
(2009) 08 AHC CK 0104
In the Allahabad High Court

Mustaque Ali

APPELLANT

Vs

Net Ram Gangwar

RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 102, 151

Citation : (2009) 08 AHC CK 0104

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ran Vijai Singh, J.—Civil Misc. Withdrawal Application No. 83885 of 2009 is taken up for orders.

2. This is an application filed by the appellant u/s 151 of CPC (hereinafter referred to as C.P.C.) seeking refund of court fees of Rs. 1558.00/- paid in Second Appeal No. 885 of 2008 Mustaque Ali v. Net Ram Gangwar.

3. Submissions of learned Counsel for the appellant is that the appeal was dismissed under Order 41 Rule 11 of C.P.C. holding it as not maintainable, therefore, Court fee already paid should be refunded. I have heard Sri Tahir Hussain Farooqui, learned Counsel for the applicant/appellant.

4. The facts giving rise to this case are that the defendant-applicant/appellant has filed this Second Appeal against the judgment dated 4.9.08 and decree dated 10.9.08 passed by Addl. District Judge Court No. 7 Bareilly in Civil Appeal No. 1/08 Netram Gangwar v. P.K. Rastogi and Ors. arising out of judgment and decree dated 26.10.07 passed in Recovery suit No. 237/2005.. The plaintiff's case was for recovery of Rs. 8000/-and the suit was dismissed on 26.10.07. The appeal filed by the plaintiff-respondents was allowed by lower appellate court on 4.9.08, against which the present second appeal has been filed in which Stamp Reporter has raised preliminary objection with regard to maintainability of second appeal in view of Section 102 of Code of Civil Procedure, according to which no

second appeal shall lie for recovery of money less than 25,000/-. This appeal was dismissed on 16.10.08 as not maintainable.

5. However, at the time of dismissal of appeal, learned Counsel for appellant has submitted that liberty be given to file writ petition. His prayer was considered as mis-conceived and the court has observed that since the appeal was dismissed as not maintainable, therefore, it would not debar the appellant to avail any other remedy if available under the law. Now present application has been filed for refund of court fees.

6. Court fee is required to be paid under the provisions of the Court-Fees Act which clearly provide that unless the necessary court-fee has been paid no document of the kind chargeable with court-fee shall be filed, exhibited or recorded in any court of justice. No document in respect of which court fee should be paid but has not been paid can therefore be of any validity and no court can act upon it. The appellant had deliberately and voluntarily paid the court fees. Even at the time of presentation of appeal he has not made prayer to the court for withdrawal of appeal as not pressed and pressed the appeal and the court has dismissed the same holding it as not maintainable on 16.10.08. Since the court fee has been paid under the Court Fees Act, therefore, unless there is any provision under the Court Fees Act to refund the court fees, the inherent power of the Court u/s 151 of C.P.C. to my mind, cannot be invoked. The Court Fees Act is self contained Act and provisions to pay the Court fee and its refund has been given in the said Act. Section 13 of the Court Fees Act deals with the refund of Court fees paid on memorandum of appeal which is reproduced below:

13. Refund of fee paid on memorandum of appeal-If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in 2 Section 351 of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that, if in, the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

7. Since there is a provision under court fee Act to get refund of court fee therefore to take help of other statute is impermissible and the application has to be decided under the four corners of the relevant section of court fee Act. In the case of Jawahar Singh Sobha Singh Vs. Union of India (UOI) and Others, it has been observed that if a statutory enactment provides a remedy for protection against administrative aggression in the form of the illegal or erroneous extraction of a tax, that remedy must be regarded as exclusive and the Courts

have no power to intervene. It has been observed in para 16 of the above case that "Secondly it has failed to take into consideration the fact that it is the duty of the Court to ascertain the intention of the Legislature and to carry such intention into effect to the fullest degree even though such legislation appears to the Court to be unfair, inequitable or unjust. If the statute is ambiguous in its terms and fairly susceptible of two or more constructions, the Court will avoid a construction which would render the statute productive of injustice, unfairness, inconvenience, hardship or oppression and will adopt a construction in favour of an equitable operation of the law and which will best subserve the ends of justice.

8. If, on the other hand, the language of the statute is plain and unambiguous and conveys a clear and definite meaning, the Courts have no power to give the statute a meaning to which its language is not susceptible merely to avoid that which the Court believes are objectionable, mischievous or injurious consequences. A Court has no power, inherent or otherwise, to nullify, destroy or defeat the intention of the legislature by adopting a wrong construction or to take shelter behind the comforting thought that Courts of law have been established and ordained for the purpose of promoting substantial justice between the parties and that a technicality should not be permitted to override justice.

9. The Courts have no power to modify the provisions of law even if those provisions are not as convenient and reasonable as the Courts themselves could have devised. If there is a general hardship affecting a general class of cases, the hardship can be avoided by a change of the law itself and not by judicial action in the guise of interpretation. If there is a particular hardship from the particular circumstances of the case, it would be extremely dangerous to relieve it by departing from the provisions of the statute. In any case a Court has no power to circumvent the provisions of a statute, for whatever is prohibited by law to be done directly cannot legally be effected by an indirect and circuitous contrivance.

10. It has been observed in para 17 of the above case that "Thirdly, the Courts have failed to recognise the basic fact that although a Court possesses, all the inherent or implied powers necessary to discharge, the onerous duties imposed upon it by the Legislature, and although it is the duty of every Court to maintain its inherent jurisdiction vigorously, a Court is not wholly independent of the Legislature and cannot disregard the mandate issued by it in the form of a statute.

11. All inherent and implied powers must yield to the power of statutory enactments (Brydon-jack v. State Bar 66 ALR 1507 at p. 1509 (T), for no Court of Law possesses inherent power to dispense with the provisions of a statute: AIR 1935 85 (Privy Council) . Jurisdiction is not a matter of sympathy or favour 1919 63 LEd 313 at p. 315, and it is not open to a Court by the exercise of inherent power to exonerate a litigant from an obligation imposed upon him by law Indu Bhusan Roy Choudhury Vs. Secy. of State, and Karfule Ltd. Vs. Arical Daniel Varghese,

12. It has been observed in para 18 of the above case that "The legal principles set out in the preceding paragraphs have been adopted and applied in a very large number of cases and Judges have taken the view that the power of a Court to grant refunds must be confined within the limits of statutory provisions. Refunds may also be granted when court fee has been paid in excess by inadvertence or by a mistake of the Court. Thus it has no power to order a refund of court-fees when the suit or appeal has been dismissed on the ground that a deficit in the court-fee order to be paid has not been paid *Janak Prasad Vs. Askaran Prasad*, or when remand order is passed on any ground other than a ground mentioned under Order 41, Rule 23 *Umar Din v. Umar Hayat* AIR 1927 Lah 886 (1) (Y) *Chokkalingam Ambalam v. Maung Tin* AIR 1936 Rang 208 (FB) (Z), or when a memorandum of appeal not numbered as appeal owing to reluctance to pay court-fee is filed and is withdrawn by the party before numbering *In re, Rachkonda Nagarathnam*, AIR 1950 Mad 629 (ZI), or when an appeal which was preferred to the High Court was withdrawn as having been settled out of Court *In re., Karfule Ltd. Vs. Arical Daniel Varghese*, or when an appeal presented by a bank to one High Court could not be proceeded with as another High Court ordered the bank to be wound up (*s*) *Discount Bank of India Vs. A.N. Mishra*, or when the petitioner sought a certain relief in the plaint or in the memorandum of appeal but later had it deleted *Om Prakash Gupta Vs. The State of Uttar Pradesh*, *Shri Om Prakash Gupta Vs. The United Provinces*, or when an appeal which was competent when filed had to be dismissed in view of the provisions of a new Act which came into force while the appeal was pending in Court *Prabhunath Vs. Mst. Khadijatul Kubra and Others*, or when the plaintiff was entitled to file the suit in the District Munsiff's Court at the time the suit was filed but where this power was taken away during the pendency of the litigation *Secy of State V.A. Veerayya Vandaya* AIR 1940 Mad 451 (Z5). The Courts have resolutely refused to depart from the provisions of the statute even in cases of manifest hardship and oppression for it is well known that hard cases make bad law."

13. After discussing so many cases, Full Bench ultimately came to the conclusion that power of a Court to remit or refund court-fees is confined only to fees which have been illegally or erroneously assessed or collected, and does not extend to fees which have been paid or collected in accordance with the provisions of the Court-fees Act.

14. Similar view has been taken by Full Bench decision of this Court in case of *Munna Lal and Another Vs. Abir Chand*, there the dispute was whether court fee can be refunded by exercising inherent powers of this Court vested u/s 151 C.P.C. After taking into account, so many cases of the Apex Court as well as of this Court has opined as under:

Here, the amount was paid properly and intentionally as the appeal would not have been entertained if it had not been paid. There is therefore no question of its being ordered to be refunded either in the exercise of the inherent powers of

this Court or otherwise.

15. In the present case, since the court-fee has been paid intentionally with a view to press the appeal according to Court-Fees Act, therefore, in view of above decisions of Full Bench, there is no occasion to entertain the petitioner's application for refund of court fee while exercising the inherent power of this Court vested u/s 151 of the code of civil procedure. Application is rejected accordingly.