

The Fazilka
Electric Supply
Co., Ltd., Delhi
v.

The Commis-
sioner of
Income-tax,
Delhi

Bishan Narain,
J.

of the Income-tax Act. The Income Tax Commis-
sioner is entitled to get costs of this reference
Counsel's fee Rs. 250.

BHANDARI, C. J.—I agree.

B. R. T.

REVISIONAL CIVIL

Before I. D. Dua, J.

BHURA MAL-DAU DAYAL,—*Plaintiff-Petitioner*

versus •

MESSRS IMPERIAL FLOUR MILLS LTD., AMBALA
CITY AND OTHERS,—*Defendants-Respondents*

Civil Revision No. 482 of 1956

1958

Apr., 27th

*Court-fees Act (VII of 1870)—Court-fee leviable—
Plaint filed in Delhi Court bearing Delhi Court-fee stamps
returned to plaintiff for presentation to the proper court
under Order VII rule 10 C. P. C.—Plaint presented in
Ambala Court—Court-fee already paid—Whether to be
given credit of—Objection as to court-fee—Whether pro-
per to be taken by the opposite litigant.*

Held, that when a court after receiving a plaint and cancelling the stamp affixed thereto returns the plaint for presentation to the proper court under Order VII rule 10 of the Code of Civil Procedure, the latter court to which the plaint is represented is bound to give credit for the court-fee already levied by the former court. The scheme of the Court-fees Act, to the extent to which it can be discerned, shows that a litigant is, normally speaking, not made liable to pay court-fee twice over for the same adjudication by the same court or by its successor court or on account of the mistakes of courts. It is also well-settled that courts should put a liberal interpretation on fiscal statutes like the Court-fees Act, so as to lessen and not add to the burden of litigation. This of course does not mean that where a provision is clear and explicit it should not be enforced; it merely means that while dealing with fiscal statutes letter of the law is of paramount importance.

Held, that payment of Court-fee as a source of revenue is a matter primarily between the State and the subject. If the State has realised the court-fee, it is hardly proper for the opposing litigant to raise objection on the score of court-fee for the purpose of shutting out or obstructing adjudication of disputes.

Petition under section 44 of Act IX of 1919 for revision of the order of Shri M. S. Sethi, Sub-Judge, IV Class, Ambala, dated the 26th November, 1956, returning the plaint to the plaintiff for making up the deficiency in the amount of Court Fee by the 20th December, 1956.

H. R. SODHI and PRITHIVI RAJ, for Petitioner.

H. L. SARIN and L. D. KAUSHAL, for Respondents.

JUDGMENT

Dua, J.—The plaintiff originally instituted the suit in the Civil Court at Delhi but it was held that Delhi Court had no jurisdiction with the result that the plaint was returned for being presented to the proper Court. The plaintiff thereupon represented the plaint in the Court at Ambala. The plaint bore the court-fee stamp affixed on it when it was earlier instituted in the Delhi Court. The defendants raised the objection that court-fee stamp bearing the stamp of Delhi State was not proper court-fee when used in the Courts in the State of Punjab and, therefore, the plaint was not properly stamped. The court-fee stamp affixed on the plaint naturally bore the words "Delhi State" having been purchased at Delhi. The trial Court thought that administration of justice, except where it relates to the Supreme Court and the High Court, is a State subject and, therefore, the Court-fee purchased in Delhi could not be used in the Courts in the State of Punjab. On this view the plaintiff was ordered to make up the deficiency in court-fee. The plaintiff has come up to this Court

Dua, J.

Bhura Mal-Dua
Dayal
v.
Messrs Imperial
Flour Mills, Ltd.,
Ambala City
and others

Dua, J.

on revision against the above order. Considering the importance of the point to the State of Punjab I requested Shri L. D. Kaushal, Deputy Advocate-General, to assist this Court as *amicus curiae* and he very kindly agreed to do so. I have heard Mr. Sodhi for the petitioner, Mr. Sarin for the respondents and Mr. L. D. Kaushal as *amicus curiae*. My attention has also been drawn to a recent decision by S B. Capoor, J., while sitting in the Circuit Bench at Delhi (Civil Revision No. 482-D of 1956) where the court-fee originally affixed on the plaint was held to be the proper court-fee in the following circumstances. The Punjab Government filed a suit against R. B. Madho Parshad and others in the Court of the Senior Subordinate Judge, Gurgaon, who held that the Gurgaon Court had no jurisdiction and returned the plaint for presentation to the proper Court after cancelling the court-fee stamps on the plaint. The plaint was then represented to the Senior Subordinate Judge, Delhi, who marked it for disposal to the Commercial Subordinate Judge. The Court after hearing the plaintiff's counsel and without issuing notice to the defendants came to the conclusion that in view of the rules made under notification No. F. 27 (6)/54-GAR, dated 29th of March, 1954, published in the Delhi Government Gazette, Part V, dated 8th of April, 1954 by the Chief Commissioner, Delhi, the court-fee stamps to be used in Delhi Courts must be overprinted with the word "Delhi" and as in that case the court-fee stamps did not bear the word "Delhi" they were held not to be proper court-fee stamps.

The learned Single Judge in that case held that when a Court after receiving a plaint and cancelling the stamp affixed thereto returns the plaint for presentation to the proper Court under Order VII, rule 10 of the Code of Civil Procedure,

the latter Court to which the plaint is represented is bound to give credit for the fee already levied by the former Court. In support of his view he relied on *S. Visweswara Sarma v. T. M. Nair and another* (1), and *Ganesh Tavanappa Burde v. Totya Bharmappa Mirji* (2); Sections 26 and 27 (b) of the Court-fees Act were held by the learned Judge not to authorise the appropriate Government to make rules providing that a court-fee stamp which is not overprinted with the word "Delhi" would not be usable in the Delhi Courts. The impugned rule was thus held *ultra vires* of the Act. Reference has also been made by the counsel to Chapter V of the Court-fees Act which deals with the mode of levying fees. Section 25 lays down that all fees referred to in section 3 or chargeable under the Court-fees Act shall be collected by stamps. Section 26 lays down that the stamps used to denote any fees chargeable under the Act should be either impressed or adhesive, or partly impressed and partly adhesive, as the appropriate Government may direct. Section 27 confers on the appropriate Government power to make rules for regulating—

Bhura Mal-Dua
Dayal
v.
Messrs. Imperial
Flour Mills, Ltd.,
Ambala City
and others

Dua, J.

- (a) the supply of stamps to be used under the Court-fees Act;
- (b) the number of stamps to be used for denoting any fee chargeable under the said Act;
- (c) the renewal of damaged or spoiled stamps; and
- (d) the keeping of accounts of all stamps used under the said Act.

Section 28 lays down that no documents which ought to bear a stamp under the Court-fees Act

(1) I.L.R. 35 Mad. 567
(2) A.I.R. 1927 Bom. 257

Bhura Mal-Dua
Dayal
v.
Messrs Imperial
Flour Mills, Ltd.,
Ambala City
and others

Dua, J.

shall be of any validity, unless and until it is properly stamped. If, however, any such document has by mistake or inadvertence been received, filed or used in any Court or office, the presiding Judge or the Head of the office may order such document to be stamped according to his direction, and, on such document being stamped accordingly, it would be validated retrospectively: Under section 29, a document amended for the purpose of merely correcting a mistake would not necessitate imposition of fresh stamp. Section 30 lays down that no document requiring a stamp under the Court-fees Act shall be filed or acted upon in any proceedings in any Court or office until the stamp has been cancelled. It also authorises the Court or the Head of the office, as the case may be, to appoint officers to effect such cancellation. The counsel contends that these statutory provisions do not justify the distinction between court-fee stamps overprinted with the word "Delhi" and those not so overprinted. The argument advanced is that just as a plaint returned by a court in the Punjab for presentation to another proper Court in the same State would not have necessitated payment of fresh court-fee, the return of the plaint by a Delhi Court which is within the jurisdiction of this High Court should also not necessitate payment of fresh court-fee. As already stated, the observations of S. B. Capoor, J., in the above case (which is a converse case) are being relied upon in support of this contention. *Hira v. B. D. Kashyap, etc.*, (1); has also been cited by the counsel. In that case a plaint had originally been instituted in the Small Cause Court at Simla in the State of Punjab with court-fee stamps pertaining to the Punjab Government. The plaint was subsequently returned for presentation to

(1) A.I.R. 1956 H.P. 38

Himachal Court. It was represented to the Sub-ordinate Judge, at Theog in Himachal Pradesh and decreed by him in due course. It was contended that the Court at Theog could not proceed with the suit because the plaint bore Punjab stamps and not Himachal stamps. The learned Judicial Commissioner having regard to the peculiar circumstances of the case and the practice which was in vogue in the Himachal State before July, 1953 of using stamps of other States overruled the objection and held that credit should be given to the plaintiff for the court-fee paid in the Small Cause Court. It was also held by the Judicial Commissioner that even if the decision of the Courts below was erroneous there was no ground for interference on revision. This decision, in my view, does not lay down any positive rule of law for general application but it was a decision on its own facts. *Vasavattula Sarabhamma v. Vasabattula Peda Veeranna and another* (1) has also been relied upon by the learned counsel in support of his contention that where a plaint is returned for presentation to proper Court, credit, for court-fee already levied by the former Court should be given by the Court to which the same plaint is re-presented. *S. Viswera Sarma v. T. M. Nair and another* (2), was explained and followed in this decision. In *Naresh Chandra Sinha v. Charles Joseph Smith* (3), also Ross, J.; while dealing with the words "for use in the High Court only" impressed on the back of the court-fee stamps in Patna, observed that there was nothing to show that the Local Government had made any rule to the effect that the sale of any stamp should be limited to a particular purpose or Court. The matter not being *res integra* and also no authority in support of the

Bhura Mal-Dua
Dayal
v.
Messrs Imperial
Flour Mills, Ltd.,
Ambala City
and others

Dua, J.

(1) A.I.R. 1950 Mad. 57

(2) I.L.R. 35 Mad. 567

(3) A.I.R. 1926 Pat.

Bhura Mal-Dua
Dayal
v.
Messrs Imperial
Flour Mills, Ltd.
Ambala City
and others

view of the learned Subordinate Judge having been cited at the Bar, I am inclined, as at present advised to adopt the view expressed by S. B. Capoor, J, in the Civil Revision noted above and follow this precedent.

Dua, J.

Mr. Kaushal has very fairly drawn my attention to rule 1 of the rules as to cancellation of court-fee stamps in force in the Punjab, which is in the following terms:—

“1. The cancellation of court-fee stamps shall be effected—

(a) when a document bearing a court-fee stamp is received by a Court competent to receive the same.

(b) * * * * *

(c) * * * * *

(d) * * * * *

The Court-fee stamp according to this rule can be cancelled only by a Court competent to receive the same. If a Court is not competent to receive the plaint, then cancellation of the court-fee stamps affixed thereon would be unauthorised. A suitor whose court-fee stamp has thus been cancelled by an unauthorised Court official might legitimately complain of the prejudice caused to him and in equity he might well claim a right to be recompensed. But this consideration apart, the scheme of the Court-fees Act, to the extent to which it can be discerned, shows that a litigant is, normally speaking, not made liable to pay court-fee twice over for the same adjudication by the same Court or by its successor Court or on account of the mistakes of Courts. I have deliberately used the expression “to the extent to which the scheme can be discerned” because it has

repeatedly been observed and rightly so, that the Court-fees Act is notorious for bad drafting. It is an artificial statute and there is hardly any principle involved in its scheme. Section 13 of the Act, however, does disclose the anxiety on the part of the legislature not to unduly or unjustly burden the litigants; that is why a mandatory provision has been made directing the appellate Court to order refund of fee paid on the memorandum of appeal or the plaint, which has been rejected and later ordered by the higher Court to be received or where a suit is remanded on appeal on certain specified grounds. It is also well-settled that Courts should put a liberal interpretation on fiscal statutes like the Court-fees Act, so as to lessen and not add to the burden of litigation. This of course does not mean that where a provision is clear and explicit it should not be enforced; it merely means that while dealing with fiscal statutes letter of the law is of paramount importance.

Bhura Mal-Dua
Dayal
v.
Messrs Imperial
Flour Mills, Ltd.,
Ambala City
and others

Dua, J.

Before concluding it would not be out of place also to emphasise that payment of court-fee as a source of revenue is a matter primarily between the State and the subject. If the State has realised the court-fee, it is hardly proper for the opposing litigant to raise objection on the score of court-fee for the purpose of shutting out or obstructing adjudication of disputes. As observed in *Gulzari Lal Marwari v. Ramgopal and others* (1):—

“According to the rules laid down by the General Council of the English Bar, it is considered to be unprofessional conduct for counsel to raise objections to the admissibility of a document on the ground that it is not stamped, but there

(1) A.I.R. 1937 Cal. 765

Bhura Mal-Dua
Dayal
Messrs Imperial
Flour Mills, Ltd.,
Ambala City
and others

—
Dua, J.

is no such objection to counsel raising an objection to the validity of a document which is by law rendered invalid owing to the absence of stamps. The distinction clearly is that in the one case counsel is taking an objection which is merely in the interest of the revenue authorities and does not touch the merits of the case, whereas in the other case the objection to the validity of the document strikes at the root of the matter, and is clearly relevant."

These observations may also apply to objections regarding court-fee stamps. In view of the above discussion, I would allow this revision and setting aside the order of the learned Subordinate Judge, dated 26th of November, 1956 remit the case back to the trial Court to re-admit the plaint and to proceed with the trial in accordance with law and in the light of the observation made above. In the circumstances of the case, there will be no order as to costs in this Court.

The parties have been directed to appear in the trial Court on 25th May, 1959.

B.R.T.

CIVIL MISCELLANEOUS

Before I. D. Dua, J.

MARWA,—*Petitioner*

versus

SANGHRAM,—*Respondent.*

Civil Miscellaneous No. 1770 of 1957

1959
—
Apr., 27th

Constitution of India (1950)—Article 227—Powers of the High Court to interfere with the orders of subordinate tribunals—Extent of—Punjab Gram Panchayat Act (IV of