

Oriental Bank of Commerce v. Lajwanti Chemicals and others
(R. N. Mittal, J.)

or retirement of the Superintending Engineer, entitled to act, his successor is to take his place as arbitrator. This was later followed in *Bachna Ram Sawan Ram v. The State of Punjab* (4), where similar view was taken.

(8) Such being the clear position in law, there can be no escape from the conclusion that once Shri D. P. Gupta had relinquished charge of his post as Superintending Engineer of the Board, he ceased to have jurisdiction to act as arbitrator in the matter and consequently the awards rendered by him, when he no longer held the post, were rightly held by the trial court to be without jurisdiction. There is thus no merit in this appeal and it is accordingly hereby dismissed with costs.

H.S.B.

Before: R. N. Mittal, J.

ORIENTAL BANK OF COMMERCE,—Appellant

versus

LAJWANTI CHEMICALS AND OTHERS,—Respondents

Regular First Appeal (without number) of 1985

March 14, 1986.

Constitution of India, 1950—Article 227—Scope of—Court fees Act (VII of 1870)—Refund of Court fee—When can be ordered—Code of Civil Procedure (V of 1908)—Order 34—Money advanced on the basis of mortgage—Simple money decree passed by Sub-Judge—Appeal maintainable in the Court of District Judge but filed in the High Court—Such appeal—Whether can be treated as a petition under Article 227—High Court acting under Article 227—Whether can rectify the mistake in the decree and pass a decree in terms of Order 34—Court fee correctly paid on memorandum of appeal under the provisions of the Court Fees Act—Whether can be ordered to be refunded by the Court under its inherent powers.

Held, that Article 227 of the Constitution of India, 1950, confers powers of superintendence on the High Court over all the courts

(4) A.I.R. 1962 Pb. 85.

which are situated within its jurisdiction. The High Court can be moved to act under this Article when there has been flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice. But the High Court will not be justified in converting itself into a Court of appeal and subverting findings of fact by a minute scrutiny of evidence or interfering with the discretionary powers of the Court. The power should not be exercised if there is some other remedy open to the party. If, right of appeal is available to the party it will not be feasible for the Court to treat the appeal as a petition under Article 227 of the Constitution of India and rectify the mistake in the decree.

(Paras 2 and 3)

Held, that the Court fee can be ordered to be refunded; where refund is allowed by any provision of the Court-fees Act, where the excess court-fee has been paid by mistake and where higher court-fee has been ordered to be paid by the Court. Where the Court fee has been correctly paid the matter is not covered by any of the aforesaid clauses. The appeal in the present case has been filed through an oversight of the counsel in the High Court whereas it was maintainable in the Court of District Judge. As such the Court fees which has been correctly paid under the provisions of the Court Fees Act cannot be ordered to be refunded by the Court under its inherent powers.

(Para 6)

Regular First Appeal from the Court of Shri V. S. Malik, HCS, Sub-Judge, 1st Class, Faridabad, dated 15th March, 1985, decreeing the suit of the plaintiff for recovery of Rs. 30,64,907.50 paise against defendants with costs and allowing the interest at the rate of 18 per cent per annum to the plaintiff on the decretal amount from the date of institution of this suit till the date of realisation of the decretal amount.

CIVIL MISC. (Without No.) of 1985.

Application under Section 151 Civil Procedure Code, praying that if this Hon'ble Court reaches the conclusion that neither the appeal can be treated as a petition under Article 227 of the Constitution of India, nor the Court fee paid can be ordered to be refunded, the memorandum of appeal be returned to it for presentation in the Court having jurisdiction in the matter in terms of rules 10 and 10-A of Order 7 of the Code of Civil Procedure.

Mr. R. S. Bindra, Sr. Advocate with Mr. R. K. Sharma, Advocate, for the Appellant.

Mr. Ashok Bhan, with Mr. A. K. Mittal, for U.T.

Mr. P. S. Duhan, for A.G. Haryana.

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JUDGMENT

(1) Briefly, the facts are that the applicant instituted a suit for recovery of Rs. 30,64,907-50 against the respondents in the Court of Subordinate Judge 1st Class, Faridabad which was decreed by him on 15th March, 1985. It is alleged that the decretal amount was secured by mortgage of immovable property, but while passing the decree the Court did not take notice of that fact and consequently did not pass a decree in terms of Order 34 of the Code of Civil Procedure but passed a simple decree for recovery of the decretal amount with interest. The applicant filed an appeal against the said decree in this Court on 8th July, 1985. However, the office raised an objection that the appeal was maintainable in the Court of District Judge, Faridabad and not in this Court. The applicant consequently filed an application that the appeal be treated as petition under Article 227 of the Constitution of India, and in case it cannot be treated as such, the court fee paid by the applicant on appeal be ordered to be refunded. It is further prayed that if either of the above said reliefs cannot be given, the memorandum of appeal be returned for presentation to the Court having jurisdiction in the matter. As one of the prayers in the application was to the effect that the court-fee be refunded to the petitioner, I considered it proper to issue notice to the counsel for the Union Territory and Advocate General, Haryana.

(2) Mr. Bindra has argued that the suit has been decided in favour of the applicant, but through oversight the decree has not been passed by the trial Court in terms of Order 34. The mistake is patent on the record and this Court can rectify such a mistake under Article 227. He further contends that in the said circumstances the appeal be treated as a petition under the said Article. In support of his contention he places reliance on *Jodhey and others vs. State through Ram Sahai* (1).

(3) I have duly considered the argument but regret my inability to accept it. Article 227 confers powers of superintendence on the High Court over all courts and tribunals which are situated within its jurisdiction. It is well settled that if alternative remedy is provided to a litigant this Court normally does not exercise jurisdiction under Article 227. It is not disputed that the right of appeal was

(1) A.I.R. 1952 Allahabad 788.

available to the applicant. Consequently, it will not be feasible for this Court to treat the appeal as a petition under Article 227. In the above view, I get support from *Jodhey's case* (supra) referred to by Mr. Bindra. It is, *inter-alia*, observed therein that the High Court can be moved to act under this Article when there has been a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice. But the High Court will not be justified in converting itself into a Court of appeal and subverting findings of fact by a minute scrutiny of evidence or interfering with the discretionary orders of Court. *It is further held that this power should not be exercised if there is some other remedy open to the party.* Consequently, this contention of the learned counsel cannot be accepted.

(4) The second submission of Mr. Bindra is that through oversight he filed the appeal in this Court whereas it was maintainable before the District Judge, Faridabad. A litigant should not be allowed to suffer on account of the mistake of the counsel. He further submits that in this situation the court fee be ordered to be refunded under the inherent powers of the Court. In support of his contention he places reliance on *Jan Mohammad vs. Amolak Ram and another* (2), *Ava Singh Tirlok Singh vs. Munshi Ram Atma Ram* (3), *Krutibasa Nayak vs. Jagannath Mahapravu and others* (4) and *State of Haryana vs. Madho Prashad* (5).

(5) On the other hand Mr. Ashok Bhan has submitted that the court-fee on the appeal has been paid in accordance with the provisions of the Court Fees Act and consequently, it cannot be ordered to be refunded under the inherent powers of the Court. He refers to *Jawahar Singh Sobha Singh vs. Union of India and others*, (6).

(6) I have given my thoughtful consideration to the matter. However, I agree with the submission of Mr. Ashok Bhan. The Full Bench in *Jawahar Singh's case* (supra) observed that the inherent power of a Court to remit or refund court fees is confined only to fees which have been illegally or erroneously assessed or

(2) A.I.R. 1936 Lahore 301.

(3) A.I.R. 1968 Delhi 249.

(4) A.I.R. 1975 Orissa 211.

(5) 1981 P.L.J. 147.

(6) A.I.R. 1958 Punjab 38 (FB).

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collected, and does not extend to fees which have been paid or collected in accordance with the provisions of the Court-fees Act. The following observations by Bhandari, C.J., while speaking for the Bench may be read with advantage:—

“6-A. on the basis of legal principles a Court of law has power to order a refund of Court-fees—

- (1) where the Court-fees Act applies,
- (2) where there is an excess payment by mistake, and
- (3) where on account of mistake of the Court a party has been compelled to pay Court-fee either wholly or in part. This proposition is so well established that I consider it entirely unnecessary to again enter upon the field of arguments and authority to maintain the power of this Court to pay back the Court-fee where excess fee has been paid through oversight, mistake or inadvertence.”

From a reading of the above observations it is evident that the court-fee can be ordered to be refunded under clause (1) where refund is allowed by any provision of the Court-fees Act; under clause (2) where the excess court-fee has been paid by mistake and under clause (3) where higher court-fee has been ordered to be paid by the Court. Mr. Bindra has admitted that clause (1) is not applicable as there are only four sections in the Court-fees Act, namely sections 13, 14, 15 and 19-A which relate to refund of the court-fees and the present case is not covered by any of these sections. It also does not fall under the remaining clauses as it is not alleged that excess court-fee has been paid on the memorandum of appeal. It appears that the appeal has been filed by the counsel through oversight in this Court whereas it was maintainable in the Court of the District Judge. Now the appellant does not want to file the appeal in that Court. Therefore, there are no sufficient grounds for ordering refund of the court-fee.

(7) I shall now deal with the cases referred to by Mr. Bindra. In *Jan Mohammad's* case (supra) the petitioner filed an appeal against an order wherefrom no appeal was maintainable. Consequently the appeal was converted into a revision. The learned Judge allowed the court-fee to be refunded to the petitioner on the

ground that no appeal lay against that order. While dealing with this case, the Full Bench in *Jawahar Singh's* case (supra) doubted the correctness of the decision. *Aya Singh's* case (supra), is distinguishable on facts. Moreover, the learned Bench of Delhi High Court made certain observations contrary to those of the Full Bench in *Jawahar Singh's* case (supra). In the circumstances, it is not possible for me to agree with the view expressed therein. *Madho Parsad's* case (supra) is also distinguishable. In that case, an appeal had been filed to this Court against a dead person, which was dismissed as incompetent. The other party filed cross-objections before dismissal of the appeal. The cross-objectionist after dismissal of the appeal made an application for refund of the court-fee on the ground that the appeal had been dismissed and therefore the cross-objections were not maintainable. The learned Judge, in the circumstances of that case, ordered refund of the court-fee. In *Krutibasa Nayak's* case (supra) the learned Bench observed that the Court had inherent powers to refund court-fee under section 151 of the Code. It, at the time of rendering the judgment, did not notice the Full Bench judgment of this Court. It may also be mentioned, that the observations made by it, run counter to those of the Full Bench. In the circumstances, Mr. Bindra cannot take benefit from the cases referred to by him.

(8) For the aforesaid reasons I reject the prayer of the petitioner to the effect that the appeal be treated as a petition under Article 227 of the Constitution of India, or that the court-fee be ordered to be refunded. However, I accept the last prayer and order that the memorandum of appeal be returned to it for presentation to the proper Court. No order as to costs.

H.S.B.

Before: K. S. Tiwana and Surinder Singh, JJ.

GURJIT SINGH *alias* SAINTI,—Appellant

versus

STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 258-DB of 1985

April 7, 1986.

Code of Criminal Procedure (II of 1974)—Section 329—Accused facing trial in court of Session raising plea of insanity—Court directing the examination of the accused in hospital—Report made by