
(1959) 11 PAT CK 0009
In the Patna High Court
Case No : M.A. No. 636 of 1958

Syed Shah Shalih-uddin Ahmad	Vs	APPELLANT
Shah Nasir Uddin Ahmad		RESPONDENT

Date of Decision : 09-11-1959

Acts Referred:

Court Fees Act, 1870 — Article 1, 19

Citation : AIR 1961 Patna 245

Hon'ble Judges : S.C. Misra, J;K. Dayal, J

Bench : Division Bench

Advocate : Amin Ahmad and M. Rehman, for the Appellant; S. Ali Ahmad and Syed Hasan, for the Respondent

Final Decision : Allowed

Judgement

1. Mr. Syed Hasan appearing on behalf of the respondents has raised a question as to his liability to pay the usual amount for a court-fee stamp of Rs. 4/8/- on his application for payment of Rs. 1880/- which was deposited by the appellants' lawyer to the credit of his clients under the order of the Registrar. The facts, in short, are these. When the appellant made an application for stay of operation of the decree passed by the court below, against which the appellant preferred a miscellaneous appeal to this Court, an ad interim stay was granted on the condition that he would deposit a sum of Rs. 1880/- in this court

The order of ad interim stay was, however, vacated at the final hearing. Thereafter the respondents prayed that they might be allowed to withdraw the sum as ordered by the Bench to be deposited as a condition precedent to the grant of ad interim stay. The prayer was allowed and it was directed that the respondents were at liberty to withdraw the amount. The present application for withdrawal has been filed by the respondents in pursuance of that order.

The office has put up a note that the application in question must bear the usual court-fee stamp as for a petition to this court in terms of Schedule II, Article 1(d)

of the Court-fees Act. Learned counsel raised an objection to the demand of the office and the matter was accordingly put up before the learned Registrar for necessary orders. Considering, however, the argument advanced by Mr. Syed Hasan and the note put up by the office, the learned Registrar thought it expedient to refer this matter to the Bench for a judicial pronouncement with regard to the practice to be followed in such cases.

2. The objection raised by the office is based on Section 19 of the Court-fees Act which provides for exemption from payment of court-fee only of documents enumerated in that section. It has been pointed out that the present application is not one of the class provided for in Section 19 of the Court-fees Act and as such this document is not to be treated as one exempt from the payment of court-fee stamp. Reference has also been made to the case of Haridasi Debi Vs. Gopeshwar Pyne and Others, .

That was a regular petition for refund of certain sum to the credit of the petitioner after deducting the necessary costs incurred by the office in connection with the said appeal, which was an appeal preferred to the Judicial Committee of the Privy Council, It was not an appeal pending in the High Court at Calcutta. It is no doubt true that in that case the money was lying to the credit of the Registrar of the Calcutta High Court in the bank and it was accordingly urged on behalf of the petitioner that this was a case covered by Section 19, Clause 20, of the Court-fees Act because it was money due by Government to the petitioner.

Their Lordships, however, considered the form of the petition which was a regular one addressed to the learned Chief Justice Sir Lancelot Sanderson and his companion Justices. It is the usual heading for a regular petition in the High Court. Apart from that the petition had to be considered by the learned Judges and an order had to be passed inasmuch as certain matters had to be gone into as to what was the amount incurred in connection with the appeal which had to be deducted out of the sum which might be refundable to the petitioner.

In our opinion, therefore, the learned Judges held in that view of the matter that it was a regular petition which came within the terms of Schedule II, Article 1 (d) of the Court-fees Act. Reference has also been made to the order passed by a learned Single Judge of this court in Second Appeal No. 1426 of 1944, being Order No. 23 dated 30-4-1946. That order was passed in connection with an application u/s 5 of the Limitation Act for condonation of delay in filing the above appeal. The learned judge while allowing the application ordered that time was to be extended provided the appellants deposited Rs. 32/- for the cost of the respondent. An application was made by the respondent for the withdrawal of this sum.

He was asked to affix necessary court-fee stamp under Schedule II, Article 1 (d) by the office and the applicant in that case claimed exemption u/s 19, Clause 20 of the Court-fees Act. The learned judge held that it was not the case of money due by Government. It was money payable by the appellants to the respondent

although it was to be done through the machinery of the court. It was accordingly ordered that the application came within the purview of Schedule II, Article I(d) of the Court-fees Act and must be duly stamped,

3. Learned counsel in Second Appeal no. 1426 of 1944 did not press before the court the consideration of points relevant for coming to a decision in this matter. Learned counsel relied upon Clause (20) of Section 19. He did not argue that before his client was asked to affix the necessary court fee stamp on what was sought to be made on as a petition under Schedule II, Article 1 (d) of the Court-fees Act it must be a petition. Every application is not a petition.

A petition is where certain relief is asked for and upon which the court has to pronounce a decision after considering the merits of the prayer. In the present case, however, where certain sum is payable to a party under the orders of the court, the court has already pronounced as to the right of the party concerned to receive that sum. The application for refund thereafter is in pursuance of such an order and it is purely a ministerial act on the part of the office to comply with the order of the court.

The petition of this character, therefore, may be an application but it is purely ministerial in nature.

4. In the result, therefore, it must be held that any application by a party for a relief upon which the court is not required to pronounce cannot come under the category of a petition under Schedule II, Article 1 (d) of the Court-fees Act. The reason why no provision has been made u/s 19 of the Court-fees Act is that the documents covered therein are those which but for the exemption would come under one or other provisions of the Court Fees Act, and would thus be chargeable for the proper court-fee required.

Primary question, first of all, is what documents have been made chargeable. After charge-ability the question of exemption would arise. The only relevant provisions under which such a document may be made chargeable is Schedule II, Article 1 (d) as I have mentioned above. The matter does not come under any of the charging provisions of the Court Fees Act. The contention of learned counsel, therefore, is correct and his application need not be stamped with any court-fee.