
(1993) 11 MP CK 0025
In the Madhya Pradesh High Court
Case No : M.C.C. No. 151 of 1985

Harvilas and Others

APPELLANT

Vs

Tulsiram and Others

RESPONDENT

Date of Decision : 25-11-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Court Fees Act, 1970 — Section 13, 14, 15

Citation : (1993) ILR (MP) 708 : (1994) 39 MPLJ 443 : (1994) MPLJ 443

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : B.G. Apte, for the Appellant; H.D. Gupta, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

This is a petition u/s 13 of the Court Fees Act, 1870 (for short, the "Act"), read with Section 151 of the Code of Civil Procedure, for refund of Court fee paid in excess by the plaintiffs/appellants on the memorandum of Second Appeal No. 39 of 1983, decided on 8-8-1983, and on the memo of Civil Appeal No. 188A/81, decided by the District Judge, Shivpuri, on 7-2-1983, between Harvilas and others and Tulsiram and others.

This Court dismissed the second appeal summarily, observing thus :--

"After the matter was remanded by this court, the plaint appears to have been amended, claiming relief of specific performance of the contract, though no court-fee had been paid. Both the courts took the view that in view of the order of the High Court the suit will be treated to be a suit for refund of money, i.e., Rs. 3,400/- only, and not for specific performance of a contract. The appellants are aggrieved by this part of the judgment and decree and submit that it is based on misreading of the judgment of this court. I am unable to agree. The question of

valuation of the suit and payment of court-fee was necessarily linked with the jurisdiction of the trial court to try the suit. In case, the suit for specific performance was filed and court-fee on Rs. 14,000/- was paid, the trial court would have no jurisdiction to try the suit. That was perhaps the reason why a statement was made in this court that the suit was a suit for refund of Rs. 3,400/- only. No illegality, therefore, appears to have been committed by the courts below in interpreting the order of this Court. No substantial question of law arises on this count".

Shri B. G. Apte, learned counsel for the petitioners, submitted that the petitioners initially paid the Court fee on Rs. 3,400/-, but during trial, defendants raised a preliminary objection to the pecuniary jurisdiction of the Court. The trial court decided the issue in favour of the petitioners. The defendants preferred a Civil Revision No. 289/1966, which was decided by this Court on 18-1-1967, observing in para 3 thus :--

"It is then contended by Shri Naokar that the suit cannot be tried in respect of the reliefs claimed in clause (Ba) of the prayer clause and until court fee is paid. This contention must be accepted. The plaintiff has claimed a declaration of right to continue in possession of a portion of the suit property on the basis of his alleged equity or part performance. It is not for me to say at this stage whether such suit lies but if the plaintiff wants the court to give him that relief, he must pay court fee before that issue can be tried. Unless court fee is paid, the court has no jurisdiction to grant that relief or to try that part of the suit. Similarly, unless and until the plaintiff pays court fee on the amount of mesne profits claimed by him the court has no jurisdiction either to grant that relief or to try that issue. So also about the plaintiffs claim for accounts".

In view of the order passed in revision, the petitioners/plaintiffs had no option but to amend the plaint and to pay the ad valorem Court fee on Rs. 14,000/-. Hence, an application for amendment under Order 6, Rule 17, Civil Procedure Code, was filed. The trial Court returned the plaint with the application for amendment for filing of the suit with the amendment application in the Court of District Judge, Shivpuri. The District Judge passed the order allowing amendment. The petitioners paid the ad valorem Court fee on Rs. 14,000/-. The order of allowing amendment was challenged by the defendants before this Court in revision, which was allowed and the order allowing amendment was set aside, then, again the suit remained for Rs. 3400/- only, hence, the District Judge sent the case back to the Court of Civil Judge, Class 2, Shivpuri.

It is in these circumstances and in view of the order passed in Civil Revision No. 289/66 that the petitioners bona fide paid the ad valorem Court fee in first appeal and in second appeal. As the suit was held to be not a suit for specific performance, but for refund of money of Rs. 3400/- only, the payment of Court fee so paid was under a mistake. Therefore, by this petition the petitioners submit that for the excess Court fee paid erroneously a certificate authorising them to receive it back from the Collector be granted. To support the claim for

refund of excess amount of Court fee Shri Apte placed reliance on the decisions reported in AIR 1932 Mad 438, Chintakayala Thammayya Naidu v. Chintakayala Vankataramanamma and Anr. AIR 1954 Pepsu 49 , Valia Veetil Komappan Vs. Elamakandy Kinnattumkara Karthiyayini and Others, Valia Veetil Komappan v. Elamakandy Kinnattumkara Karthiyayini and Ors..

Shri H. D. Gupta, learned Deputy Advocate General, appearing for the State, submitted that this Court, when the matter came up in revision, treated the suit as one for the specific performance and directed the petitioners to amend the plaint and to pay the Court fee. When the order allowing amendment was challenged, this Court observed that the suit is for refund of money of Rs. 3,400/-, therefore, disallowed the amendment. Consequently, the District Judge sent the case back to the Court of Civil Judge, Class 2. The trial Court passed the decree for refund of Rs. 3,400/- only, which ultimately was confirmed. But, the payment of "Court fee ad valorem on Rs. 14,000/- in the circumstances of the case cannot be considered to be erroneous. In any case, the petition does not lie u/s 13 of the Act.

After hearing counsel, I am of the opinion that the petitioners cannot be blamed for valuing the suit for Rs. 1,400/- and for payment of ad valorem Court fee thereon. In fact, the petitioners paid the Court fee because of the order of this Court passed in revision, but on construction of the pleadings the suit was not treated and tried as the suit for specific performance. However, as the petitioners had to pay the Court fee under a mistaken view of the Court, the petitioners are certainly entitled to refund of Court fee.

But, as rightly submitted by the learned Deputy Advocate General, the order of refund of Court fee cannot be made u/s 13 of the Act. However, in such circumstances, a party has to be assisted, its claim for refund should not be thrown, merely because the petition does not lie within any of the provisions of Sections 13 to 15 of the Act. It is well settled that the power of High Court to refund Court fee is not confined only to cases covered by Sections 13 to 15 of the Act, as Section 151 of the CPC enables a High Court to order refund of Court fee paid in excess when obvious injustice would be done if it is not repaid. It would be unreasonable and unjust for the High Court not to assist a party to recover excess Court fee, erroneously paid under its own order or under the orders of Courts- subordinate to it.

A Division Bench of this Court, in case of Sarmanlal Yadav v. Jabalpur Town Improvement Trust, reported as a short note in 1979 MPLJS 4, relying on an earlier decision of this Court in case of Arjuna Govinda v. Amrita Keshiba and Ors. 1956 NLJ 682 : AIR 1956 Nag 281, has held that even in cases not covered by Sections 13, 14 and 15 of the Act, the Court can u/s 151, CPC order refund of Court fee paid in excess by mistake, inadvertence or oversight. The same is the view expressed in cases of Thammayya. Naidu (supra) and Parmatma (supra).

In the result, the petition is allowed with no order as to costs. Refund of ad

valorem Court fee paid by the petitioners on the names of the first and second appeals on excess value of Rs. 10,600/- is allowed. Let a certificate to that effect be issued.