

(1950) 02 PAT CK 0025
In the Patna High Court
Case No : M.J.C. No. 248 of 1949

Mt. Bibi Aliqunnissa and Others

APPELLANT

Vs

Sk. Md. Shafique and Others

RESPONDENT

Date of Decision : 07-02-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1950 Patna 358

Hon'ble Judges : Reuben, J;Jamuar, J

Bench : Division Bench

Advocate : Syed Hassan, for the Appellant;

Judgement

1. The question raised in this case is whether this application for the restoration of Second Appeal no. 254 of 1949, which stood dismissed for failure to deposit deficit court-fees, is maintainable u/s 151, Civil P. C., or can only be entertained as a petition in review,

2. The petitioners are the plaintiffs in a suit for partition. Their suit was decreed in part. The decree was upheld by the Court of first appeal. They then came in appeal to this Court. In the Courts below they paid merely a declaratory court-fee. The Stamp Reporter in this Court objected that, as regards a portion of the property forming the subject-matter of the suit, the suit was of the nature of a title suit, and therefore an ad valorem, court-fee was payable. The report was accepted by the Taxing Officer, and the necessary court-fees on the memorandum of appeal was paid. When the appeal came before the Bench, the stamp report as to the liability to pay the deficit court-fee in the Courts below being accepted by the learned advocate for the appellants, a direction was made that, failing deposit of the deficit court-fee within two months the appeal would stand dismissed. This order has become final. Hence, the present application.

3. The maintainability of this application u/s 151 is challenged on the authority of Rameshwardhari Singh v. Sadhu Saran Singh 2 Pat. 504 : A. I. R. 1923 Pat.

854 , Ganga Prasad and Another Vs. Sm. Girja Devi, and certain unreported cases. The learned advocate for the petitioners has rightly distinguished these cases, on the ground that the two reported cases are cases in which a plaint was dismissed for default is paying the deficit court-fee on the plaint itself and, in Miscellaneous Judicial Case No. 178 of 1948 and second Appeal No. 503 of 1947, the deficit in court-fee was on the memorandum of appeal. First Appeal No. 102 of 1918 was decided on its own peculiar facts, namely, that the petitioner by his conduct had accepted his petition as one in review.

4. It has been contended that the order of this Court should be read, u/s 12, Clause (ii), Court-fees Act, read with Section 10, Clause (ii) of that Act as an order dismissing the suit. Clause (ii) of Section 12 empowers an appellate Court to consider the question of the court-fee payable on a plaint or memorandum of appeal in the subordinate Court, when it thinks that the question has been decided to the detriment of the revenue and, if the additional court-fee which it finds to be payable is not paid within the time fixed by it, Clause (ii) of Section 10 directs the appellate Court to dismiss the suit. It is contended that, when this Court passed the order directing that the appeal shall stand dismissed for default, it must be taken to have intended the order to operate as an order of dismissal of the suit and that the appeal itself should be dismissed as having become infructuous in consequence. It appears to us that this would certainly have been the correct order to pass in the circumstances of the case. But, since the order actually passed has not taken that form, we would interpret it on its own terms as an order of dismissal for default in respect of which applications for restoration are entertained by this Court u/s 151. Let there be an order accordingly.