

(1927) 04 MAD CK 0035
In the Madras High Court

S.P.S.A.L. Ramaswami Chettiar

APPELLANT

Vs

V.C.T.N. Chidambaram Chettiar

RESPONDENT

Date of Decision : 20-04-1927

Acts Referred:

Citation : 105 Ind. Cas. 620

Hon'ble Judges : Jackson, J

Bench : Single Bench

Judgement

Jackson, J.—This petition is against the order of the Subordinate Judge of Devakotta allowing an amendment of the written statement on condition of defendant's paying plaintiff Rs. 150 by way of costs. Defendant paid the money which was taken by plaintiff's Vakil "under protest" as he intended to challenge the order in this Court.

2. Respondent raises a preliminary point whether plaintiff, having taken the money although under protest, is not estopped from questioning the order.

3. It has long been recognized that where a party accepts costs under a Judge's order, which, but for the order, would not at that time be payable, he cannot afterwards object that the order was made without jurisdiction. *King v. Simmonds* (1846) 7 Q.B. 289 : 115 E.R. 493 and *Tinkler v. Hilder* (1849) 4 Ex. 187 : 7 D. & L. 61 : 18 L.J. Ex. 429 : 13. Jur. 684 : 154 E.R. 1176. This ruling was followed in *Banku Chandra Bose v. Marium Begum* 37 Ind. Cas. 804 : 21 C.W.N. 232 in circumstances similar to those of the present case; but the petitioner relies upon an obiter dictum in that case of the Chief Justice:

Personally, I cannot help thinking that the defendants would have been in a much better position if...they had said "we intend appealing against this order and we only accept, this sum...under protest." The defendant's Vakil himself in that case when questioned by the Court said that receipt under protest would have been of no avail, and cited *Croft v. Lumley* (1858) 6 H.L.C. 672 : 27 L.J.Q.B. 321 : 4 Jur.903 : 6 W.R. 523 : 10 E.R. 1459 : 108 R.R. 252. I think, with

all respect to the Chief Justice that he was not right. That ruling is based on the broad principle that what is done, not what is said is the all important matter. The petitioner obtained money which he could not otherwise have got, and although he protested he enjoyed that benefit. He must be taken to have admitted that the order was within jurisdiction.

4. In this case there is no question of compulsion which distinguishes it from an otherwise similar case in *Mani Lal Guzrati v. Harendra Lal Roy* 8 Ind. Cas. 79 : 12 Cri.L.J. 556. The money might easily have lain in deposit. Nor do I think that the authorities quoted above are shaken by *Oliver v. Nautilus Steam Shipping Co. Ltd.* (1903) 2 K.B. 739 : 72 L.J.K.B. 857 : 89 L.T. 318 : 19 T.L.R. 697 : 52 W.R. 200 : 9 Asp. M.C. 436 a special case under the Workmen's Compensation Act.

5. The petition is dismissed with costs.