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the claim is served within 60 days after filing' (emphasis added). The rule applies exclusively to ordinary first instance proceedings, i.e., mostly civil and commercial matters, with the exception of some pertinent disputes, which are regulated under a special Book of the Code of Civil Procedure [Book 4, Articles 591–645: Special Proceedings].

Countless actions have been dismissed as a result of this rule since 2016. Courts were refusing claims even when the defendants were appearing before the court, submitting pleadings and raising their defence. Only claims addressed to defendants living in countries which were neither EU member states nor Hague Convention signatories were 'saved'. Article 134, in connection with Article 136 Greek of Code of Civil Procedure, established half a century ago the notorious system of fictitious service, akin to the French system of *remis au parquet* (Article 683 Code de Procédure Civile). This system still applies for countries such as the United Arab Emirates or Madagascar, however not for Cyprus or Monaco, due to the prevalence of the EU Service Regulation and the 1965 Hague Convention, anchored in the Constitution (Article 28). Hence, the non-production of a service certificate is no obstacle for the former, whereas any service certificate dated after the 60-day term is not considered good service for the latter, leading to the dismissal of the claim.

The decision of the Supreme Court

Against this background, the Supreme Court was called to address the matter for the first time after nearly six years since the introduction of the new provision. The Supreme Court began with an extensive analysis of the law in force (Article 134 Code of Civil Procedure; EU Service Regulation; Hague Service Convention, and Article 215 Para 2 Code of Civil Procedure). It then pointed out the repercussions of the latter rule in the system of cross-border service, and interpreted the provision in the fashion which has been persistently suggested by legal scholarship: the '60 days' term should relate to the notification of the claim to the Transmitting Authority, i.e., the competent Prosecutor's office pursuant to Article 134 Code of Civil Procedure, and the declarations of the Hellenic Republic in regards to the EU Service Regulation and the Hague Service Convention.

The date of actual service should be disconnected from the system initiated by Article 215 Para 2 Code of Civil Procedure. The Supreme Court provided an abundance of arguments in favour of this direction, which may be summarised as follows: violation of Article 9 Para 2 Service Regulation 1393/2007 (now Article 13 Para 2 Service Regulation 2020/1784); contradiction of the spirit of Article 15 of the Hague Service Convention, despite the lack of a provision similar to the one featured in the EU Regulation; violation of the right to judicial protection of the claimant, enshrined in the Greek Constitution under Article 20; violation of Article 6(1) of the European Convention on Human Rights, because it burdens the claimant with the completion of a task which goes beyond the claimant's sphere of influence.

For all of the reasons above, the Supreme Court overturned the findings of the Thessaloniki First Instance court, and considered that service to the defendants in Monaco and Cyprus was good and in line with the pertinent provisions.

Conclusion

The judgment of the Supreme Court has been expected with enormous anticipation. It comes to the rescue of the claimants, who were unjustly burdened with an obligation which was and still is not under their power to control. The judgment returns the situation back to the days before the infamous provision of Article 215 Para 2, i.e., where the domestic procedural system was impeccably in tune with the EU Regulation and the Hague Service Convention.

Apostolos Anthimos[1]

INDIA

Valuation of 'land' incapable of being valued under the Court Fees Act, 1870 of India: clarity provided

It is trite principle that if lands are not saleable, it is impossible to place a monetary value upon them. Such lands are thus incapable of being valued under the Court Fees Act, 1870 under S. 7 Cl. 5 (c) which states: 'Where land pays no revenue, the value is to be taken as fifteen times the net profits, or if no net profits have arisen there from, as the value of similar land in the neighbourhood'. Court Fees on such lands are calculated as per Art. 17-B of Sch. II of the Court Fees Act, 1870, which relates to plaints in suits 'when it is not possible to estimate at a money value the subject matter in dispute and which is not otherwise provided for by this Act'.

This procedural issue arose in a suit regarding the valuation of property, which it was argued was incapable of being valued as it was a tank bed.[2] In the case of *Manikkam Pillai v N.M. Nagasami Ayyar & Anr.*,[3] a Civil Revision Petition challenged the aforementioned subject dispute and question of law.

The facts

The petitioner Manikkam Pillai, being a landholder, had sued the defendants, namely N.M. Nagasami Ayyar and another, who occupied a holding under him, seeking to

1 apostolos.anthimos@gmail.com.

2 I.e. government lands are situated in the beds of tanks or rivers.

3 Civil Revision Petition No. 1159 of 1933, AIR 1934 Mad 714.

eject them from part of a tank bed upon which he alleged that they had encroached. The relief sought was with respect to eviction and mandatory restraint of the defendants regarding the tank bed.

A preliminary issue was whether the correct Court Fee had been paid by the plaintiff.

A revision petition was presented against the order, requiring payment of an ad valorem fee under S. 7 Cl. 5 (c) of the Court Fees Act, 1870 which reads: 'Where land pays no revenue, the value is to be taken as fifteen times the net profits, or if no net profits have arisen there from, as the value of similar land in the neighbourhood'.

It was contended by the petitioner that the appropriate provision for deciding this issue was Art. 17-B of Sch. II of the Court Fees Act, 1870, which relates to plaints in suits 'when it is not possible to estimate at a money value the subject matter in dispute and which is not otherwise provided for by this Act'. Furthermore, the petitioner argued that when deciding the aforementioned issue, Art. 17-B of Sch. II was applicable and not S. 7 (v), because the land was incapable of valuation. It should be noted that the learned District Munsif had asked the plaintiff to specify any net profits that were generated on the property in the year before the lawsuit. It is therefore obvious that since the plaintiff/petitioner described the ground as a tank bed, ideally the subject matter was to be valued as a tank bed and not as cultivated land. Furthermore, the petitioner contended that a detached tank bed area does not necessarily result in net earnings. Hence, it cannot be valued in relation to other areas that are identical to it.

The ruling

The Hon'ble Court of Madras, India, observed that all tank bed lands are of value only in the degree to which they produce some kind of revenue or profit. The Hon'ble Court further observed that it is not possible to place a monetary value on items which are not saleable. That the Hon'ble Court in order to conclude its finding relied upon the case titled *Rajagopalan aide vs Ramasubramania Ayyer*[4] of the Hon'ble Court of Madras, India, which is a benchmark case for determining the market value of a property under the Court Fees Act for those lands/property not capable of being valued. *Rajagopalan aide* held that in the case of a temple, there can be no market value as such. The reasoning put forth was that a temple has no market value as it is inalienable. Hence, Hon'ble Court of Madras, India, while referring to the same case, observed that in the same way a tank bed which is not saleable has no market value. Hence, it is impossible to apply the provisions of S. 7(v) of the Court Fees Act, 1870 because the value of the tank bed cannot be determined. The Hon'ble Court concluded that the only course was apply Art. 17 B of the Act, as mentioned above.

4 AIR 1935 Mad 449.

Thus the petition was allowed and the Court Fee was directed to be payable under Art. 17 B of the Court Fees Act, 1870. The District Munsif's order was set aside and he was directed to assess the matter in the manner prescribed.

Comments

It is trite principle that where correct valuation and relief cannot be assessed, the valuation given by the plaintiff is accepted tentatively.[5] Furthermore, it is trite principle that the valuation as set up by the plaintiff in the plaint of the suit is conclusive and final.[6] Hence, in cases where valuation concerns property which is not marketable or is inalienable the valuation for the purpose of Court Fees over the same cannot be calculated and shall be governed under the provision of Art. 17-B of Sch. II of the Court Fees Act, 1870. Thus the abovementioned case law governs the determination of calculation of Court Fees on those lands/property whose valuation is not possible and which are not marketable lands, for instance Government leased properties or the abovementioned tank bed.

Thus, the Hon'ble Madras High Court, India in *Rajagopalan* and *Manikkam Pillai* guides and paves the way regarding disputes pertaining to determination of such Court Fees. They give clarity that such determination shall be as per Art. 17-B of Sch. II of the Court Fees Act, 1870 and not under any other provision.

Anushkaa Arora[7] assisted by Arya Panda[8]

ITALY

About orders for payment and unfair terms in consumer contracts: United Sections of the Supreme Court of Cassation (6 April 2023, no. 9479)

The (long-awaited) pronouncement of the *Sezioni Unite* (United Sections) of the Italian Supreme Court on the coordination between domestic procedural rules and the principles of law enunciated by the Court of Justice in its four decisions of 17 May 2022 (and, in particular, in the decision issued in the *SPV v. Banco di Desio* case, which directly called into question the Italian order for payment procedure) has recently been published.

5 *Subhash Chander Goel v. Harvind Sagar*, AIR 2003 P & H 248.

6 *Kesho Mahton v. Ayodhya Mahton*, AIR 1983 Pat 67, *Shiela Devi v. Kishan Lal Kalra*, ILR (1947) 2 Del (FB) 491; *Commercial Aviation & Travel Co. v. Vimal Pannalal*, AIR 1988 SC 1636.

7 Principal & Founder, ABA Law Office, and Senior Counsel of Private Retainers and Central Government of India, Jail Visiting Advocate, anushkaaarora@abalawoffice.in.

8 Research Associate, ABA Law Office.