

(1938) 08 MAD CK 0028
In the Madras High Court
In Re: Chukka Durgiah

Date of Decision : 19-08-1938

Acts Referred:

Citation : (1938) 48 LW 461 : (1938) 2 MLJ 647

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—The point raised in this petition is that decided in Sadasivam Pillai and Others Vs. Varadaraja Odayar and Others, . In

that case Venkataramana Rao, J., purported to follow a previous decision, namely, that of Venkatasubba Rao, J., in S.L. Lakshmana aiyar Vs.

T.S.P.L.P. Palaniappa Chettiar and Others, . The point is whether when a Court has passed a judicial order fixing the correct court-fee payable on

a memorandum of appeal it is open to that Court to revise it afterwards either at the instance of a party or of its own motion. This question was

answered in the negative in the cases referred to above and I see no sufficient reason for not following those decisions. It is urged however by Mr.

Sitarama Rao that the word "final" found in Section 12(1) of the Court-Fees Act is capable of the meaning that there should be no appeal from

that order and not that it shall not be open to review by the same Court which made the order. This argument does not appear to have been put

forward in the course of arguments in the previous cases, but it appears to me that this argument is hardly available in view of Clause (2) of the

same section which provides for an alteration of the order by a superior Court of appeal or revision. In the particular case before us there was no

application for a review of the order by, the petitioner himself against whom the present order was made modifying the order which was favourable

to him. Nor did the Court purport to act under its inherent powers. Finally it is impossible in a case like this to say that it was necessary for the

ends of justice to modify the order already passed. In these circumstances I am of opinion that the learned District Judge had no jurisdiction to vary

the order dated 28th September, 1937, to the prejudice of the petitioner by his subsequent order dated 11th December, 1937, in the matter of the

court-fee payable on the memorandum of appeal.

2. The petition is therefore allowed and the order of the District Judge, dated 11th December, 1937, is set aside. There will be no order as to

costs of this petition.