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Case QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 22-09-2026

Pronounced on 18-11-2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A No. 3032 of 2026
in
ARB O.P SR No. 108247 of 2026
CNR:{HCMA011486662026}

Mr.A Shankar

..Applicant(s)

Vs

Mrs.Lalitha Gopalakrishnan

..Respondent(s)

Prayer

Judge's Summons under Order XIV Rule 8 of the Madras High Court Original Side Rules 1956 and read with Under Sections 149 and 151 of the Code of Civil Procedure, 1908, praying to Condone the delay of 16 days in paying the deficit court fee of Rs.99,000/- in respect of Arbitration Original Petition and consequently accept the deficit court fee already paid and proceed with the above Arbitration original petition D.No.108247/2026

For Applicant(s): Mr.Advaith Nelakanttan.R
Assisted by Saketh Reddy
For M/s.ARK Law Associates

For Respondent(s): Mr.Kaushik N.Sharma
For M/s.KNS Law Chambers

ORDER

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The instant application has been taken out to condone the delay of 16 days in paying the deficit court fee, which has been objected to by the respondent.

2. Heard Mr.Advaith Nelakanttan.R, learned counsel appearing for the applicant and Mr.Kaushik N.Sharma, learned counsel appearing for the respondent.

3. The learned counsel appearing on behalf of the applicant would submit that an award came to be passed on 25.10.2025, which came to be challenged by the applicant under Section 34 of the Arbitration and Conciliation Act [hereinafter referred to as 'the Act']. He would submit that the petition under Section 34 of the Act was filed beyond the period of three months, but within the grace period. While filing the application, in view of the financial crunch in paying the entire court fee, a court fee of Rs.1,000/- was paid. The papers were returned by the Registry and after complying with the defects pointed out, including the deficit court fee, the same was complied with and re-presented before the Court. There had occurred a delay of 16 days in paying the deficit court fee.

4. He would submit that the objections raised by the respondent based upon the judgments of this Court cannot stand scrutiny by this Court. He would

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submit that the judgments relied upon by the learned counsel appearing for the respondent, including the Division Bench judgment of this Court, cannot be applied, as the said judgment had failed to appreciate the Court Fees Act, 1870, as well as the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

5. He would submit that an insufficiently stamped documents that had been received by the Court could always be allowed to be properly stamped, and on such document being stamped properly, it would render the said document a valid document as if it had been stamped at the first instance, that is, on the date of filing. He would submit that, when such a provision that had been incorporated under the Court Fees and Suit Valuation Act, the decision rendered by this Court, holding that a delayed payment of court fee would not render the filing to be within the period of limitation would go contrary to the spirit of the said enactment.

6. He would further submit that the finding of this Court that the Arbitration and Conciliation Act is a special enactment and would not be governed by the provisions of Section 149 C.P.C., cannot render the provisions of the Court Fees and Suit Valuation Act, which governs the law relating to the payment of court fees, otiose. Even if the said finding is assumed to be correct, the Court Fees and Suit Valuation Act, governing the payment of court fees cannot be rendered otiose.

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7. He would submit that the provision of Section 149 C.P.C., when read in conjunction with the Court Fees and Suit Valuation Act, would implicitly show that the object of both the said enactments is to benefit a litigant, who has paid a deficit court fee by permitting the litigant to make good the said deficit. When such deficit is made good, it relates back to the date of its original filing, namely, the date of filing at the first instance. In that regard, the findings and reasoning rendered by this Court cannot be said to be good law, as the said judgment had not considered the impact of the Court Fees and Suit Valuation Act.

8. He would further submit that the Arbitration and Conciliation Act, being a special enactment, may exclude the applicability of the provisions of the Limitation Act for condoning the delay in filing a petition under Section 34 of the Act, but it cannot exclude the provisions of the Court Fees Act and the Tamil Nadu Court Fees and Suit Valuation Act, as they are the special enactments dealing with the payment of court fees.

9. A strict construction of the provisions, as adopted by this Court, would only render the provisions of the Court Fees Act, 1870 and the Tamil Nadu Court Fees and Suit Valuation Act, 1955, otiose. He would submit that the Courts have to interpret and apply the provisions of a particular law in a manner

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that would not render any provision in the very same statute or any other statute otiose.

10. By applying the said principle, he would submit that this Court, while dealing with the deficit court fee, had rendered the provisions, particularly Section 28 of the Court Fees Act, 1870 and Sections 4 and 5 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, otiose.

11. In that context, he had also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Northern Railway Vs. Pioneer Publicity Corporation Private Limited***, reported in ***(2017) 11 SCC 234***, which overturned a Division Bench judgment of the Delhi High Court that had taken a view similar as that of this Court in holding that the delayed payment of deficit court fee could not cure the defect relating to the period of limitation.

12. He would further seek to distinguish the judgment of the Hon'ble Apex Court in the case of ***Simplex Infrastructure Limited Vs. Union of India, reported*** in ***(2019) 2 SCC 455***, which was heavily relied upon by this Court in holding that payment of deficit court fee beyond the period of limitation could not be said to be a curable defect, as the filing itself was not substantial. He would contend that the said judgment of the Apex Court had not held or rescinded its order in the manner in which this Court had dealt with the issue. It

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had only dealt with the filing of a petition under Section 34 within the time limits prescribed under Section 34 of the Act and did not relate to the payment of deficit court fee, which, according to him, is always a curable defect, as permitted under Section 28 of the Court Fees Act, 1870 and the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

13. He would further submit that such a strict interpretation would render a litigant remediless, even though the litigant had approached this Court within the period of limitation but had failed to pay the required court fee, which is also permitted under the relevant provisions of the Court Fees Act upon showing sufficient cause. When such a litigant is sought to be rendered remediless, it would not only cause injustice to the litigant but also amount to a failure of justice.

14. Hence, he prays this Court to pass appropriate orders, thereby condoning the delay of 16 days in paying the deficit court fee.

15. Countering his arguments, Mr.Kaushik N.Sharma learned counsel appearing on behalf of the respondent, would submit that the reliance placed upon on the judgment of the Hon'ble Apex Court in the case of ***Northern Railway Vs. Pioneer Publicity Corporation Private Limited (cited supra)***, which overturned the decision of the Division Bench of the Delhi High Court,

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cannot be taken as a law that had been propounded, which is now being presented before this Court.

16. He would submit that the issue involved in the Delhi High Court judgment in the case of ***Northern Railway Vs. Pioneer Publicity Corporation Private Limited (cited supra)*** not only involves a case of deficit court fee but also involves curing of other defects, which was done beyond the period prescribed. It was only in that context that the Hon'ble Apex Court held that the same amounted to re-filing, whereas both the Division Bench of the Delhi High Court as well as this Court had held that the issue was one of substantial filing by paying the necessary court fee. This aspect has not been dealt with by the Hon'ble Apex Court in the aforesaid judgment, and therefore, the well-considered judgments of this Court cannot be ignored.

17. He would further submit that the Arbitration and Conciliation Act, being a special enactment and covering all facets of law, cannot have its object and provisions whittled down by reading a beneficial provision of another enactment into it. He would further submit that Section 149 CPC, which is pari materia to the provisions contained in the Court Fees Act, was held to be excluded in view of the nature of the special enactment under the Arbitration and Conciliation Act. The provisions of the Tamil Nadu Court Fees and Suits

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Valuation Act, 1955, would also not apply, as claimed by the applicant. Hence, he would pray this Court to dismiss the application.

18. I have considered the submissions made by the learned counsel appearing on either side and perused the materials available on record.

19. The present application is seeking to condone the delay of 16 days in payment of the deficit court fee. The judgments rendered by this Court in holding that payment of deficit court fee beyond the period of limitation cannot be viewed as substantial filing, is sought to be negated by placing reliance upon Section 28 of the Court Fees Act, 1870 and Sections 4 and 5 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

20. There can be no dispute that, under the provisions of the CPC, a plaint which had presented without a proper court fee can be rejected. However, the same can be rejected only after giving an opportunity to the plaintiff to cure the said defect within the time prescribed.

21. Section 149 CPC deals with the power of the Court to allow a person, who has paid a deficit court fee to make good the same. The said provision is pari materia to Section 5 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. For better appreciation, the relevant provision is extracted hereunder:

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"**5.Fees on documents inadvertently received -**

"When a document on which the whole or any part of the fee prescribed by this Act has not been paid is produced or has, through mistake or inadvertence, been received in any Court or public office, the Court or the head of the office may, in its or his discretion at any time, allow the person by whom such fee is payable to pay the fee or part thereof, as the case may be, within such time as may be fixed; and upon such payment, the document shall have the same force and effect as if the full fee had been paid in the first instance."

22. The proviso to Section 28 of the Court Fees Act, 1870, is also to the very same effect. For better appreciation, the relevant provision of Section 28 is extracted hereunder:

"28. Stamping documents inadvertently received *– No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.*

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance."

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23. Order VII Rule 11(b) of CPC., empowers the Court to reject a plaint if the deficit court fee is not made good within the time fixed by the Court. However, the proviso appended thereto also empowers the Court to extend such time for reasons to be recorded, where the person was prevented by a cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers within the time fixed by the Court and where refusal to extend the time would cause grave injustice to that person.

24. A reading of the aforesaid provisions would only drive this Court to come to the following conclusions:

(a) Both under the Court Fees Act and the Tamil Nadu Court Fees and Suits Valuation Act, where there has been a deficit payment of stamp duty and it is found that the same could be made good within the time prescribed by the Court which received the document and upon such payment being made, the payment of stamp duty would relate back to the date on which the petition was originally filed.

(b) A competent Civil Court, by application of Section 149 read with the proviso to Order VII Rule 11 CPC, would be entitled to extend the time for payment of the deficit court fee even beyond the period prescribed by the Court for complying with the requirement to pay the deficit court fee.

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25. The arguments made by the learned counsel appearing for the applicant based upon the provisions of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, (hereinafter referred to as "Court Fees Act"), the deficit Court fee had been made good within the time-frame granted by this Court and as the same has been made good within the time-frame framed by this Court, the same should relate back to the original date of filing, it could only be treated to be a valid filing. The said contention is substantiated by various judgments namely the Full Bench judgment of this Court in the case of ***Gavaranga Sahu vs. Botokrishna Patro,*** reported in ***ILR (1909) 32 Mad 305***, and the Judgment of the Hon'ble Supreme Court in the cases of ***Mannan Lal vs. Mst.Chhotka Bibi (Dead) by Lrs.,*** reported in ***(1970) 1 SCC 769, Indian Statistical Institute vs. Associated Builders*** reported in ***(1978) 1 SCC 483*** and ***A Nawab John vs. V.N.Subramaniyam*** reported in ***(2012) 7 SCC 738.***

26. In the Full Bench Judgment of this Court in the case of ***Gavaranga Sahu,*** referred *supra*, this Court had answered a reference in the negative whereunder the reference that was made, was whether the plaint which was presented on an insufficiently stamped paper, however within the prescribed period of limitation and is made good within the time given by the Court, but after the actual period of limitation had expired on the cause of action. In the aforesaid judgment, the Hon'ble Full Bench of this Court had also extracted the order of reference whereunder an opinion had been expressed that a deficit

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stamp duty paid on a case presented before the Court within the period of limitation, but make good after the period of limitation, but however within the period extended by the Registry cannot be said to be a case filed beyond the period of limitation.

27. In the decision rendered by the Hon'ble Apex Court in the case of ***Mannan Lal vs. Mst.Chhotka Bibi (Dead) by Lrs.,*** (*referred supra),* the Hon'ble Supreme Court had extensively considered a similar claim and had also returned a finding that an appeal that was filed within the period of limitation, but the Court fees subsequently paid within the time granted, but beyond the period of actual limitation would be a proper filing within the period of limitation as the Hon'ble Apex Court had held that when the appeal was presented, it must be treated as pending from the date when the memorandum of appeal was presented before this Court.

28. The learned Single Judge of this Court in the case of ***General Manager & Ors., vs. Veeyar Engineers and Contractors*** reported in ***2019 SCC Online Mad 5586***, and an order made in Application Nos.9610 & 9611 of 2019 in O.P.D.No.65025 of 2019 had taken a view that presentation of the Section 34 petition without paying a substantial Court fee would be only a *non est* filing and the same cannot be cured beyond the period of limitation as prescribed under Section 34 and in that regard, such a filing being a improper

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and *nonest* filing cannot bring into the Section 34 petition within the period of limitation. Later, decision of the learned Single Judge was taken on appeal before the Division Bench of this Court and in a judgment in the case of ***Waaree Energies Limited vs. Sahasradhara Energy Private Limited*** reported in ***2021 SCC Online Mad 5086,*** the Division Bench of this Court had upheld the view taken by the learned Single Judge, when the Hon'ble Division Bench in upholding the said judgment had also held that when a provision of the statute had stipulated a time limit within which proceedings could be initiated and not thereafter, the power to condone the delay would not apply. The Division Bench also had held that the date of representation with appropriate Court fees would be the date on which the petition under Section 34 had been properly filed in affirming the order of the learned Single Judge.

29. A Full Bench of the Delhi High Court on a reference made to it by its judgment dated 19.02.2025 had taken a contra view that a simplicitor filing of deficit Court fee at a later point of time would not render a filing of an application under Section 34 to be treated and declared as *non est*. The said judgment however had been challenged and is pending consideration before the Hon'ble Apex Court.

30. A learned Single Judge had also in Application Nos.4872 & 4874 of 2025, dated 23.10.2025 had also concurred with the view of the learned Single

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Judge. The said order of the learned Single Judge was taken by way of a Intra Court Appeal wherein the Division Bench of this in O.S.A.(CAD) Nos.24 & 25 of 2026, dated 18.03.2026, had set aside the order of the learned Single Judge, and much without entering upon the merits of the order passed by the learned Single Judge, but only on the ground that the delay in payment of Court fee was due to the part of the counsel.

31. In that regard, a thorough perusal of the judgments that had been placed across the bar, it should be noted that in none of the judgments, the provisions of the Court Fees Act which permits payment of deficit Court fee noted in the original filing was permitted to be cured within time-frame fixed by the Court had been taken note of.

32. The Hon'ble Apex Court in the case of ***Mannan Lal vs. Mst.Chhotka Bibi (Dead) by Lrs.,*** reported in ***(1970) 1 SCC 769,*** had categorically held that on the date of presentation of the memorandum of an appeal, an appeal is held to be pending before the Court. Similarly was a decision of the Full Bench of this Court in interpreting the issue on the guidelines of Section 54(b) of the then Code of Civil Procedure which is *pari materia* to Section 5 of the Court Fees Act.

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33. This Court is aware that a transgression of the order of the learned Single Judge made in ***Waaree Energies Limited vs. Sahasradhara Energy Private Limtied*** reported in ***2021 SCC Online Mad 5086,*** Application No.9610 & 9611 of 2019 in OPD No.65025 of 2019, it would amount to judicial indiscipline. The Court is also bound by the decision of the Division Bench reported in ***2021 SCC Online Mad 5086,*** which is affirmed by the judgment in later referred above. But however, neither the learned Single Judge and the Division Bench referred to *supra* had not considered the issue in conjunction with the provisions of the Court Fees Act. The issue had been considered by the Larger Bench of this Court judgment made in the year 1909 reported in ***ILR (1909) 32 Mad 305 (FB)*** and the judgment of the Hon'ble Apex Court reported in ***(1970) 1 SCC 769,*** which both have been discussed above. For better appreciation, this Court would extract the relevant provisions in the aforesaid judgments.

a) ILR (1909) 32 Mad 305 (FB):-

> *As I am unable to distinguish* ***Venkatramayya vs. Krishnayya reported in (1897) ILR 20 Mad 319****, on the ground suggested by Banerji, J in Surendra Kumar Basu v. Kunja Behary Singh reported in (1900) ILR 27 Calc., 814, and as opinions in this Court are as I have shown conflicting, I will ask the Chief Justice to refer to a Full Bench the question.*
>
> *"When a plaint is presented on a paper insufficiently stamped, "within the prescribed period of limitation, and time is given by "the court under Section 54(b) of the Code of Civil Procedure to*

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"make good the deficiency, is the suit barred by limitation, if the "deficiency is supplied within the time fixed by the Court, but after " the limitation period has expired?"

In answering the reference the Full Bench of this Court had also extracted the entire order under which the reference was made to the Full Bench. The views that was expressed by the Hon'ble Justice Miller would also be useful to be extracted for better understanding and for such understanding, the relevant portion of the order of reference is also extracted as found in the aforesaid judgment:-

"....

The whole question seems to depend on the meaning to be attributed to the word "plaint" in section 4 of the Limitation Act; if the insufficiently stamped plaint is a plaint within the meaning of that section it follows that whether the insufficiency is due to mistake or not, the document when presented will be useful to save the bar of limitation. Of course if every insufficiently stamped plaint received by an officer of the Court is to be pre-sumed to have been received by mistake or inadvertence, the question will not arise: the second paragraph of section 28 of the Court Fees Act will validate the document as from the date of its presentation, but the remarks of Sir George Knox, A.C.J., and Banerji, J., on this subject (Hari Ram v. Akbar Husain (2)), seem to confine the presumption to plaints which have been admitted and registered, and I do not see how it is to be properly extended to cases in which the officer of the Court has merely taken the document from the hand of the person presenting it, and put it on one side for further examination before admission.

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And this is what frequently, perhaps usually, happens. The officer of the Court has not time to scrutinize each plaint as soon as it is presented; he takes it and as soon as he has time examines it, and if it is insufficiently stamped he does not at once reject it under section 54 of the Code of Civil Procedure (Hari Ram v. Akbar Husain (2)); but applies section 54 (b) and fixes a time for making good the deficiency. This course is clearly warranted by the section; but it can hardly be said that taking without examination is taking by inadvertence or mistake.

In such cases, and the present is, I think, one of them, the question which I have propounded does require an answer, and I agree with Sir Subrahmania Ayyar, J., that the validity of the plaint for the purposes of section 4 of the Limitation Act is not dependent on its validity for the purposes of the Court Fees Act.

It seems to me that a document purporting to be a plaint and drawn up substantially in accordance with the provisions of sections 48 to 52, Code of Civil Procedure, is a plaint whether it is stamped or not. It is clear that it does not cease to be a plaint; because it is not drawn up exactly in accordance with those provisions, vide section 53 (b) (i) and (ii): it is a plaint, but an imperfect plaint. So it seems to me, if it is not sufficiently stamped it is a plaint but an imperfect plaint. So far as civil suits are concerned the plaint of the Limitation Act and the Court Fees Act must be the plaint prescribed by the Code of Civil Procedure for the institution of a suit. There is nothing else that it can mean. Then the plaint imperfect by reason of being insufficiently stamped has no validity by virtue of section 28 of the Court Fees Act for the purposes of that Act. Now as was observed by Mahmood, J., in Balkaran Rai v. Gobind Nath Tiwari (1) the Court Fees Act has no preamble whereby its purposes can be ascertained, but I do not think it can be suggested that one of its

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purposes was to supplement the provisions of the Limitation Act. One of its main purposes, no doubt, is to levy fees for services to be rendered by Courts and public officers, and the plaint is not to be effectual for such purposes until it is duly stamped. The Court will not be empowered to issue process for the defendant, or to try the suit or grant relief to the plaintiff, but, if it does any of these things by mistake or inadvertence, its proceedings can be validated by payment of the required fees in the way prescribed by law. To hold with Shephard, J., that an insufficiently stamped plaint being ab initio void cannot be validated seems to me, with great deference, to be running counter to section 28 of the Court Fees Act and to section 54 (b) of the Code of Civil Procedure. In neither case, as I read these sections, can it be held that the plaint when the deficiency is supplied is a new plaint.

In my opinion sufficient extent is given to the word "validity " in section 28 if it is confined to the purposes of the Act in which it is found, and I therefore agree with Sir Subrahmania Ayyar, J., and the observation of Sir George Knox, A.C.J., to which I have referred.

I do not overlook the danger adverted to in Juinti Prasad v. Bachu Singh (2) where the observations of the learned Judges at pages 73 and 74 of the report conjure up a picture of a District Munsif's Head Clerk dispensing to belated and impecunious plain tiffs what would amount to extension of limitation periods up to one, ten, or twenty years; but I cannot but think that had the framers of the Code of Civil Procedure had this danger in mind they would have provided against it expressly in the Code, and I cannot therefore accept the existence of the danger as evidence of any value in favour of the view of the law taken in Venkatramayya v. Krishnayya(1). I do not say that the danger is unreal, but it can be minimized if not extinguished in various ways, one of which would be by fixing a maximum period of time under section 54 (b) of the

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Code of Civil Procedure or rather hereafter under Order VII, rule 11, of the new Code of Civil Procedure; and after all if the officer of the Court is disposed to misconduct, it is not difficult to admit an insufficiently stamped plaint by an alleged mistake or inadvertence and file it, in which case the plaintiff also obtains in effect an extension of the limitation period within which to present a fully stamped plaint.

....”

b) 1970 (1) SCC 769:-

“...

9. The Court Fees Act 8 of 1870, provides for the payment of various fees payable in respect of different kinds of documents to be filed in court. Omitting the words which are not relevant, Section 4 lays down that:

> *“No document of any of the kinds specified in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be 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 jurisdiction as regards appeals from the judgments ... of one or more Judges of the said Court, or of a Division Court ... 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.”*

Among the documents specified in the First Schedule chargeable with fees which are ad valorem are memoranda of appeal presented to any court. Section 28 of the Act lays down that no document which ought to bear a stamp under this Act shall be of any validity unless and until it is properly stamped. This is, however, subject to the qualification that if any such document is through mistake or inadvertence received, filed or used in any court without being properly stamped, the presiding Judge or the head of the office as the case may be or in the case of a High Court, any Judge of

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such court may, if he thinks fit, order that such document be stamped as he may direct; and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

10. As an appeal under the Code of Civil Procedure can only be preferred in the form of a memorandum laid down in Order 41, Rule 1 of the Code and further as the memorandum of appeal has to be stamped in accordance with the Court Fees Act it would appear that unless there were some saving provisions such a memorandum if not properly stamped could not be received at all by the High Court when a litigant desires to file an appeal or a Special Appeal. The rules of the Allahabad High Court specified above are aimed at adjudication of any dispute or objection as to court fee payable on a memorandum of appeal. When it is found that the court fee paid is deficient, the court has power to allow time for the purpose of making the deficiency good. Even where limitation is about to expire and the time-is too short to enable the appellant to make good the deficiency the court may allow the litigant time for the purpose. This shows that the court can keep on its file a memorandum of appeal although insufficiently stamped and the court will ordinarily allow an opportunity to the appellant to make good the deficiency and will not throw it out of hand. The Court Fees Act, however, lays an embargo on the court from receiving any document including a memorandum of appeal if it is not properly stamped. This provision of law was strictly construed in the case of Balkaran Rai v. Gobind Nath Tiwari [ILR 12 All 129 (FB)] where the Allahabad High Court took the view that where a memorandum of appeal was insufficiently stamped when tendered was subsequently stamped sufficiently, the affixing of the full stamps would not have a retrospective effect so as to validate the original presentation unless it has been done by order made under the second para of Section 28 of the Court Fees Act. In that case the court allowed the preliminary objection that as the making

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good of the deficiency had taken place after the period of limitation there was before the court no valid appeal in regard whereof a decision could be given on merits.

11. The rigour of the law as interpreted in this decision was mitigated by the amendment of the Code of Civil Procedure of 1882 by the insertion of Section 522-A by Act 6 of 1892 reading:

> *"If a memorandum of appeal or application for a review of judgment has been presented within the proper period of limitation, but is written upon paper insufficiently stamped, and the insufficiency of the stamp was caused by a mistake on the part of the appellant or applicant as to the amount of the requisite stamps, the memorandum of appeal or application shall have the same effect, and be as valid as if it had been properly stamped:*
>
> *Provided that such appeal or application shall be rejected unless the appellant or applicant supplies the requisite stamp within a reasonable time after the discovery of the mistake to be fixed by the court."*
>
> *The above provision was enacted in a slightly different form in the Code of 1908. Section 149 of the new Code reads:*
>
> *"Where the whole or any part of any fee prescribed for any document but 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."*

12. 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

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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.

13. 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 effort 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.

14. Apart from the decisions bearing on the point, there can in our opinion, be no doubt that Section 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. If such a construction be accepted, the bar of Sections of the Abolition of Letters Patent Appeals Act of 1962 would not operate in the instant case.

15. In the case of Gavaranga Sahu v. Botokrishna Patro [ILR 32 Mad 305 (FB)] a Full Bench of the Madras High Court was called upon to

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adjudicate on the question of the validity of a plaint presented on a paper insufficiently stamped to start with but where the deficiency was made good within the time given by the court under Section 54(b) of the Code of Civil Procedure, 1882. Section 54(b) of the Code of 1882 is reproduced in Order 7, Rule 11 of the Code of 1908. Under the said provisions a plaint has to be rejected if the relief sought is properly valued but the plaint is written upon a paper insufficiently stamped and the plaintiff on being required by the court to supply the requisite stamp within a time to be fixed by it fails to do so. 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.

16. The Judicial Committee of the Privy Council gave a decision much to the same effect in Faizullah v. Mauladad [AIR 1929 PC 147] . In this case the suit was filed for accounts and the settlement of the sums due in connection with the affairs of a partnership firm, the plaintiffs valuing the suit at Rs 3000 for the purpose of court fees and asking for rendition of accounts and a decree for Rs 3000 with the statement that if more than that amount was found due the plaintiffs would pay an additional court fee. The defendant asked for a decree in his own favour for Rs 29,000. The trial Judge passed a final decree in favour of the defendant for Rs 19,991 and no sum was found due by him to the plaintiffs under their claim for Rs 3000. The judgment was appealed from by both parties. The plaintiffs-appellants challenged the decree against them and maintained that not

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only that decree be set aside but one in their favour for Rs 3000 or less or more should be granted. They valued the appeal for purposes of court fee at Rs 19,991and paid fees thereon amounting to Rs 975. The question as to the invalidity of the appeal on the ground of insufficiency of court fee was answered by the Judicial Committee by holding that the memorandum of appeal did state in terms of the Act (i.e. the Court Fees Act) the amount at which the relief was sought and that determined the appeal. According to the Judicial Committee even if it was held that the fee payable was insufficient it was the duty of the court in exercise of its discretion to give an opportunity to add to the amount lodged the extra sum of Rs 70 or 80 required for deferring the question of the amount of fee under the Court Fees Act until final value was ascertained. Referring to the provisions of Section 149 of the Code the Board observed that the discretion under that section "extended to the whole or any part of any fee prescribed and could be exercised at any stage in the case, while finally, upon the extra payment being made, the document is to have the same effect as if it had been paid in the first instance". The Board further held that as the decree of the Subordinate Judge was dated 24th March, 1924, the first appeal was on 27th May and the Second Appeal on 2nd June the time for limitation of the appeal being 90 days both appeals were within time. It was further held that the appeals were not a nullity and on the contrary they were documents duly presented to and accepted by the court, and as to the court fee thereon, should the valuation be unsatisfactory or in the end insufficient, that is validated by the additional payment, the result of which payment is that the document, namely, the memorandum of appeal, stands good from its date and the appeals are accordingly not time-barred.

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

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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 [AIR 1951 All 64 (FB)] 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.

18. In another Full Bench, Hari Har Prasad Singh v. Beni Chand [AIR 1951 All 79] of the same year dealing with a case of a memorandum of appeal which was found defective for want of proper court fee and not admitted in view of Section 4 of the Court Fees Act but returned or rejected on that ground it was held that the memorandum could not be treated as an appeal. It was there observed:

> *"If Section 4 of the Act (i.e. Court Fees Act) had stood by itself, an unstamped or insufficiently stamped memorandum of appeal, chargeable with fees, could not have been received by the High Court for any purpose …. There is nothing in Section 149 of the Code which overrides the provisions of Section 4 of the Court Fees Act, it merely postpones the operation of that section for the time being. If the whole or part of the requisite court fee is not paid within the time allowed by the Court, Section 149 of the Code ceases to have effect, and the Court is precluded from filing or recording an unstamped or insufficiently stamped memorandum of appeal in court."*

19. According to Stroud, a legal proceeding is "pending" as soon as commenced, and until it is concluded, i.e. so long as the court having

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original cognizance of it can make an order on the matters in issue, or to be dealt with, therein.

20. When the deficiency in the payment of court fees is made good and the document or memorandum of appeal is to be given the force and effect which it would have had if there had been no deficiency, the appeal must be treated as pending on 12th November, 1962. In Nagendra Nath v. Suresh [AIR 1932 PC 165] which turned on the interpretation of Article 182(2) of the Limitation Act of 1908 as regards the validity of an appeal presented in an irregular form the Board observed that although there was no definition of "appeal" in the Civil Procedure Code any application by a party to an appellate court asking it to set aside or revise a decision of a Subordinate Judge, is an appeal within the ordinary acceptation of the term, and that it was no less an appeal because it was irregular and incompetent.

21. The words used in that judgment are no doubt of wide import. But however that may be in the case before us there can be no difficulty in holding that an appeal was presented in terms of Order 41 Rule 1 of the Code inasmuch as all that this provision of law requires for an appeal to be preferred is the presentation in the form of a memorandum as therein prescribed. If the court fees paid thereon be insufficient it does not cease to be a memorandum of appeal although the court may reject it. If the deficiency in the fees is made good in terms of an order of the court, it must be held that though the curing of the defect takes place on the date of the making good of the deficiency, the defect must be treated as remedied from the date of its original institution.

22. In view of the above reasons, we find ourselves unable to concur in the judgment of the High Court. In the main judgment under appeal, the reasoning appears to be that the memorandum of appeal had no effect

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before the making good of the deficiency and as the same took place after 12th November 1962 the appeal was not saved by Section 3(2) of the U.P. Act. The learned Chief Justice of the Allahabad High Court expressed the opinion that a memorandum of appeal barred by time stood on a footing different from the one in which there was deficiency in the court fee paid. According to him under Section 3 of the Limitation Act it is an appeal that is dismissed and not a memorandum of appeal. When therefore Section 4 of the Court Fees Act deals with a memorandum of appeal the consideration of the laws of limitation bears no analogy to a deficiency in court-fees. With due respect we are not impressed by the above reasoning. As already noted, although there is no definition of the word "appeal" in the Code of Civil Procedure, it can only be instituted by filing a memorandum of appeal. The filing of a memorandum of appeal therefore brings an appeal into existence; if the memorandum is deficient in court-fee, it may be rejected and if rejected, the appeal comes to an end. But if it is not rejected and time is given to the appellant to make up the deficiency and this opportunity is availed of, Section 149 of the Code expressly provides that the document is to have validity with retrospective effect as if the deficiency had been made good in the first instance. By reason of the deeming provision in Section 149 the memorandum of appeal is to have full force and effect and the appeal has to be treated as one pending from the date when it was before the Stamp Reporter and the deficiency noted therein.

...."

34. In such view of the matter, this Court is of the view that the judgments rendered by the learned Single Judge reported in ***2019 SCC Online Mad 5586*** and ***Waaree Energies Limited*** (referred *supra*), had not laid down

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the law correctly, in view of the decision rendered by the Full Bench of this Court and the Hon'ble Apex Court discussed and extracted *supra*.

35. In fine, this Court is of the view that the objections raised by the respondents as regards to the period of limitation cannot be sustained. This Court is of the view that when an original petition under Section 34 had been filed within the prescribed time limit under Section 34, but however with a deficit Court fee, which had been called upon by the Registry to be made good by fixing a timeline and if the same is made good within the timeline fixed by the Registry, then the payment of Court fee relates back to the date of original filing making the Section 34 petition within the period of limitation. However, it is made clear that if the Court fee is not paid within the period stipulated by the Registry and an application to condone a delay beyond the said period is made, such application cannot be said to be maintained, neither under the provisions of the Court fees Act or the Code of Civil Procedure as both the Court Fees and the Code of Civil Procedure makes it mandatory that such deficit Court fee should be made good within a particular period of time. When a statute prescribes deed to be done in a particular time period, such period cannot be extended by application of the General Principles of Limitation Act.

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36. In the present case from the records, it would reveal that the petition filed on 27.01.2026 was originally returned by the Registry only in the month of April 2026 granting time to the applicant to make good Court fee on or before 01.05.2026 and such Court fee had been made good before the said date. This Court is of the view that the application to condone the delay is not even required in payment of deficit Court fee, as the deficit Court fee has been paid within the time prescribed by the Registry.

37. In fine, the Application stands closed and the Registry is directed to take on file the Original Petition, if it is otherwise in order. However there shall be no order as to costs.

18-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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