

(1938) 10 PAT CK 0001
In the Patna High Court

Sarjug Prasad Sahu and Others

APPELLANT

Vs

Surendrapat Tewari and Others

RESPONDENT

Date of Decision : 13-10-1938

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 107(2)
Court Fees Act, 1870 — Section 13

Citation : AIR 1939 Patna 137

Hon'ble Judges : Wort, J;Agarwala, J

Bench : Full Bench

Judgement

Wort, J.—In the litigation out of which this second appeal has arisen, judgment was delivered against the plaintiffs on 23rd August 1935. The decree was signed on 31st August. The appellants applied for copies of judgment and decree and obtained the same on 5th September. The Civil Courts were closed from 27th September to 30th October on account of the annual vacation. On the 31st day, on which the Courts re-opened, the appellants presented a memorandum of appeal which the District Judge directed to be registered. The memorandum, however, was insufficiently stamped.

2. It bore a stamp of Rs. 1-8-0 instead of stamps worth Rs. 300. At the time of presenting the plaint, the appellants filed a petition stating that they had been unable to obtain the requisite court-fee stamps at the Treasury because the Treasury Officer said that it was not a Treasury-day. The next day the District Judge dismissed the appeal for insufficiency of court-fee. This appeal has therefore been preferred by the plaintiffs. The question that has been raised is whether the matter is governed by Order 7, Rule 11, Civil P.C., which empowers a Court to reject a plaint

where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so.

3. On the interpretation of this clause which has been adopted in the High Courts

of India, the Court must afford the plaintiff time to supply the deficiency in court-fees where the relief is properly valued. The question whether the rule applies to appeals has been debated in the Courts, and, so far as this Court is concerned, it was recently decided in Second Appeal No. 289 of Bahuria Ram Sawari Kuer v. Dulhin Motiraj Kuer reported in A.I.R (1939) Pat. 83 in which the decision of the Bombay High Court in Achut Ramchandra Pai Vs. Nagappa Bab Balgya, was followed. The Bombay High Court held that the effect of Sub-section 2 of Section 107, Civil P.C., was to make the provisions of Order 7, Rule 11, applicable to appeals. That being the case, in the present instance the Court below" having registered the appeal should have afforded the appellants an opportunity of making good the deficiency in the court-fee payable on the memorandum of appeal.

4. The order of the Court below is therefore set aside and the appeal is remanded to it to be disposed of in accordance with law. The parties will pay their own costs in this appeal. u/s 13, Court-fees Act, the appellants are authorized to receive from the Collector of Patna, the amount of court-fees which they have paid on the memorandum of appeal in this Court.

Agarwala J.

I agree.