

be deemed to limit or otherwise affect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. This rule also serves the inherent power of the Court to pass appropriate orders which may be necessary for the ends of justice or to prevent the abuse of the process of the Court.

9. We are, therefore, inclined to hold that the High Court can exercise jurisdiction in suits and proceedings, including criminal proceedings in appropriate cases, by or against the company. The question of law referred to this Bench is answered accordingly and the case may now be listed before a learned Single Judge for appropriate orders.

H.S.B.

Before J. V. Gupta, J.

STATE OF HARYANA—Appellant.

versus

MADHO PARSHAD,—Respondent.

Civil Misc. No. 1377/CI/1980.

November, 28, 1980.

*Court Fees Act (VII of 1870)—Section 13—Code of Civil Procedure (V of 1908)—Section 151—Appeal dismissed as incompetent—Court fee paid on cross-objections in such appeal—Whether could be refunded.*

*Held*, that the power of the Court to remit the court fee is confined only to fees which have been illegally or erroneously assessed or collected and does not extend to fees which have been paid or collected in accordance with the provisions of the Court Fees Act, 1870. Where cross-objections are filed in an appeal which itself was not competent and is dismissed as such, the court fee affixed on those cross-objections is clearly paid under a bona fide mistaken impression and the same is liable to be refunded.

*Application under Section 151 C.P.C. praying that the application be allowed and the court fee affixed on the cross objections be ordered to be refunded to the respondent-applicants.*

S. K. Goyal, Advocate, for A.G. Haryana, for the appellant.

Arun Jain, Advocate, for the Respondent.

## JUDGMENT

J. V. Gupta, J.

(1) This is an application for refund of the Court-fee which was affixed on the cross-objections by the applicants. The ground taken up therein is that the cross-objections were filed by the applicants being the heirs and legal representatives of the deceased respondent, but since the appeal, that is, Regular First Appeal No. 1605 of 1979, filed on behalf of the State of Haryana, was dismissed as incompetent, having been filed against dead persons, the cross-objections could not be entertained.

2. Notice of this application was given to the State of Haryana which contested the same.

3. According to the learned counsel for the applicants, they are entitled to the refund of the Court fee paid on the cross-objections because the same was paid by them under a *bona fide* mistaken impression and that this Court has the inherent powers under section 151, Code of Civil Procedure, to order the refund of the Court fee paid on such cross-objections. In support of this contention, the learned counsel placed reliance on *Aya Singh-Tirlokh Singh v. Munshi Ram-Atma Ram* (1). On the other hand, the learned counsel appearing on behalf of the State, contended that there was no such inherent power vested in the Court for the refund of the Court-fee and in support of his contention, relied on *Jawahar Singh-Sobha Singh v. Union of India and others*, (2).

4. After hearing the learned counsel for the parties, I am of the opinion that the applicants are entitled to the refund of the Court-fee paid on their cross-objections. The decision of the Full Bench of this Court in *Jawahar Singh's case* (supra), is not applicable to the facts of the present case. Moreover, it has been held therein that the power of the Court to remit the Court-fee is confined only to fees which have been illegally or erroneously assessed or collected, and does not extend to fees which have been paid or collected in accordance with the provisions of the Court-fees Act. In the present case, the applicants filed the cross-objections, but later on, it was revealed that the appeal itself was not competent having been filed against dead persons and was dismissed as such.

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(1) AIR 1968 Delhi 249.

(2) AIR 1958 Punjab 38.

So, it is a clear case where the Court-fee on the cross-objections was paid under a *bona fide* mistaken impression. In this respect, reference may be made to *Aya Singh's* case (supra), wherein it has been held—

“Unless the liability to pay Court-fees is clearly supportable on the plain statutory language a suitor is not obliged to pay any Court-fee. It is on this basis perhaps that inherent power of the Court is recognised to direct refund of excess Court-fee paid either under compulsion or under a *bona fide* but erroneous impression, if the cause of justice so demands. It is true that the Court-fees Act, has made certain provisions for refund and it may be argued that the legislative intent should be held to exclude refund in other cases, but numerous authorities have upheld the inherent power of the Court to direct refund *ex debito justitiae*. It is not, however, every excess payment of Court-fee which must be refunded as a matter of course. Apart from the mandatory provisions, the Court, in order to exercise its inherent power, has to consider the facts and circumstances of each case and come to a judicial determination whether or not the cause of justice requires refund. Where a counsel erroneously thought that a remand order was equivalent to a decree and on this impression paid Court-fee very much in excess of the amount prescribed treating the appeal to be from a decree, the impression was due to a *bona fide* mistake, and refund of the excess of the Court-fee paid was ordered. However, his case was not to be considered as a precedent for refund in all cases of excess payment merely because of the ignorance of the counsel, for it was the duty of the counsel accepting briefs in High Court to be fully informed of the legal position and each case will have to be considered on its own merits.”

In the abovesaid case, *Jawahar Singh* case (supra) has also been considered and distinguished. While considering the said Full Bench case, it has been observed :—

“Obviously, the Bench was not concerned with the excess Court-fee paid under an erroneous impression. It was

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assumed there that the Division Bench decision of the Punjab High Court in *Sohan Singh's* case, A.I.R. 1956 Punjab 215 had taken the view that the Court had full power to grant refund of Court-fees even when the fees had been collected in accordance with the provisions of law and the Full Bench apparently negated such a view."

In this view of the matter, the application for the refund of the Court-fee is allowed.

5. Consequently, it is directed that the certificate for the refund of the Court-fee paid on the cross-objections be issued in accordance with law.

N.K.S.

*Before S. S. Sandhawalia, C.J. and S. P. Goyal, J*

BHAGWANT SINGH,—*Petitioner.*

*versus*

SURJIT KAUR,—*Respondent.*

*Criminal Revision No. 1284 of 1978.*

December 2, 1980.

*Code of Criminal Procedure (II of 1974)—Sections 125 and 127 (2)—Order for maintenance passed—Subsequent decree of Civil Court specifically on the point of maintenance—Order of maintenance—Whether liable to be varied or cancelled in terms of the Civil Court decree—Provisions of section 127 (2)—Whether mandatory.*

*Held*, that where the decree of a Civil Court is directly on the issue of the liability or the quantum of maintenance, then it is obviously a judgment of a Court of competent jurisdiction directly on the point. Once that is so, it calls for notice that the language of the statute is in terms mandatory. The Legislature has designedly used the words "shall cancel the order or, as the case may be, very the same accordingly." The opening part of section 127 (2) of the Code of Criminal Procedure 1973 undoubtedly vests a certain dis-