 on the file of the XXIX Addl. City Civil Judge (CCH30) at Bengaluru and;*
- (ii) Set aside the orders dated 09/06/2020 passed in O.S.No.2092/2020 and consequently dismiss the suit in O.S.No.2092/2020 on the file of the City Civil Judge at Bengaluru and;*
- (iii) Pass such other orders as may be deemed appropriate in the ends of justice and equity.*

2. The parties are referred to as per their ranking before the Trial Court.

3. The contention of the defendants in brief is that the suit is filed for recovery of Rs.17,00,000/- (Rupees Seventeen Lakhs Only) along with interest at the rate of 18% per annum. The suit was filed on 17.11.2017 without payment of court fee. The Registry raised objection that court fee of Rs.1,26,820/- is not paid by the

plaintiff along with the suit. However, an interlocutory application under Section 149 of CPC was filed seeking two months time to pay the court fee. No further application was filed for extension of time to pay the deficit court fee. However, on 05.03.2020 office note is put up stating that by oversight the file was missing and hence the file is placed before the learned Judge for orders. The learned Judge directed issuance of notice to plaintiff and plaintiff's counsel, and to list the matter on 16.03.2020. Office note on 16.03.2020 is that the notice is served on the plaintiff and the learned Counsel for the plaintiff. However, the learned Prl. City Civil and Sessions Judge, passed an order on 16.03.2020 that the learned Advocate for plaintiff is present and files memo with Demand Draft for Rs.1,26,820/-, in favour of the Registrar, City Civil Court, towards deficit court fee. Accordingly, office was directed to send the Demand Draft to Cash Branch. Office was directed to verify correctness of payment of court fee and then put up by 30.03.2020. On 09.06.2020 office note is that due to lockdown, case is taken on the day's board, for

kind orders. Order is passed by the learned Judge that the deficit court fee is paid, hence register the suit.

4. Learned Senior Counsel Sri D.R.Ravishankar, appearing for the defendants submitted that the provision contained in Section 149 of the Code of Civil Procedure, vests the court with discretion to allow the plaintiff to pay the deficit court fee, but such discretion can be exercised in deserving cases, after application of mind. Having regard to the facts hereinabove, learned Senior Counsel submits that there being no application from the plaintiff seeking extension of time for payment of deficit court fee, the court could not have exercised such discretion. There being no reason pleaded by the plaintiff for not paying the court fee/deficit court fee for more than two years, the court could not have exercised such discretion unilaterally.

5. Learned Senior Counsel for the defendants placed reliance on a decision of the Apex Court in the case of ***Buta Singh (Dead) by L.Rs. Vs. Union of India***

(UOI)¹, where it was held that if the deficit court fee is not made up and presented within the time enlarged under Section 148 of CPC, there would be no appeal in the eye of law unless the delay is condoned. It was held that if the party deliberately, to suit his convenience, paid insufficient court fee, the mistake is not *bona fide* but one of choice made by the party. In such situation, if the court fee is not paid, it would be open to the court either to reject the suit or refuse to condone the delay for not showing sufficient cause thereon. The Apex Court therefore held that the court is required to exercise its judicial discretion keeping in mind the facts and circumstances in each case and not automatically, for mere asking, that the indulgence be shown to the party to make good the deficit court fee. It was held that if discretion is not exercised accordingly, it would amount to showing undue indulgence. Further, while placing reliance on another judgment of the Apex Court in the case of **A.Nawab John and Ors. Vs. V.N.Subramaniyam**², the

¹ (1995) 5 SCC 284

² (2012) 7 SCC 738

learned Senior Counsel submitted that in the matter of payment of deficit court fee the discretion must be exercised in a manner not to confer unfair advantage on one of the parties to the litigation. It was held that in a case where a plaint is filed within the period of limitation prescribed, but with deficit court fee and the plaintiff seeks to make good the deficit court fee beyond the period of limitation, the court, though has discretion under Section 149 of CPC, it must scrutinize the explanation offered for the delayed payment carefully, because exercise of such discretion would certainly have some bearing on the rights and obligations of the defendants. The Apex Court having found that the High Court rightly held that the discretion under Section 149 was not exercised by the Trial Court in accordance with the principles of law. It was held that the appeal was required to be dismissed on that count alone. Learned Senior Counsel would therefore submit that when admittedly no application was filed by the plaintiff seeking further extension of time and in view of the fact that Section 148 of CPC provides for enlargement of such period for payment of deficit court fee, but not

exceeding 30 days in total, there was no scope for the learned Judge to have passed the impugned order accepting the deficit court fee after two years from the date of filing of the suit.

6. Per contra, learned Senior Counsel Sri N.Ravindranath Kamath, appearing for the plaintiff submitted that the Civil Revision Petition is not maintainable. It was submitted that the defendants did not file any application seeking rejection of the plaint. If such application was filed, the plaintiff would have justified the reason for delay in payment of deficit court fee. On the other hand, this Civil Revision Petition is filed, without any adjudication between the parties on the issue of payment of deficit court fee. The learned Senior Counsel submitted while placing reliance on ***Ganapathi Hegde Vs. Krishna Kudva and other***³, that the Apex Court has held that though the plaint as originally filed was not affixed with requisite court fee stamps, but before the suit was registered the deficit court fee was supplied and hence the

³ (2005) 13 SCC 539

Trial Court's consequent order rejecting the defendants application under Order VII Rule 11 was perfectly in accordance with law and within the discretion conferred on the Trial Court. The learned Senior counsel, while placing reliance on ***Manoharan Vs. Sivarajan and Others***⁴ submitted that the Apex Court, while considering the scope and purport of Section 149 of CPC has also taken into consideration Article 39A of the Constitution of India and held that Article 39A provides for holistic approach in imparting justice to the litigating parties. It not only includes providing free legal aid via appointment of counsel for the litigants, but also includes ensuring that justice is not denied to litigating parties due to financial difficulties.

7. At this juncture, Sri.D.R.Ravishankar, learned Senior Counsel submitted while pointing out to the decision in ***Buta Singh***, where the Apex Court has held that inability to raise money to pay Court fee is not a reason to exercise the discretion under Section 149 of

⁴ (2014) 4 SCC 163

CPC. Moreover, it was held that mere poverty or ignorance or inability to pay the Court fee at the time of presenting the appeal is not always a good ground for indulgence under Section 149.

8. Heard learned Senior Counsel Sri.D.R.Ravishankar for the petitioners/defendants and learned Senior Counsel Sri.N.Ravindranath Kamath for respondent/plaintiff and perused the petition papers.

9. As rightly submitted by the learned Senior Counsel for the petitioners/defendants, the Apex Court has clearly held in the case of **Buta Singh** that it is the duty of the Registry before admitting the suit to point out to the plaintiff or his counsel that the deficit Court fee is payable on the plaint and some reasonable time is given for payment of deficit Court fee. The plaint should be returned to do the needful. If the deficit Court fee is not made up and the plaint is not presented within time enlarged under Section 148 CPC, there would be no suit in the eye of law, unless the delay is condoned. It was therefore held that if

a party, deliberately, to suit his convenience paid insufficient Court fee, the mistake is not *bona fide*, but one of choice made by the party. It was therefore held that in such situation, even after grant of reasonable time for payment of deficit Court fee, the deficit Court fee is not paid the Court should have rejected the suit.

10. Having regard to the undisputed facts, that the suit was filed on 17.11.2017 along with an application under Section 149 of CPC seeking two months time to pay the deficit Court fee and accordingly, the Court directed to put up the plaint on 27.01.2018, after deficit Court fee is paid, no further application was filed by the plaintiff. No extension of time is granted by the Court. Nevertheless, the matter is listed on 27.01.2018, 27.04.2019, 05.03.2020 and 16.03.2020. On 16.03.2020, the learned counsel for the plaintiff furnished a Demand Draft for Rs.1,26,820/- and the same was accepted without the Court passing any order regarding condonation of delay.

11. The learned Senior Counsel for the defendants is also right in his submission that although Section 148 of

the CPC provides a party to seek enlargement of time to pay the court fee, nevertheless, the provision was amended by Code of Civil Procedure (Amendment) Act, 1976, with effect from 01.02.1977 to put a limit on enlargement of such period by inserting the words 'not exceeding 30 days in total' with a view to minimize the procedural delay at the instance of either party to a suit. That being the position, it was impermissible for the Trial Court to accept the Demand Draft for payment of deficit court fee after two years from the date of filing of the suit. Moreover, no application was filed by the plaintiff after the initial application was filed along with the plaint, seeking extension of time by two months. Therefore, this Court is of the considered opinion that the impugned order accepting the payment of deficit court fee could not have been passed by the Trial Court, in the facts and circumstances of this case.

12. Consequently, the Civil Revision Petition is **allowed**. The impugned order dated 09.06.2020 passed by the Trial Court in O.S. No.2092/2020 accepting the

deficit court fee and registering the suit is hereby quashed and set aside, while holding that the suit filed by the plaintiff is still born and cannot be registered.

Ordered accordingly.

Pending I.As., stand disposed of accordingly.

**Sd/-
(R DEVDAS)
JUDGE**

JT/rv
CT: JL