
(1986) 10 OHC CK 0028
In the Orissa High Court
Case No : Misc. Case No. 650 of 1986

State of Orissa

APPELLANT

Vs

Rajanikanta Mohapatra

RESPONDENT

Date of Decision : 27-10-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 149

Citation : AIR 1988 Ori 56 : (1987) 63 CLT 390

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : Addl. Standing, for the Appellant;

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—Application u/s 149 CPC has been registered as a Miscellaneous case which is being disposed of by this order.

2. Court-fee of Rs. 603/- is payable by the appellant-petitioner on the memorandum of appeal. Without paying the same, application has been filed to extend the time by four months to pay the court-fee. The relevant portion of the petition reads as follows :--

"1. That today the appellant is filing the appeal without court-fee.

2. That the court-fee payable on the memorandum of appeal is Rs. 603.00 which is to be challaned from the Treasury.

3. That since the amount required for purchasing court-fee was not received from the concerned department in time it has not been possible to file the necessary challan in the Treasury for purchasing court-fee.

4. That it is necessary in the interest of justice that four months" time be granted to the appellant to file the requisite court-fee in this case.

Prayer.

The appellant, therefore, prays that your Lordships would be graciously pleased to extend the time for payment of the requisite court-fee by four months and pass such other orders as your Lordships think fit and proper in the facts and circumstances of the case.

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3. u/s 4 of the Court-fees Act, 1860 the memorandum of appeal is prohibited to be filed or received where the proper fee has not been paid. The language of the Section 4 in the taxing statute is mandatory. The relevant portion reads as follows :--

"4. Fees on documents filed, etc., in High Courts in their extraordinary jurisdiction. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Court in any case coming before such court in the exercise of its extraordinary original civil jurisdiction,

or xx xx xx xx xx In their appellate jurisdiction -

xx xx xx xx or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

XXX XXX XXX unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document."

4. The provision being in a taxing statute is to be interpreted strictly. Equity has no place in taxing statutes. To mitigate the rigour, Section 149 C.P.C. has been enacted which has the effect of being a proviso to Section 4. Therefore, both the provisions are to be read harmoniously. See Mannan Lal Vs. Chhotaka Bibi, (Dead) by Lrs. B. Sharda Shankar and Others, .

5. The language of Section 149 C.P.C. makes it clear that permission by the court to pay the proper fee later is discretionary. On mere asking for the same by the defaulting litigant, Court would not allow to pay the same. Court is to be satisfied that there was sufficient cause for non-payment of the proper fee. Section 149 C.P.C. reads as follows : --

"149. Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such Court-fee, and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

6. The language of the Section 149 C.P.C. makes it clear that wide discretion has been vested in the Court to allow late payment of proper fee. However, wider the discretion, greater is the restraint. Therefore, while considering to exercise the

discretion, court is to examine the conduct of the litigant.

In AIR 1923 Pat 56 Deonath Sahai v. Radha Kanta Prasad while construing Section 6 of the Court-fees Act which is similar in language of Section 4 it was held that the Legislature did not intend that time should be given as a matter of course even where the plaintiff had deliberately and without any excuse paid an insufficient court-fee.

In Deonandan Misra Vs. Ganga Prasad and Others, , it was held that the Court may not exercise its discretion in favour of an appellant when the question of the amount of court-fee is not in doubt or when no honest attempt appears to have been made to comply with the law.

In Basawwa Dada Mali Vs. Limbawwa Dada Mali, , it has been observed that discretion is not to be exercised in favour of a party who has been negligent.

The Allahabad High Court in the Full Bench decision reported in S. Wajid Ali Vs. Mt. Isar Bano Urf Isar Fatma, held that time may be extended where inability to pay the court-fee is due to circumstances beyond the control of the litigant.

Cumulative effect of the aforesaid decisions is that mere inability to pay the court-fee at the time of presenting the memorandum of appeal is not a sufficient ground for indulgence by the Court to exercise the discretion u/s 149 C.P.C. in favour of the litigant.

7. Therefore, it is to be examined if there was sufficient cause for the appellant not to pay the proper fee under the Court-fees Act at the time of presentation of the memorandum of appeal.

8. The impugned judgment was delivered on 23-12-1985. Certified copy of the same was applied for on 15-1-1986 along with the requisite stamps and folios. It is astonishing that to prepare the hand written certified copy of eighteen pages, the trial court took about six and half months. It was made ready on 30-7-1986. Taking into consideration the period available u/s 12 of the Limitation Act, the appeal could have been preferred in the 1st week of October, 1986. Thus, the appeal was preferred much before the expiry of the period of limitation. One of the grounds to exercise the discretion is that the court-fee (stamp) was to be obtained from the treasury. The appellant could have first obtained the court-fee stamp and then presented the memorandum of appeal. Where the period of limitation was going to expire, the ground may be sufficient to allow to file the appeal without court-fee. Where, however, there was sufficient time, there was absolutely no justification for filing the appeal without the proper fee being paid.

9. The next ground for the inability to pay the court-fee is that the money had not been received from the department. Vagueness of the statement is apparent on the face of the statement. State of Orissa is the appellant. It has no living mind. It is to function through individuals in accordance with the Rules of business would not (Sic) indicate any provision where an appeal can be filed in breach of the mandatory provision u/s 4 of the Court-fees Act even if the money

has not been received from the department. The Government Pleader authorised to act on behalf of the State Government is not bound to prefer the appeal without proper fee being paid much before the expiry of the period of limitation without the money being received. There was also no justification for the department to instruct the Government Pleader to prefer the appeal without payment of proper fee. Legislature has made no exception in respect of State Government so far as payment of court-fee. This is a clear case where the deficiency in the proper functioning of individuals invites blame to the State Government which has no living mind. Therefore, persons in charge of administration are to take care of the individuals through whom the State Government is required to function so that the functions of the State Government do not become blameworthy. Even if it would have been accepted as a sufficient cause for preferring the appeal without court-fee, no explanation has been given as to why the department while sending the, documents for preferring an appeal has not paid the money for the purpose of court-fee. Although, the amount of court-fee would ultimately go to the State Exchequer, State Government is bound by the law of the land. By filing of an application u/s 149 C.P.C. with vague assertions, for extension of time to pay a paltry sum of Rs. 603/-, it should not have been expected that the discretion would be exercised in its favour.

10. To examine the bona fides of the departmental officers, I called upon the learned counsel for the appellant to disclose the date when the amount was received to get the court-fee stamp from the treasury. He disclosed that the amount was received on 28-8-1986 and at that stage submitted that the court-fee has already been paid on 29-9-1986. If this fact would have been brought to my notice on 23-10-1986, when the matter was listed on the basis of the office note dated 30-8-1986, I could have disposed of the application that day. It seems, no record has been maintained in this case by the appellant to bring the fact to the notice of the court considering the application u/s 149 C.P.C. Court's registry is also not free from blame. Before listing a matter indicating the deficiency of a litigant, up to date position should have been examined. This much is enough to indicate that lack of co-ordination has resulted in this unfortunate situation. If the amount was received on 28-8-1986, I fail to appreciate why it took a month to obtain the court-fee stamp.

11. The teamed Additional Government Advocate submitted that the proper fee having already been paid since 29-9-1986, the same should be accepted when the same had been filed within the period of limitation for preferring the appeal and the defects if any, ought to be ignored. There is force in his contention. When the appeal could have been filed on 29-9-1986, serious view should not be taken of the lapses. In that view, I accept the submission and extend the time till 29-9-1986 for payment of court-fee specially when the application u/s 149 C.P.C. remained pending till date. This, however, does not mean that my discussion in earlier paragraphs were not necessary. When the application u/s 149 C.P.C. was filed and was the subject matter for consideration, judicial approach necessitated

the consideration of various facts to draw legitimate inferences for exercise of the discretion.

12. It would not, however, be futile exercise to indicate the various defects found out in this case. They are : --

1. It took 6 1/2 months for furnishing a certified copy by the trial court.
2. The petition u/s 149 C.P.C. was filed without application of mind.
3. Even after receipt of the money it took one month to obtain the court-fee stamp.
4. About one month after the court-fee stamp was filed, the matter was listed without any indication in the order-sheet that the court-fee amount has been filed though late. The officers in charge of administration in the various wings ought to take note of the defects concerning them to deal with the delinquency if any at their end. In order to preserve the prevalence of the rule of law and to avoid future inferences of lack of vigilance, the authorities concerned should have a thorough probe into the matter. Although this single instance has come to light, there may be many such lapses for which permanent remedy is to be chalked out.

13. In the result, for the reasons indicated above, the court-fee stamp having already been paid, the time is extended till 29-9-1986 when the same was filed and the misc. case is allowed. Copies of this order be sent to the Revenue Department, Law Department of the State Government and the District Judge, Sambalpur for the needful.