
(1953) 09 CAL CK 0004
In the Calcutta High Court
Case No : F.A.T. No. 1834 of 1951

Mayasankar Vyash (Vallavji) and Others APPELLANT
Vs
Gouri Sankar Matilal and Others RESPONDENT

Date of Decision : 10-09-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1954 Cal 256 : 58 CWN 463 : (1955) 2 ILR (Cal) 158

Hon'ble Judges : R.P. Mookerjee, J; P.N. Mookerjee, J

Bench : Division Bench

Advocate : Hemanta Kumar and Sudhir Kumar Dutta, Hemendra Kumar Das,
Govt. Pleader, for the Appellant;

Judgement

1. The appellants filed this appeal valuing the same at Rs. 10,081/8/- with court-fee stamps for Rs. 772/87-. On an objection raised by the Stamp Reporter a reference was made to the Taxing Officer u/s 5 of the Court-Fees Act. The Taxing Officer held that the valuation, as stated in the memorandum of appeal, was not correct and the amount of court-fee paid was short by Rs. 660/-. The appellants were called upon to file the deficit court-fees of Rs. 660/-. They took time on several occasions but did not file the deficit court-fees.

2. The appellants have now intimated the Court that they have not been able to secure adequate funds and are not in a position to file the deficit court-fees. They have, accordingly, moved the Court for a direction to the office to return the memorandum of appeal along with the court-fees paid. The application is really one for refund of the court-fees paid on the memorandum of appeal.

3. We have heard the petitioners and the Senior Government Pleader.

4. When a party is found to have paid court-fees in excess of what is required to be paid under the law an order for the refund of the excess court-fees should be and is usually made -- "Harihar Guru v. Ananda Mahanti" 40 Cal 365 (A). The same view has been expressed in -- Chaudra Hari Singh and Others Vs. Tipan

Prosad Singh and Others, (B). This is done under the inherent powers of the Court u/s 151 Civil P. C., there being no express statutory provision for refund of court-fees in such cases.

5. There is admittedly no provision in the Court-fees Act or in any other Statute for the refund of court-fees paid on the memorandum of appeal when an appeal is dismissed on the ground that deficit court-fees ordered to be paid have not been paid. As at present advised we are inclined to hold that such refund may be allowed in a proper case in the exercise of the inherent powers of the Court. That, however, would not, as we shall presently see, assist the petitioners before us. In that view of the matter we do not consider it necessary to examine the effect of the decision of this Court in -- "Abodh Bala v. Radha-rani Dasi" 55 Cal WN 417 (C).

6. On behalf of the petitioners reliance was placed on -- J.C. Galstaun Vs. Janaki Nath Roy and Others, . The facts in that case, how-over, were altogether different. A memo, of appeal was filed beyond the period of limitation with an application u/s 5, Limitation Act for condoning the delay. Time was not, however, extended and, during the period when the rule for extension of time was pending, the memorandum of appeal had not been registered in the office. The application was thereupon filed for the return of the memorandum of appeal not yet registered with a certificate authorising the petitioner to receive back from the Collector the amount of court-fees paid on the memorandum of appeal. This was allowed. That decision, therefore, does not go far enough to support the petitioners' claim for refund in the present case.

7. The decision which best supports the petitioner is -- "Bhuneshwari Prasad Bingh v. Kissen Dayal Bhakat" AIR 1923 Pat 600 (E). A memorandum of appeal was returned to the appellants on the ground that it was not properly stamped and the Court, purporting to follow the Calcutta decision, -- " (A)", directed a refund aS pointed40 Cal 365 out already the Calcutta decision is no direct authority for refund of court-fees in such cases. At the most it may be relied on in such connection as showing that the Court has inherent power to direct a refund in proper cases u/s 151 Civil P. C. Reliance was placed also on -- Chaudra Hari Singh and Others Vs. Tipan Prosad Singh and Others, (B)" and -- "in the matter of G. H. Grant" 14 WR 47 (F). Both these decisions, however, also relate to cases where court-fees were paid in excess by mistake or otherwise.

The decisions relied on by the Patna High Court in -- "Bhuneshwari Prasad"s case (E)", do not, therefore, by themselves alone warrant the order for refund of court-fees made in that case. That order, however, may be supported on the view that there the learned Judges apparently found that the particular circumstances of that case called for the exercise of the inherent powers of the Court in the matter of refund of court-fees and the refund was actually ordered in the exercise of such inherent powers.

8. The rulings cited by the petitioners" learned Advocate are therefore authorities

only to show that refund of court-fees may in a proper case be ordered u/s 151 of the Code, and -- Bhuneshwari Prasad Singh and Others Vs. Kishen Dayal Bhagat and Others, (E)", would only be an instance of such refund where the party failed for some justifiable cause to pay deficit court-fees. In the present case we find no such justifiable cause and we are not satisfied that the circumstances before us justly call for the exercise of our inherent powers in the petitioner's favour. We, accordingly, refuse the appellant's prayer for refund of court-fees.

9. The only order then which the petitioners can ask for in the case now before us is for a return of the memorandum of appeal with a note that they are not entitled to a refund of the court-fees paid and we order accordingly.