**APPLICATION UNDER SECTION 149 OF C.P.C.**

APPLICATION FOR EXTENDING TIME TO DEPOSIT DEFECIENCY OF COURT FEE

IN THE HIGH COURT OF THE....................

Civil Misc. Application No................ of 19....................

Under Section 149, C. P. C.

in

Civil Appeal No..................... of 19.........................

A. B................................................................... Plaintiff

*versus*

C. D......................................... Defendant/Respondents.

Sir,

The appellant most respectfully submits as under:

1. That the appellant having fallen sick and having no other source of income than his salary on the post of................... at...................

2. That accordingly, the appellant could not deposit the defeciency of court-fee within the extended time upto................... 19...................

3. That it is expedient that one month’s time further may be extended for filing the defeciency of court fee.

**PRAYER**

It is therefore most respectfully prayed that one month’s further time may be extended for filing the defeciency of Court fee.

Dated................... 19................... Counsel for the Appellant.

Affidavit in support of the application to be filed.

**CASE LAW**

**SCOPE OF THE SECTION**

When the Court excuses the delay in payment of Court-fee on the memorandum of appeal without notice to the other side, it is open to the other side to file an application to the Court to dismiss the appeal on the ground that the delay ought not to have been excused1. In the partition suit all parties are in a position of plaintiff, if an original plaintiff does not presecute the suit, any of the defendants who has paid the Court fees has right to get himself impleaded as plaintiff. This power to transpose party under O. 1, R. 10(2) of the Code can be exercised by Court even *suo motu,* and the order transposing the defendant as plaintiff is not without jurisdiction. A plaint which is insufficiently stamped does not cease to be a plaint; at the most, it is only an imperfect plaint, and it is not as if that no action can be taken by the Court on such an imperfect plaint2.

The discretion cannot be exercised in favour of a party who had no *bona fide,* that is to say, who was not under any honest mistake or doubt as to had not made an honest attempt to comply with the law3.

Where defeciency in Court-fee was made good after expiry of limitation for filing appeal, an application to condone delay in depositing Court-fee each day’s delay is not required to be explained, unlike the case on the application under section 5 of the Limitation Act, 19634.

This section is an exception to the rule contained in sections5.

Where for delay in payment of the defeciency of court-fees the reason urged was that the Court-fee stamps could not be purchased due to the fact that purchases of high valuation Court-fee stamps take some time, the exercise of discretion cannot be said to be in gross violation of recognised principles of law, requiring any interference. The question of Court-fee is primarily between Government and the person concerned. The plea of any valuable right on the ground of limitation is not available to other side6.

**PAYMENT OF NECESSARY COURT FEE ON ENHANCEMENT OF DECRETAL AMOUNT.**

***Section 149***

The Courts have powers to issue directions for payment of necessary court fee on enhancement of the decretal amount. It is always open to High Court to prepare a decree on receipt of required court fee from the cross-objectors. 7

1. Gudur Vankata Narsimha Rao v. Kamarapu Bukka Narsimhulu, (1966) 1 Andh. L. T. 345: (1966) 1 Andh. W. R. 360.

2. Parukutty Amma v. Ramanunni Nair, A. I. R. 1966 Ker. 150: I. L. R. (1966) 8 Ker. 270 : 1966 Ker. L. R. 36: 1966 Ker. L. J. 111: 1966 Ker. L. T. 199.

3. Union of India v. Abdul Habib Hazir Mohd. Sons, 1966 M. P. L. J. (Notes) 38.

4. State of Punjab v. Nand Kishore, A. I. R. 1966 Punj. 332: Cur. L. J. 578.

5. State of Punjab v. Nand Kishore, A. I. R. 1966 Punj. 332: Cur. L. J. 578.

6. Soni Bai v. State, I. L. R. (1966) Raj. 454: 1966 Raj. L. W. 141). see A. I. R. 1961 S. C. 882: A. I. R. 1953 S. C. 431.

7. M. D. Thiruvalluvar Transport Corporation v. Santhalakshmi, 2000 (3) CCC 5 (Mad.).