

(1975) 01 OHC CK 0010
In the Orissa High Court
Case No : A.H.O. No. 31 of 1974

Krutibasa Nayak

APPELLANT

Vs

Sri Jagannath Mahapravu and Others

RESPONDENT

Date of Decision : 21-01-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Court Fees Act, 1870 — Section 13

Citation : AIR 1975 Ori 211

Hon'ble Judges : S. Acharya, J;P.K. Mohanti, J

Bench : Division Bench

Advocate : K.C.J. Ray, for the Appellant; B.B. Mohanty, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Acharya, J.—The petitioner has filed a petition praying for the refund of the court-fee of Rs. 490.50 paise paid by him on the memorandum of this appeal. The petitioner, was respondent No. 5 in Second Appeal No. 91 of 1971 which was allowed by Hon'ble R. N. Misra, J., by his judgment dated 18-7-1974. As the said judgment was delivered by Misra, J. while he was sitting in a Divisional Bench, Mr. Ray, the learned counsel for the petitioner, orally moved Misra, J., in his chambers on the same day for granting him leave to file appeal against the aforesaid decision. In the petition before us (at flag W) it is stated on affidavit that the petitioner's lawyer on the said occasion returned from the chamber of Misra, J., with the impression that the leave prayed for was granted by the Judge and with that impression the memorandum of appeal with court-fee of Rs. 490.50 was filed in this Court endorsing therein that the required leave for the purpose had been granted by the Judge. The memorandum of appeal was registered in the High Court office as A. H. O. No. 31 of 1974 and was placed before a Division Bench of which Misra, J., was not a member.

As in the connected records there was no order granting leave to appeal by

Hon"ble R. N. Misra, J., that Division Bench directed that matter to be placed before a Division Bench consisting of Hon"ble Misra, J. When the matter thereafter came up before a Division Bench consisting of R. N. Misra, J., that Bench ordered the said matter to be placed only before R. N. Misra, J., in the Single Bench. Accordingly the matter was placed before R. N. Misra, J., in the single Bench, and he on the question as to whether leave was granted by him or not in that case, stated in his order dated 3-10-74 that after he delivered the judgment in the aforesaid second appeal Mr. Ray came to his (Misra J.'s) chambers and prayed for the said leave. But as the lawyer for the other side was not present at that time in the chambers, Misra, J., could not entertain the said prayer of Mr. Ray and expressed that Mr. Ray might make a written application to that effect. It is stated in the said order that no leave was granted by him in this case and so it was not open, to the petitioner to file an A. H. O. After stating as above. Misra, J., desired the matter to be placed again before a Division Bench.

2. After the said order of Misra, J., the petition in question was filed on 19-11-1974 praying for the refund of the court-fee paid on the memorandum of appeal filed under aforesaid circumstances. This petition has been filed invoking the court's inherent jurisdiction u/s 151, Civil Procedure Code. Mr. Ray urges that on the facts and circumstances of this case this is a fit case in which the court, in the interest of justice, should exercise its inherent powers and order refund of the court-fee paid on the memorandum of appeal.

Mr. Mohanty, the learned Additional Government Advocate, opposes the petitioner's said prayer by submitting that the provisions in the Court Fees Act for the refund of court-fee are not applicable to the facts of this case; that the court, on the facts of this case, should not exercise its inherent power to order refund of the said court-fee; and that only in cases where the court-fee is paid on a mistaken or wrong calculation of the same, or by inadvertence or being called upon by the court to pay excess court-fee, which was not required under the law to be paid, then alone the court-fee paid can be ordered to be refunded and in no other case. According to Mr. Mohanty the court-fee paid on the memorandum of appeal is in accordance with law and the prayer for refund of the same is not on the basis of any mistake in the payment of the same but only on the basis of the mistake in filing the appeal as stated above, and so the prayer for refund cannot be granted.

3. In the Division Bench decision of this Court reported in Syed Sakhawat Hossain Vs. State of Orissa, it has been held:--

"It is well settled that even in those cases which do not come within the scope of Sections 13 14 and 15 of the Court Fees Act, a court has inherent power in certain circumstances to grant a refund of the court-fee already paid."

That view has been taken on a consideration of the decision reported in In Re: Chidambaram Chettiar, . In the decisions reported in Kumud Nath Das Saha and Others Vs. Government Pleader, ; Ahmed Ebrahim Vorajee Vs. The Government

of The Province of Bombay, ; Vishnuprasad Narandas Modi Vs. Narandas Mohanlal Modi, ; Indu Bhusan Roy Choudhury Vs. Secy. of State, ; AIR 1933 170 (Oudh) and AIR 1939 Lah 257 (Firm Hari Ram and Sons v. H. O. Hay) the Courts by exercising their inherent power u/s 151. CPC ordered refund of the court-fee paid in those cases.

In the Full Bench decision reported in Eagle Plywood Industries Private Ltd. Vs. Amulya Gopal Majumdar and Others, it has, amongst other things, been held in paragraph 8 thereof that where the matters are within the scope of Sections 13 to 15 of the Court Fees Act, the provisions of those sections must be strictly applied, and in matters out of the scope of those sections the court has in certain circumstances inherent jurisdiction to order refund of court-fee on the principle that every court has inherent power to do real and substantial justice for the administration of which it exists.

Thus there is no doubt that the provisions of Sections 13 to 15 of the Court Fees Act are not exhaustive and that the inherent power of the court u/s 151, CPC can be exercised for the purpose of ordering refund of court-fee in a fit case even though that case does not come within the scope of Sections 13 14 or 15 of the Court Fees Act. .

4. It was observed by Peacock, C J., in Hurro v. Sooraodhonee (1868) 9 SWR 402:

"Since laws are general rules they cannot regulate for all times to come so as to make express provisions against all inconveniences, which are infinite in number, and so that their dispositions shall express all the cases that may possibly happen. It is the duty of the Judges to apply the laws not only to what appears to be regulated by their express dispositions but to all the cases to which a just application of them may be made, and which appear to be comprehended either within the express sense of the law or within the consequences that may be gathered from it."

The inherent powers of this court, provided u/s 151, CPC are meant for the purpose of doing real and substantial justice in matters before it and the said power can justly and properly be invoked in the interest and/or to meet the ends of justice where there is no other remedy available to a party. Every court has power to act *ex debito justitiae* to prevent injustice or unnecessary hardship to a party. The inherent power has been conferred on the courts to do the right and/or to undo a wrong in the administration of justice, and in that direction all necessary orders can be passed by virtue of the inherent powers excepting those which are expressly or by necessary implication prohibited by the law.

Excepting such cases of prohibition, the law, for obvious reason, does not limit or restrict the exercise of the inherent powers by courts to any particular type or class of cases; and the courts also do not hazard to give an exhaustive list of cases in which the said power can be exercised. Exercise of such powers has to be left to the discretion of the courts who in the interest of justice and to prevent

any abuse of the process of the court can and should pass necessary and substantial order in that direction, though there may not be any provision for the same in the relevant law.

5. In the Full Bench decision reported in *Munna Lal and Another Vs. Abir Chand*, cited by Mr. Mohanty, the learned Judges on the facts of that case disallowed the prayer of the appellant to refund the court-fee paid on that appeal. The facts, in short, on which the above decision was arrived at, are that the defendants filed the First Appeal and paid the ad valorem court-fee on the valuation of the suit. The decree against which the appeal was preferred was a conditional decree and it had been provided in that decree that if the plaintiff-decree-holder made any default in making a certain payment within the time allowed then the suit must stand dismissed. After the appeal was filed the plaintiff-decree-holder made a default which resulted in the automatic dismissal of the suit. Accordingly the appeal became infructuous. The appellants therefore applied for the withdrawal of the same before it was formally admitted by the court and the court allowed the said prayer.

The appellant thereafter filed an application for the refund of the court-fee paid on the memorandum of the said appeal, and that matter was referred to a Full Bench of that court, which rejected the said prayer on the ground that the amount of court-fee in that case was paid properly and intentionally as the appeal otherwise would not have been entertained at all. On these facts they did not exercise their inherent power to grant the said prayer. Thus the facts and premises in which the said decision was arrived at are entirely different from those in the present case before us and so the same is not an apt citation for this case.

6. In the case reported in *Eagle Plywood Industries Private Ltd. Vs. Amulya Gopal Majumdar and Others*, relied upon by Mr. Mohanty, the court, on the facts of that case, held that no equitable consideration arose for making the order of refund of the court-fee. The facts of this case were that a memorandum of appeal was filed out of time, together with an application u/s 5 of the Limitation Act for condonation of the delay. In order to make the application u/s 5, it was necessary to affix stamps of the full value upon the memorandum of appeal. Without affixing such stamps, the application, u/s 5 could not be entertained. The petitioner moved that application and lost it. On these facts the learned Judges observed that the appellant had taken the risk of either being successful or losing the said application and simply because the said application became unsuccessful that is no reason for exercising the inherent powers of the court for passing an order of refund. Thus the said decision is distinguishable on facts.

A few other decisions in which the prayer for refund of court-fees has been disallowed are all on facts different from the facts of the present case and do not afford a proper guideline to decide a matter of the present nature.

7. The memorandum of appeal filed in this case cannot at all be accepted and

entertained as an appeal, as no leave for the films of the appeal had actually been obtained, and accordingly in the eye of law there was no appeal before this court against the judgment and decree of the Single Judge. Merely because a memorandum of appeal with court-fee paid thereon was filed in the office of this court and the office appended a number to it. It did not become an appeal for any intent or purpose. This memorandum of appeal, as stated earlier, was filed because of the mistaken impression of the counsel of the petitioner that leave to appeal as required had been granted in the case, though in fact no such leave had been granted.

Relying on the mistaken impression of the lawyer the petitioner had to pay good money for no cause or purpose. As is evident from the facts of the case the lawyer, at the time he advised his client to pay the court-fees, was certainly labouring under an honest belief that the required leave had been granted. As soon as it was discovered that no leave had been granted to file the appeal, the petitioner's lawyer made this move for the refund of the court-fee. The appeal thus was filed with the abovementioned mistaken impression of the lawyer and the lawyer immediately on the discovery of the real fact has made a move for the refund of the court-fee. The appeal as such has not been entertained, nor any order on that appeal has so far been passed by this court. The only matter which so far has been dealt with by this court is relating to the fact as to whether leave, as required, was granted or not. The matter which has come before us is only a matter relating to the refund of the court-fee and we are called upon to decide that matter on the petition filed to that effect.

In the decisions reported in Kumud Nath Das Saha and Others Vs. Government Pleader, the principle upon which the courts acted u/s 151, CPC seems to be that if a party paid court-fees which he was not liable to pay or paid court-fees more than what he was liable to pay through mistake or inadvertence. Government could not be allowed to take advantage of such mistake.

In the facts and circumstances under which court-fee was paid in this case and as matters stand at present as stated above, in our view this it a fit case in which on equitable considerations and for doing proper justice to the case, the inherent powers of the court can lastly be exercised for passing an order directing refund of the court-fee paid on the memorandum which has been numbered as A. H. O. No. 31 of 1974.

8. Accordingly a certificate be issued in favour of the petitioner authorising him to take refund of the court-fee paid by him on his aforesaid memorandum. The said memorandum be struck off from the registry of this court and be returned to the petitioner.

Mohanti, J.

9. I agree.