
(1953) 06 CAL CK 0019
In the Calcutta High Court
Case No : Extraordinary Suit No. 14 of 1952

Tarachand Ghanshamdas	Vs	APPELLANT
Sree Radhakrishna Sugar Mills Ltd.		RESPONDENT

Date of Decision : 26-06-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1955 Cal 52 : 58 CWN 87

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : Sankardas Banerjee, for the Appellant; S.M. Basu, General, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This application raises the very Important question of jurisdiction of this Court to grant a certificate for refund of Court-fee when a suit is transferred to this High Court under its Extra-Ordinary Original Civil Jurisdiction under Clause 13 of the Letters Patent. The law and the practice on this point have been at variance, and the practice of the Court itself has not been uniform.

2. This suit was instituted by the plaintiff on 21-12-1951 in the Court of the Subordinate Judge of Berhampore, Murshidabad for a declaration that the Debenture of Trust Deed dated 29-6-1938 constituted a first charge on the properties and assets of the defendant company and for other incidental reliefs for the enforcement of the Trust Deed and the Mortgage created thereunder. The suit was valued at Rs. 15,00,000/- and the Ad Valorem duty of Rs. 10,000/- was paid" thereon in Court-fees. Thereafter an application was made by the defendant company by its Liquidator for a transfer of that suit from Berhampore Court to this High Court. An order dated 19-3-1952 was made on that application by this Court transferring the Berhampore suit under Clause 13, Letters Patent to this High Court. The duty payable on the suit If it were instituted in this Court

would have been Rs. 28/8/- only.

3. On these grounds the plaintiff now makes this application before me for a certificate for refund of the excess Court-fees paid by the plaintiff firm in Berhampore. It is contended that the difference between Rs. 10,000/- paid as Court-fees and Rs. 28/8/- being the fee in this High Court is the excess paid. It is this excess whose refund is now claimed.

4. There is no statutory provision which justifies the issue of a certificate by the High Court for the refund of Court-fees paid in suits transferred to this High Court under Clause 13 of the Letters Patent. What is said is that there is a long standing practice in this Court of granting such certificate. Such a practice it is argued can be supported by invoking the inherent jurisdiction of the Court. The practice further is that after this Court has issued such a certificate the applicant produces the certificate before the Board of Revenue and makes another application before such Board for actual refund and the Board thereupon issues orders for refund of the excess Court-fees. I have failed to find any reason why the Board of Revenue should require a certificate from this Court to enable the applicant to obtain the refund. Such a course puts the certificate of this Court in great peril if the Board of Revenue chooses to dishonour it as it is not bound by any law to accept such a certificate.

5. My attention has been drawn to various cases mostly unreported in proof of such practice. In the Extra-Ordinary Suit No. 1 of 1943 Mr. Justice S.R. Das in -- "Kalyani Basu v. Governor General in Council " (A)" made an order on 20-1-1943 in these terms:

"It is ordered that a Certificate be issued from this Court in favour of the plaintiffs in the above mentioned suit in order to enable them to apply to the Board of Revenue for a refund of the sum of Rs. 2,475/- being the Ad Valorem Court-fee already paid by them at the time of the institution of the Money Suit No. 7 of 1941 in the Court of the First Subordinate Judge at Nadia less the sum of Rs. 35/10/- which would have been payable had this suit been instituted in this Court."

Mr. Justice S.R. Das did not deliver any judgment in support of the order and apparently the point was not argued before the learned Judge. Then again in Extra-Ordinary Suit No. 1 of 1952, -- "Bajoria Ltd. v. Purshottamdas Gajanand (B)", Harries C. J. similarly granted a certificate for refund of Court-fees when a suit was transferred under Clause 13 of the Letters Patent from Cooch Behar Court to this High Court. Here again the records do not show any indication that this practice was questioned. In Suit No. 424 of 1889 in the Subordinate Judge's Court at Khulna between -- "Amarendra Nath Chatterjee v. Girija Nath Roy Chowdhury and others.", I find an order was made on 26-6-1900 to this effect:

"It is further ordered that it be referred to the Taxing Officer of this Court to tax all costs properly incurred by the plaintiff in the Court of the Subordinate Judge of Khulna according to the scale of fees allowed in the lower Court and let credit

be given to the plaintiff as against the fees chargeable to them in this Court for the institution fee paid by them in the said Court at Khulna."

6. On the other hand there are instances which show that a contrary practice has also been followed. In the Extra-Ordinary Suit No. 1 of 1905, Fletcher J. in Appeal on 11-4-1910 refused such an application of the plaintiff in -- "Sree Radhika Mohan Roy v. Kshitish Chandra Acharyya Chowdhury (C)". In that case the plain-tiff also applied to this Court for a certificate for refund of the stamp duty paid by him in the Court of the First Subordinate Judge of 24 Parganas. In the same suit in the trial Court there was even a prior application for a certificate for refund before Mr. Justice Bodilly who also refused the application. In fact the original decree which was made on 30-8-1905 at first contained a direction for issue of the certificate but subsequently that part of the original decree was cancelled and corrected and a note by the hand of the learned Judge annexed to the decree shows that the learned Judge felt the same difficulty in issuing such a certificate as I feel.

7. The practice therefore of this Court on this particular point has not obviously been uniform. Some Judges did issue the certificates and others did not.

8. In these circumstances the point requires to be formally determined on this application. The practice in this regard has been to issue these certificates "ex parte". As the point for decision in the case is one of great importance, I directed notice of this application to be given to the Government Solicitor. The learned Advocate General has appeared for the Government representing the Revenue Authorities. For the applicant, the case has been presented by the learned Standing Counsel.

9. Prior to the Constitution of India in 1950 the then relevant Government of India Acts provided that no High Court had any original jurisdiction in any matter concerning Revenue and it becomes a little difficult to see how such applications for certificates for refund of Court-fees were made to this Court and how such certificates were granted in spite of this statutory provision. All Original Jurisdiction came under this embargo, whether ordinary or extra-ordinary as the Statute then used the words "any original jurisdiction."

10. This practice developed from the false analogy of the Court's power to issue a certificate in cases of over-valuation. In such cases the Court has always the jurisdiction to grant Certificates for refund, and there are very good reasons to support such jurisdiction both on the basis of the Statute and Judicial decisions. For instance in -- "Harihar Guru v. Ananda Mahanty", 40 Cal 365, a Division Bench of this Court on the fact that the appellant's agents had by inadvertence over-paid Court-fees on the Memorandum of Appeal directed the Taxing Officer to issue the necessary certificate to enable the appellant to get a refund of the excess Court-fee from the Revenue Authorities. The certificate granted in that case followed the form used -- "In the matter of G.H. Grant", 14 WR 47 (E).

Now payment under a mistake or Inadvertence when such payment is one of

over-valuation stands on a very different footing. Another Division Bench of this Court in -- J.C. Galstaun Vs. Janaki Nath Roy and Others, said that when the Memorandum of Appeal to the High Court had not been registered on the ground that it was out of time and the delay had not been caused by any lack of bona fides on the part of the appellant he was entitled to a certificate for refund of the Court-fees paid. Such certificate was expressly granted in the exercise of the inherent power of the Court. In fact the learned "Judges expressly invoked Section 151, Civil P. C. for granting the certificate. The correctness of this decision has been Questioned. .

So again in the case of -- "In the Matter of Kumud Nath Das", 39 Cal WN 1074 another Division Bench of this Court comes to the conclusion that when obvious injustice has been done the High Court has inherent power u/s 151, Civil P. C. to direct a refund of excess Court-fees paid in cases which do not come within the purview of the provision of the Court-fees Act relating to refund of Court-fees. That was a suit for enhancement of rent where the plaintiff paid Court-fees on the basis of the enhanced rent on the plaint as well as on the memorandum of appeal to the High Court which was far in excess of the actual fees leviable and the High Court directed refund of such excess amount. Exercising such inherent power D.N. Mitter J. who delivered judgment in this case directed the issue of the necessary certificate so that the plaintiff could get a refund of Rs. 585/- which was paid in excess of the proper Court-fees.

In another case, -- Indu Bhusan Roy Choudhury Vs. Secy. of State, a Division Bench of this Court decided that even apart from Sections 13, 14 and 15, Court-fees Act, the High Court had inherent power u/s 151, Civil P. C. to grant a certificate for refund of Court-fees but made it quite clear that such power was limited to cases where fees not warranted by the Statute had been realised or paid by mistake or inadvertence. This case is of importance because it lays down the principle that such inherent power cannot be used to direct a refund of fees which the party was bound under the law to pay simply for the reason that the proceeding commenced on payment of such fees proved infructuous.

Henderson J. presiding in that Division Bench dissented from the view taken in -- "J. C. Galstaun v. Janaki Nath (P)" and the same dissent was expressed by Nasim Ali J. who delivered a separate judgment but concurred with the opinion of Henderson J. Nasim Ali J. in that case has classified the main categories of cases where the Court is said to exercise its inherent powers to issue a certificate for refund and they are --(1) where excess Court-fees have been paid by inadvertence, (2) where litigants have made excess payments under an erroneous view of the provisions of the Court-fees Act and (3) where the Court has realised excess Court-fee on an erroneous interpretation of the Section of the Court-fees Act. At page 709 Nasim Ali J. observed:

"The principle underlying these cases seems to be that the Government should not profit by the mistake of a litigant or of Court as to the amount of Court-fees payable under the Court-fees Act and in cases of such mistakes the , Court

should order refund for ends of Justice. This is an intelligible principle. Government cannot reasonably object to refund the excess as it is not legitimately due under the Statute."

The present case does not come within the principles adumbrated in that decision.

11. Coming to more recent times the decision in -- "Abodh Bala Ghosh v. Radharani Dassi", 55 Cal WN 417 (I) is relevant on the point of inherent jurisdiction, A Division Bench of this High Court in that case came to the conclusion that the Court had no inherent power to direct the refund of Court-fees and dissented from the view taken in -- "J. C. Galstaun v. Raja Janaki Nath (F)". G.N. Das J. in delivering judgment of that Division Bench lays down that the real test is whether the payment of Court-fees was necessary for the proceedings irrespective of the fact whether the said proceedings succeeded or not.

At page 420 of that Report G.N. Das J. observed:

"his eventual success or failure to obtain the relief claimed by him is wholly immaterial in determining his right to get a refund of Court-fees."

It may be stated here that the Calcutta Division Bench disapproved of the decision -- In Re: Narayana Reddiar, ." In that case where G.N. Das J., delivered the judgment the facts were interesting. There the petitioner filed an Appeal in the High Court out of time and paid Court-fees on the Memorandum of Appeal. He thereafter made an application u/s 5, Limitation Act for extension of time to file the Appeal but that application was dismissed. Thereupon he made an application for refund of Court-fees paid on the Memorandum of Appeal on the ground that the application for extension of time having failed the Appeal could not become effective. On those facts the Division Bench held that even the inherent power of the Court to direct the refund could, not be invoked.

12. The principle behind the Court's inherent jurisdiction to issue a certificate for refund of Court-fees in cases of over-payment through inadvertence or mistake or erroneous interpretation of Court-fees Act has in my judgment been wrongly applied to the case of transfer of a suit to this High Court in its Extra-Ordinary Original Civil Jurisdiction under Clause 13 of the Letters Patent. The inherent power of the Court in this respect operates within the well-defined limits of mistake or inadvertence or wrong interpretation of the Court-fees Act as laid down in the series of decisions of this and other Courts. The case of a suit transferred under Clause 13 of the Letters Patent does not come within these limits, because it is not a case of over-payment either through mistake or inadvertence or erroneous interpretation of the Court-fees Act.

13. The plaintiff properly and rightly instituted the Suit in Berhampore Court in Murshidabad. That was the proper forum and that was the Court which had jurisdiction to receive and entertain the Suit. In order to institute that Suit it was required by law that the plaintiff should pay the necessary Court-fees for that

Court. If he did not then he could not have instituted that suit in that Court and in that event there could be no application for transfer of that Suit under Clause 13 of the Letters Patent. It is necessary to emphasise that under Clause 13 of the Letters Patent, the Suit which is to be transferred is a Suit properly instituted in the right Court. That being so the plaintiff rightly and under proper legal obligation paid the requisite Court-fees under the law and this payment cannot be regarded as through inadvertence or mistake or through any erroneous interpretation of the Court-fees Act. The fact that such suit did not continue in Berhampore Court is to me quite beside the point and immaterial. That suit remains still a transferred suit and the law, procedure and pleading applicable to such Courts is the law, procedure and pleading that will have to be applied even after its transfer to the High Court and indeed even the decree made in that suit cannot be executed after 3 years as distinguished from High Court decrees whose limitation for execution is 12 years.

14. It is therefore clear to my mind that the analogy for certificates for refund of Court-fees in cases of payment of Court-fees under mistake or inadvertence or wrong interpretation of Court-fees Act cannot apply in this case. It is not a case where either the Court-fee has been illegally paid or paid under any mistake or any inadvertence. In the case of a transfer of a suit under Clause 13 of the Letters Patent it is therefore inappropriate to say that there is in that sense any excess payment or payment in excess of what the Court-fees Act directs. It is at best a case that the suit did not continue in the Court where it was instituted after payment of Court-fee required for that purpose. But the payment of that Court-fee was necessary for the initiation of the proceeding irrespective of the fact whether the proceedings succeeded or not or continued to remain in the Court where it was initiated.

Here there is not even the question of success or failure of the proceeding. It is not that the proceedings have become infructuous but they are being continued in a different Court. This case does not come therefore within the principle expounded by G.N. Das J. in 55 CWN 417 or within even any of the limits or categories clearly enunciated by Nasim Ali J. in *Indu Bhusan Roy Choudhury Vs. Secy. of State*, .

15. There are other difficulties in invoking the inherent jurisdiction of the Court to issue a certificate for refund of Court-fees in case of a transfer of suit under Clause 13 of the Letters Patent. First, the Court-fees are paid at a stage long prior to the stage when the suit comes or is brought within the jurisdiction of this Court under Clause 13 of the Letters Patent, and therefore this Court can have no inherent jurisdiction to deal with a matter which was not within its seisin at the time of such payment. No Court in my view should claim to exercise its inherent jurisdiction with regard to matters and acts which are not within its purview and seisin. Even after transfer to this Court, the payment of Court-fees is not an issue justiciable by this Court within the ambit of its jurisdiction under Clause 13 of the Letters Patent which is concerned with this High Court's power

of removal, trial and determination of such Suit.

Emphasis in this context must be laid on the actual terms of Clause 13 of the Letters Patent which give this High Court the power "to remove and to try and determine" such a suit. Refund of Court-fees paid on the plaint in the District Court is not in my view within the powers exercised by this Court in its Extra-Ordinary Original Jurisdiction. Inherent power of the Court should in my opinion be employed to aid the ordinary and statutory jurisdiction of the Court to do complete justice. Secondly the Court-fee is not paid to the Court but to the State and the payment of such fees is an act prior to the litigants come to the Court. All that the Court normally does in this regard is to satisfy itself that the statutory Court-fees have been paid on the plaint. For that is the gate-money which the State takes before it allows a litigant to enter the portals of the Courts of Justice in the land. When however a dispute arises whether under the Statute there has been overpayment under a mistake or inadvertence then the Court has jurisdiction to determine such a dispute. But as I have indicated before no such consideration arises in the case of a transfer under Clause 13 of the Letters Patent.

Lastly the practice of issuing certificate for refund, apart from its being an uncertain practice, has all the demerits of putting such a certificate of this Court on trial before the State Government which in this State is the Board of Revenue. I cannot imagine this Court issuing a certificate which is open to the executive to disregard it as I consider such practice to be repugnant to this Court's power and dignity. A Court passes an order for the purpose of enforcing it and it should not pass any order if it cannot be enforced. Support for some of the views which I have just expressed here can be found from the observations of Chagla C. J. of the Bombay High Court in -- *Karfule Ltd. Vs. Arical Daniel Varghese*, and of Desai J. in a recent decision of the Allahabad High Court in -- *Shri Om Prakash Gupta Vs. The United Provinces*, .

16. It is necessary now to analyse and examine the specific provisions of the Court Fees Act. This Statute has special provisions for refund. Section 13 of the Act provides for the refund of fee paid in Memorandum of Appeal. Section 14 of the Act provides for the refund of fee on application for review of judgment. Section 15 of the Act provides for refund where the Court reviews or modifies its former decision on the ground of mistake in law or fact. There is no other express provision in the Statute for refund of court-fees. The case of a transfer of a suit under Clause 13 of the Letters Patent cannot come within any of these specific statutory provisions for refund or certificate for refund.

17. For West Bengal Section 8 of the Act provides for costs of enquiry as to valuation and refund of excess fee. If as a result of an enquiry u/s 8 of the Act the Court finds that the subject-matter of the suit has been over-valued then it is provided that such excess shall be refunded. The other statutory provision is Section 19A of the Act which provides for the relief where too high a court-fee has been paid in respect of probate of will or letters of administration. None of

these two provisions in Section 8 and Section 19A can be invoked where a suit is transferred to this High Court under Clause 13 of the Letters Patent.

18. The applicant therefore not coming within the categories of cases where Court has exercised its inherent power to issue a certificate for refund, and not coming within the special statutory provisions for refund under the Court-fees Act itself, cannot ask this Court to issue a certificate for any refund.

19. Before I conclude, a reference to two other Sections of the Court-fees Act is necessary. The learned Advocate-General who appears for the State has placed great reliance on Section 3 and Section 4, Court-fees Act. Section 3 of the Statute provides for the levy of fees in High Courts on their original side in Part "A" States. Section 4 of the Act makes the following special provision for 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 Courts in any case coming before such Court in the exercise of its Extraordinary Original Civil Jurisdiction,..... 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."

20. The point of the argument is that although a special provision for fees on documents in the Extraordinary Original Civil Jurisdiction is made yet it does not provide for refund of court-fees paid on the plaint filed in a Court before its transfer to this High Court in such extraordinary original jurisdiction under Clause 13 of the Letters Patent. On the contrary it says that no document shall be received by the High Court unless in respect of that document a fee for the amount not less than that indicated by either of the said Schedules as the proper fee for such document has been paid. Now it is argued that the proper fee on that plaint in the District Court is the fee that has been paid. To create an artificial excess by calculation with reference to the fees in the High Court and to grant a certificate for refund of such artificially conceived excess will be to act in derogation of the Statute.

Here the Legislature has made a special statutory provision for fees on documents in the High Court in its Extraordinary Original Civil Jurisdiction and yet it has not chosen to provide for the refund of fees in case of such transfer. The interpretation therefore appears to be that this Section 4, Court-fees Act by necessary implication excludes any question of refund of court-fees in case of transfer of suits to this High Court in its Extraordinary Original Civil Jurisdiction. The learned Standing Counsel argued that Section 4 of the Act could be interpreted to confine the application of that Section to documents filed in the High Court, although the word used is "received". But even then the necessary implication of that Section is irresistible that the Legislature did not provide for return of any court-fee in such, cases.

This conclusion is reinforced by the fact that the words "either of the said Schedules" in Section 4 of the Act must obviously mean the first or second Schedule of the Act. It is patent from an analysis of the first and second Schedules to the Act that none of their various items including the "table of rates of ad valorem fees leviable on the institution of suits as provided in the First Schedule of the Act, indicates or suggests the scope or possibility of the return of the court-fees paid in a District Court on a plaint when the suit is transferred to the High Court in its Extraordinary Original Civil Jurisdiction under Clause 13, of the Letters Patent. This consideration taken with the prohibition in Section 4 of the Act that no document of the kinds specified in the first and second Schedules of this Act shall be received by the High Court unless the proper fee as shown for the document in the Schedule has been paid, appears to exclude the question of refund.

22. For these reasons I therefore hold that this Court has no statutory or inherent jurisdiction to make any order either for refund of court-fees or for the issue of a certificate for such refund in the case of a suit transferred to this High Court in its Extraordinary Original Civil Jurisdiction under Clause 13 of the Letters Patent. In future therefore this Court in my, opinion should not issue such certificate.

23. The application is therefore dismissed taut in the circumstances I make no order as to costs.