(6) The learned counsel for the appellant has not challenged the impugned judgment on any other ground.

For the reasons mentioned above, this appeal has no merit and is dismissed with no order as to costs.

Gurnam Singh, J.—I agree.

K. T. S.

CIVIL APPELLATE

Before S. S. Sandhawalia and S. C. Mital, JJ.

GURDIAL SINGH,—*Appellant.*

versus

MASSA SINGH, ETC.,—*Respondents.*

Execution Second Appeal No. 1280 *of* 1969

November 11, 1976.

Code of Civil Procedure (Act V of 1908)—Sections 148 *and* 149—*Whether apply to appeals—Copy of impugned judgment inadequately stamped—Deficiency in court-fee made up after the period of limitation—Appellant—Whether entitled to the benefit of section* 149.

Held, that sections 148 and 149 of the Code of Civil Procedure 1908 are equally attracted to the appeals presented in the High Court or Courts below as also to suits in the original trials.

(Para 18).

Held, that the language of section 149 of the Code is of the widest amplitude and gives untrammelled powers to the court in its discretion to allow the making up of any deficiencies in the court-fees and this can be done at any stage irrespective of bars of limitation or the alleged creation of vested rights in one or the other of the parties. Unless the Court comes to the finding that the litigant was acting *mala fide* or with contumacy, the appellant would be entitled to the benefit of section 149 and discretion should be exercised in his favour by allowing him to make up the deficiency in the court-fee. (Paras 9 and 18),

CASES OVER RULED

1. *Shahadat and others* v. *Hukam Singh, A.I.R*: 1924 *Lah*: 401:

2. *Mohammad Fazal Elahi* v. *Ram Lal and another A.I.R*: 1935: Lah. 124(2).

3. *Har Narain* v. *Jai Gopal and others* 1937 P.L.R: 502:

4. *Custodian Evacuee Property Punjab and others* v. *Parbhu Dayal Chhajan Lal and others, A.I.R.* 1960 Punjab 298:

and

5. *Jai Bhagwan* v. *Om Parkash and others A.I.R*: 1969 Punjab and Haryana 308.

Case referred by Hon'ble Mr. Justice S. S. Sandhawalia on 20th September, 1972 for decision of an important qeustion of law involved in the case to a larger Bench. The Division Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice S. C. Mittal after deciding the question of law referred to, returned the case to a Single Bench for decision on merits. Hon'ble Mr. Justice S. S. Sandhawalia finally decided the case on 11th November, 1976.

Execution Second Appeal from the order of the Court of Shri Shanti Swaroop, Additional District Judge, Ferozepore, dated 12th March, 1969 affirming that of Shri L. C Aggarwal, Sub-Judge 1st Class, Muktsar, dated 8th March, 1968 accepting the appeal and allowing the decree-holder to own only 30 St. acres of land and he being already the owner of 19 St. acres 2 units of land he can acquire only 10 St. acres and 14 units of land more out of the suit land.

Anand Swaroop Advocate (K. G. Chowdhry Advocate and M. L. Bansal, Advocate with him), *for the appellant.*

D. S. Nehra Advocate (Arun Nehra Advocate with him), *for the respondent.*

JUDGMENT

S. S. Sandhawalia, J.

Referring Order. (1) Preliminary objections to the competency of these two connected execution second appeals have been raised. These rest on the following facts. Gurdial Singh and Gurdev Singh appellants, who are brothers, had brought separate execution applications in the Court of the Sub-Judge 1st Class, Muktsar. The

judgment-debtors filed objections under sections 47 and 151 of the Code of Civil Procedure read with section 19-A of the Punjab Security of Land Tenures Act. By separate but identical orders recorded on the same day, i.e., March 8, 1968, the learned Sub-Judge partly accepted the objection petitions. The present appellants presented two separate appeals on April 25, 1968 being Civil Miscellaneous Appeals Nos. 21 and 22 of 1968 against the above said orders which came up for hearing before the Additional District Judge, Ferozepur. In his judgment, dated March 12, 1969, the learned Additional District Judge dealt with both the appeals together observing in the opening part thereof that as the facts of both are similar and the same points were involved, these appeals would be disposed of by one judgment. In the operative part at the end he also observed as follows :—

> "There is no force in any of the appeals. Both are, hereby, dismissed. The parties will bear thair own costs. Pronounced in open Court."

(2) Against the abovesaid judgment, two separate appeals being E.S.A. Nos. 1280 and 1281 of 1969 have been instituted by Gurdial Singh and Gurdev Singh appellants separately. One of the preliminary objections, which is common to both relates to the insufficient stamping of the trial Court's judgment. It is alleged on behalf of the respondents that both the appeals were presented in this Court on July 14, 1969 when an objection amongst others was raised by the office that the copy of the trial Court's judgment in each appeal was insufficiently stamped. By the office order July 21, 1969, the two appeals were returned to the counsel to be refiled within a week after compliance with the objections. These were refiled by the counsel on July 28, 1969 when the alleged deficiency of Rs. 1.40 Ps. only in the stamp affixable on the trial Court's judgment was duly made up. It is the common case of the parties that on July 28, 1969, the limitation for filing the two appeals had expired and consequently the deficiency in the stamp was made up beyond the period of limitation.

(3) The basic contention of Mr. D. S. Nehra, learned counsel for the respondent, on these facts is that as the trial Court's judgment

was inadequately stamped, there was no appeal before the Court till the insufficiency of the stamps was removed. Since this it is argued was done after the expiry of the period of limitation, no valid appeal in the eye of law was presented within time and consequently both the appeals are not competent.

(4) The other preliminary objection relates to E.S.A. No. 1281 of 1969 only. It is pointed out that when the appeal was presented, the office objected that the copy of the lower appellate Court's judgment in Civil Miscellaneous Appeal No. 22 of 1968 was not forthcoming. When refiling the said appeal on July 28, 1969, counsel made a note that there was no separate judgment by the appellate Court in Civil Miscellaneous Appeal No. 22 of 1968 and that the main judgment in Civil Miscellaneous Appeal No. 21 of 1968 disposed of both the appeals. However, the office insisted on compliance with their objection on this score and on July 30, 1969, the short formal order recorded by the Additional District Judge stating merely that for the reasons recorded in Civil Miscellaneous Appeal No. 21 of 1968, this appeal is also dismissed, was attached. The office, however, pointed out that as the formal short order's copy had been filed after the period of limitation, the counsel may move an application for condonation of delay, if so advised. Consequently Civil Miscellaneous No. 2227-C of 1969 was filed on August 4, 1969 under section 5 of the Indian Limitation Act seeking a condonation of delay. This application it appears was not placed separately for orders before the Court and is before me for disposal.

(5) It is best to take up the first preliminary objection common to both the appeals in regard to the insufficiency of the stamping of the trial Court's order. The basic reliance of Mr. Nehra is upon a Single Bench judgment of Scott-Smith, J. in *Shahadat and others* v. *Hukam Singh*, (1). Therein also an appeal was filed in the High Court on January 7, 1922, but the copy of the order appealed against along with the memorandum of appeal was unstamped and the translation fee had not been paid. The appeal was returned as incomplete and it was refiled on January 17, 1922 whilst the last day of limitation for filing of the same was January 9. Declining a prayer for the condonation of delay under section 5 of the Limitation Act, the learned Judge repelled the argument that the mistake had been committed by the clerk and observed in these terms :—

> "In my opinion it is the duty of the counsel when filing an appeal to see that all the documents which require stamp

(1) A.I.R. 1924 Lah. 401.

are properly stamped. He cannot shelter himself behind his clerk, and if his clerk has been guilty of carelessness, is responsible for that."

Upholding the preliminary objection, the appeal was dismissed, Mr. Nehra points out that the above view has been followed in *Mohammad Fazal Elahi* v. *Ram Lal and another,* (2) and *Harnarain* v. *Jai Gopal and others,* (3) by the learned Single Judges of that Court. In our High Court, Mahajan, J. *in Custodian, Evacuee Property, Punjab and others,* v. *Prabhu Dayal Chhajan Lal and others,* (4) referred to the decision in *Shahadat's case and Mohammad Fazal, Elahi's case* (supra) and following the same upheld a similar preliminary objection though the learned Judge proceeded to consider the merits of the case as well and then dismissed the appeal.

(6) In reply Mr. Anand Saroop on behalf of the appellants first points out on facts that the counsel for the appellants had stamped the judgment of the trial Court with a stamp of Rs. 1.25 Ps. on the ground that the said document was merely a judgment and not a decree. It is stated at the bar that the stamp affixable on a judgment of the lower Court was Rs. 1.25 Ps. ordinarily when an appeal is filed. However, the appeal having arisen in an execution matter, the office following a decision of this Court deemed the said judgment to be a decree and hence had opined that the same was to be stamped with the stamp of Rs. 2.55 Ps. only. Learned counsel contended that due to the partly difference of the amount, no controversy was raised with the office and the amount was duly made up. Counsel also contended that the administrative and ministerial acts by the Deputy Registrar and the subordinates are done under the authority of this Court. The office had itself prescribed a week's time for rectifying the alleged insufficiency of the stamp and the same had been duly done and the appeal was accepted and duly registered and ultimately presented to the Court. He, submitted that if it was at all necessary, power had been exercised on behalf of the Court under sections 149 and 148 of the Code of Civil Procedure by the office and its orders had been duly complied with within time. In any case, learned counsel strenuously prayed for and expressly invoked the jurisdiction of this Court under sections 148

(2) A.I.R. 1935 Lah. 124(2).

(3) 1937 P.L.R. 502.

(4) A.I.R. 1960 Pb. 298.

and 149 and argued that the alleged deficiency having been already made up, this Court had discretion at any stage whatsoever to allow the making up of the deficient court-fee and in such circumstances it would have the same force and effect as if such fee had been paid in the first instance.

(7) As regards the legal position, Mr. Anand Saroop frontaly assailed the correctness of the decisions relied upon by Mr. Nehra. It was argued that the Lahore cases run counter to the view expressed subsequently by their Lordships of the Supreme Court. Further it was contended that these decisions failed to take notice of the basic statutory provisions of sections 148 and 149, C.P.C., and also numberous decisions to the contrary both of the other Courts as also of the Lahore High Court.

(8) There is no manner of doubt that the decisions referred to above and relied upon by Mr. Nehra lend unstinted support to the contention raised by him. However, with the greatest respect to the learned and the distinguished Judges, who have taken the above view, I find myself wholly unable to subscribe to the rigour and the technicality of the rule enunciated by them. I am fortified in the view I express by the observations of their Lordships of the Supreme Court who refreshingly seem to have moved away from harsh technicality as regards the slight insufficiency or otherwise of court-fee payable upon documents filed in Court. In *Mahasay Ganesh Prasad Ray and another* v. *Narendra Nath Sen and others*, (5) a similar preliminary objection was raised before their Lordships alleging that the appeal had been filed before the High Court without the necessary court-fee stamps and that the deficiency therein was allowed to be made up after the period of limitation had expired and consequently the appeal was barred by time and had been wrongly heard by the High Court. Brushing aside the preliminary objection regarding the insufficiency of the stamps, Chief Justice Kania, speaking for the Court after discussion concluded as follows :—

> "As pointed out by the High Court, the payment of court-fees is a matter present respondents and that was the whole fight in respect of this contention. In our opinion, therefore, the preliminary objection fails."

(5) A.I.R. 1953 S.C. 431.

A close perusal of the abovesaid judgment clearly leaves one with the impression that the abovesaid authoritative pronouncement has definitely set up a liberal rule condoning any trifling or even material deficiency in the payment of court-fee which as observed was merely a matter between one of the parties and the Government. This decision would need reference again in the context of the provisions of section 149, Civil Procedure Code, also on which heavy reliance was placed on behalf of the appellants.

(9) There is again merit in the contention raised on behalf of the appellants that the decisions relied upon by Mr. Nehra suffer from the patent infirmity of not having taken any notice of the statutory provisions of section 149 in particular and section 148 of the Code of Civil Procedure in general. It was rightly argued that the language of section 149 is of the widest amplitude and gives untrammelled powers to the Court in its discretion to allow the making up of any deficiencies in the court-fees. Particularly it is pointed out that the statute allows this to be done at any stage irrespective of bars of limitation or the alleged creation of vested rights in one or the other of the parties. For facility of reference, the provisions of sections 148 and 149 of the Code of Civil Procedure may be set down :—

> "148. Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.
>
> 149. Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee, and upon such payment the document, in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance."

The wide language of the abovesaid provisions, therefore, lends great support to the contention raised on behalf of the appellants. Mr. Nehra had faintly sought to contend that the provisions of sectios 149 are not applicable to appeals. However, learned counsel

could advance neither principle nor authority in support of this contention and indeed it is well settled that these provisions would be equally applicable to the appeals presented before the Court and the documents accompanying them. Though the matter was not raised directly in this form, the exercise of power under section 149, of Civil Procedure Code, in this regard was expressly approved by their Lordships of the Supreme Court in *Mahasay Ganesh Prasad Ray's case* (5) (supra) with these observations :—

> "Secondly, the power of the High Court to allow an amendment under section 149, Civil Procedure Code, is clearly one under which the plea of the bar of limitation may be ignored. There are decisions of very high authority taking that view. The contention, therefore that by allowing the amendment, the High Court-look away the present appellants' valuable right to plead the bar of limitation cannot be accepted. It was a matter of discretion for the High Court and the materials put before us indicate no reason to hold that the discretion was exercised so as to violate any recognised principles of law or that by granting leave to amend any gross injustice has been done."

The abovesaid enunciation of the law, therefore, would overrule the basic premise which weighed with Scott-Smith, J. *in Shahadat's case* (1) (supra). The learned Judge had been mainly influenced by the ground that a valuable right had accrued to the respondent by the bar of limitation and that is the view which has been expressly repelled by their Lordships as quoted above. I am, therefore, of the view that the contention of the appellants assailing the earlier Lahore judgments for ignoring the vital provisions of sections 148 and 149 of the Code of Civil Procedure in this regard is, therefore, well founded. Reference to all the judgments relied upon by Mr. Nehra would show that these two provisions are conspicuous by their absence in the abovesaid authorities and it appears that the attention of the learned Judges was not drawn thereto.

(10) I have closely perused the above quoted four judgments on which Mr. Nehra has placed reliance. It is evident that in *Shahadat's case* (1) (supra), the issue was not seriously canvassed. There is no detailed discussion of any principle nor any examination of the relevant authorities. It appears that the particular

grounds pleaded for condonation by the learned counsel did not appeal to the learned Judge and he declined to exercise his discretion in favour of condoning the delay and made observations in that regard. The case apart from its correctness appears to be confined to its own facts. However, once that decision was rendered, it seems to have been followed without any challenge or discussion in *Mohommad Fazal Elahi's case* (2) (supra) and in the briefest of judgments in *Harnarain* v. *Jai Gopal and others,* (3) (supra). In this Court also on the particular point, no serious canvassing on either side appears before Mahajan, J. in *Custodian Evacuee Property case* (4) (supra).

(11) Apart from the fact that the Lahore decisions referred to above make no reference to section 149, Civil Procedure Code, their force is further weakened by the observations in a later Full Bench in *Jagat Ram Misra* v. *Kharaiti Ram and another,* (6). The scope of section 149 upon which heavy reliance has been placed by the appellants was considered by the Bench and it was authoritatively laid down in these terms :—

> "Be that as it may, it seems to me that the discretion conferred on the Court by section 149, Civil Procedure Code, is normally expected to be exercised in favour of the litigant except in cases of contumacy or positive *mala fides* or reasons of a similar kind. The question of *bona fides* in this connection should be construed in the sense that the word is used in the General Clauses Act and not as used in the Limitation Act. A thing should be presumed to be done *bona fide,* if it is done honestly whether it is done negligently or not for the purposes of judging whether the discretion under section 149 should or should not be exercised in favour of the litigant."

(12) The abovesaid view has been relied upon and reiterated in this Court by the two Division Bench judgments, the facts whereof are similar, if not identical, with the present case. In *the State of Punjab,* v. *Pt. Nand Kishore,* (7), the appeal was filed in this Court with deficient court-fee which was objected to by the Registry and the insufficiency of the stamps was admittedly made up after the

(6) A.I.R. 1938 Lahore 361.

(7) 1965 Curr. L.J. 578.

period of limitation for filing the appeal had expired. The Bench consisting of Dua and Narula JJ. quoted with approval the observations in *Jagat Ram* v. *Kharaiti Ram,* (6) (supra), and whilst allowing the deficiency to be made up under section 149 of the Code of Civil Procedure observed as follows :—

> "No suitor or litigant in a free country should be non-suited on a technical matter like this if there is no want of *bona fide* on his part and if the appeal had in fact been presented within time and there has been some insignificant delay in making up the deficiency in court-fees on account of reasons beyond the control of the appellant."

The above view as also the ratio of *Jagat Ram's case* (6) (supra) has been again followed in the recent Division Bench judgment in *Smt. Amar Kaur* v. *Iqbal Singh etc.* (8). Herein also the appeal in this Court had been filed with a deficient court-fee of Rs. 3 only. On objection by the Registry, this deficiency was made up, however, after the period of limitation for filing the appeal had expired. On the suggestion of the Registry, an application for condoning the delay in the payment of court-fee was filed which was, however, rejected by the learned Single Judge. The Division Bench, after an elaborate discussion of the law, particularly in the context of section 149 of the Code of Civil Procedure, accepted the appeal and allowed the deficiency in the court-fee to be made up in exercise of the discretion under section 149 of the Code of Civil Procedure and it was ordered that the appeal would be deemed to have been filed properly samped within time in the first instance. In the Delhi High Court, I. D. Dua, C. J. in *Custodian of Evacuee Property, New Delhi* v. *Rameshwar Dayal and others,* (9) has taken a view consistent with the Division Bench of this Court in *Pt. Nand Kishore's case* to which he was earlier a party. After making an express reference to Shahadat's case (1) (supra) and also to the case of *Parbhu Dayal Chhajan Lal's case* (4) (supra) it was held that under section 149, the definition of *bona fides* as given in the General Clauses Act would be applicable and not that in the Limitation Act. It was further observed that discretion under section 149 should be exercised in the applicant's favour.

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(8) L.P.A. 813/70 decided on 18th July, 1972.
(9) A.I.R. 1968 Delhi 183.

(13) There is then an authoritative pronouncement of their Lordships of the Supreme Court in *Mannan Lal* v. *Mst. Chhotka Bibi*, (10). Construing section 4 of the Court-fees Act and section 149 of the Code of Civil Procedure together, their Lordships held that the rigour of section 4 stood mitigated by the discretion vested in the Court by section 149 of the Code of Civil Procedure. It was observed as follows :—

> "Apart from the decisions bearing on the point, there can in our opinion, be no doubt that section 4 of the Court Fees Act is not the last word on the subject and the Court must consider the provisions of both the Act and the Code to harmonise the two sets of provisions which can only be done by reading Section 149 as a proviso to Section 4 of the Court Fees Act by allowing the deficiency to be made good within a period of time fixed by it. If the deficiency is made good, no possible objection can be raised on the ground of the bar of limitation : the memo randum of appeal must be treated as one filed within the period fixed by the Limitation Act subject to any express provision to the contrary in that Act and the appeal must be treated as pending from the date when the memorandum of appeal was represented in Court. In our view it must be treated as pending from the date of presentation not only for the purpose of limitation but also for the purpose of sufficiency as to court-fee under section 149 of the Code."

(14) The abovesaid enunciation thus runs directly counter to the reasoning in *Shahadat's case* (1) (supra) which is the basic authority on which reliance has been placed in subsequent decisions. Therein the view had been expressed that sections 4 and 28 of the Court-fees Act had the effect that no legal appeal must be deemed to be filed if it was not adequately stamped and a vested right on the point of limitation would arise to the opposite party if the insufficiency was made up after the expiry of the period of limitation. Both these reasons have been categorically negatived by the authoritative pronouncement abovesaid.

(15) Though it is slightly out of context, a reference must be made to *Jai Bhagwan* v. *Om Parkash*, (11), upon which Mr. Nehra

(10) A.I.R. 1971 S.C. 1374.

(11) A.I.R. 1969 P. & H. 308.

had heavily relied in opposing specifically the applications under section 149, Civil Procedure Code, moved by the appellants. The learned Single Judge therein had followed the earlier Lahore authorities beginning with *Shahadat's case* and preferred their reasoning to the view expressed by Dua, C.J. in *Rameshwar Dayal's case* (9) (supra) and also doubted the correctness of the Full Bench in *Jagat Ram's case* (6) (supra). It was opined that the authority of the Full Bench seemed to have been shaken by the decision of the Supreme Court in *Madhavrao Narayanrao Patwardhan* v. *Ram Krishna Govind Bhanu*, (12).

(16) It is not necessary to advert in detail to the facts and reasoning in *Jai Bhagwan's case* (*supra*). It suffices to mention that this judgment was considered by the Division Bench in (9) (supra) (*Amar Kaur* v. *Iqbal Singh and others*) along with the decision in *Madhavrao Narayanrao Patwardhan's case* (12) (supra), and it was observed as follows in regard to both :—

> "These two judgments are not the correct guide for deciding applications under section 149 of the Code of Civil Procedure. For such applications, the guidance has been laid down in the cases referred to earlier in this judgment."

It is worth repeating that the Division Bench had in fact followed the view in the Lahore Full Bench and quoted with approval the view of Dua, C. J., in *Rameshwar Dayal's case* (9) (supra).

(17) The issue also deserves to be examined from another angle. In many High Courts, a considered and consistent view that has been taken is that by virtue of clause (2) of section 107 of the Code of Civil Procedure, Order 7 rule 11 applies to appeals also. Equally section 149, Civil Procedure Code, is attracted in such a case. This view at least has been held consistently in the Patna High Court and the representative opinion may be noticed in these terms in *Mahavir Ram and another* v. *Kapildeo Pathak and others*, (13)—

.....

> "Order 7, Rule 11. Therefore, makes it compulsory for the Court before rejecting the plaint to give some time to the

(12) A.I.R. 1953 S.C. 767.
(13) A.I.R. 1957 Patna 111.

plaintiff to make up the deficiency, however, short that may be, and the Court cannot straightway reject the plaint without giving such time. The provisions of Order 7 Rule 11 are applicable to appeals also as I have already stated and that being so, where the memorandum of appeal is insufficiently stamped, the Court must afford the appellant an opportunity of making good the deficiency of the court-fee payable on the memorandum of appeal.

It is, therefore, clear that a memorandum of appeal not sufficiently stamped cannot be rejected summarily on that ground, unless an opportunity is given to the appellant to explain, or to make good the deficiency within the stated time—*see*—'*Baijnath Prasad Singh* v. *Umeshwar Singh*' (14), '*Bahuria Ramsawari Kuer* v. *Dulhin Motiraj Kuer*' (15), *Sarjug Prasad Sahu* v. *Surendrapat Tewari*' (16) and—'*Ramgati Singh* v. *Shitab Singh*' (17)."

As noticed by chitaley in his exhaustive commentary on the Civil Procedure Code, the abovesaid view has been subscribed to by the majority of the High Courts of Travancore-Cochin, Bombay, Calcutta, Patna, Rajasthan and the former Chief Court of Oudh. In fairness, however, it must be noticed that a contrary view has been taken in the Lahore High Court as also by the High Courts of Allahabad and Madras. No decision of our own Court in this regard was brought to my notice by the learned counsel. It appears that the weight of authority is in favour of the interpretation that Order 7 rule 11 of the Code of Civil Procedure is equally applicable to appeals as admittedly it is to a plaint in a suit. If that is so, the appellants had virtually a right to make up the deficiency of a court-fee on the memorandum of appeal and its accompanying documents. On that view, the preliminary objection on behalf of the respondents would be wholly devoid of merit.

(18) In the ultimate analysis, therefore, it must be held that sections 148 and 149 of the Code of Civil Procedure are equally attracted to the appeals presented in this Court or Courts below

(14) A.I.R. 1937 Pat. 550 I.:L.R. 16 Pat: 600 (S.B:).
(15' A.I.R. 1939 Pat. 83 I.L.R. 17 Pat: 687:
(16) A.I.R. 1939 Pat. 137.
(17) A.I.R. 1939 Pah. 432.

as also to suits in the original trials. Applying the ratio of the decisions cited above, it is evident that unless the Court comes to the finding that the litigant was acting *mala fide* or with contumacy, the appellant would be entitled to the benefit of section 149 and discretion should be exercised in his favour by allowing him to make up the deficiency in the court-fee. In the present case, it cannot be even remotely suggested that the appellants were acting *mala fide* and that they were guilty of any contumacious conduct. I am, therefore, inclined to reject the preliminary objections and allow the application under section 149, Civil Procedure Code, moved on behalf of the appellants. The appellants are entitled to extension of time for making good the deficiency in the court-fee and the same having been already made up, their appeals should be deemed to have been filed properly stamped within time in the first instance.

(19) Apart from authorities, on principle also I am respectfully inclined to take a view in favour of the appellants as regards the preliminary objections made by the respondent. As has been often said, the rules of procedure are designed to advance the cause of justice and not to obstruct its path. It appears inapt that valuable and material rights of the litigant should flounder upon trifling deficiencies of court-fees amounting to a few *paisas*. As the observations of their Lordships of the Supreme Court in *Mahasay Ganesh Prasad Ray's case* (5) (supra) and *Mannan Lal's case* (10) (supra) would show that there is now commendable shift away from technically (in regard to the payment of court-fees) which operates harshly and with needless rigour. As the Chief Justice, Sir Shadi Lal, in another context in *Sant Singh and another* v. *Gulab Singh and others*, (18) has said—

> "The Courts exist for determining the merits of the dispute between litigants, and it is their duty to avoid, if they can legally do so, a result which causes hardship."

(20) The view I am inclined to take runs counter to the decisions of the Lahore High Court in *Shahadat's case* and also in *Mohammad Fazal Elahi's case* and *Harnarain's case* (supra). That view has also been accepted by this Court in *Prabhu Dayal Chhajan Lal's case and Jai Bhagwan's case*, (supra).

(18) I.L.R. 10 Lahore 7.

(21) With the greatest respect to the learned and distinguished Judges in the cases abovesaid, I have to hold that on principle, on the weight of the authority, and in view of the recent decisions of the Supreme Court, the ratio *decidendi* in the abovesaid cases is no longer good law. It is apt, therefore, in the context that the issue of preliminary objection raised on behalf of the respondent should be placed before a larger Bench for an authoritative decision. Let the papers be placed before my Lord the Chief Justice for appropriate orders.

S. S. Sandhawalia, J.—Order of Division Bench dated 29-10-75.

(22) The exhaustive referring order recorded by me on September 20, 1972, shall be deemed an integral part of this judgment. Learned counsel for the parties had very fairly conceded before us that they had indeed nothing more to add on the point apart from that which already stands noticed and adjudicate upon in the said order. For the elaborate reasons recorded therein, the preliminary objections raised in both the appeals on behalf of the respondents are hereby dismissed and the applications under section 149, Civil Procedure Code, moved on behalf of the appellants are allowed. The appellants are held to be entitled to extension of time for making good the deficiency in the Court-fee and the same having been already made up, their appeals are deemed to have been properly filed and stamped within time in the very first instance.

(23) For the reasons recorded in the referring order we hold that *Shahadat and others* v. *Hukam Singh* (1) (supra) *Mohammad Fazal Elahi* v. *Ram Lal and another* (2) (supra), *Har Narain* v. *Jai Gopal and others*, (3) (supra), *Custodian, Evacuee Property Punjab, and others* v. *Parbhu Dayal Chhajan Lal and others* (4) (supra) and *Jai Bhagwan* v. *Om Parkash and others* (11) (supra), are no longer good law.

(24) The preliminary objections having been adjudicated upon and dismissed, the case should now go back before a learned Single Judge for decision on merits.

K. T. S.

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