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Court : Karnataka

Decided On : Aug-07-1951

Reported in : AIR1952Kant20; AIR1952Mys20

Judge : Mallappa, J.

Acts : Mysore Court-fees Act, 1900 - Sections 10; Mysore Code of Civil Procedure (CPC), 1911 - Sections 158 and 562 - Order 41, Rule 23

Appeal No. : Civil Revn. Petn. No. 397 of 1950-51

Appellant : B. Gopalappa

Respondent : Shivananda Rice and Flour Mills and anr.

Advocate for Def. : A.R. Somanatha Iyer, Adv. General

Advocate for Pet/Ap. : M.K. Sreenivasa Iyengar, Adv.

Judgement :

ORDER

1. This is a revision petition against the order of the learned District Judge, Shimoga, in R. A. No. 24 of 50-51 refusing to pass an order of refund of the court fee paid on the memo of appeal after having, in the interest of justice, remanded the suit to the trial Court for fresh disposal. The portion of Section 10, Court fees Act, relevant to this case is :

'If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in Section 562 of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorising him to receive back from the Deputy Commissioner the full amount of fee paid on the memorandum of appeal.'

* * * * *

It has to be said that according to Section 562, Civil P. C., as it stood at the time the Court-fees Act Was enacted, the grounds mentioned in it to enable an appellate Court remanding a suit did not include a remand in the interests of justice. It is equally so according to the provisions of Order 41, Rule 23 as it stood before amendment. Since the reference in Section 10, Court-fees Act, is to a remand on any of the grounds mentioned in Section 662, Civil P. C., according to the reasoning of the learned District Judge, there cannot be a refund of the court fee paid on the memo of appeal when the appellate Court remands the suit for fresh disposal by the lower Court in the interests of justice, It has, however, to be remembered that in case Rule 23 of Order 41, cannot be read in Section 10 of Court-fees Act in place of Section 663 of the old Civil P. C., no refund of the court-fee paid can be made after the new Civil Procedure Code came into force in 1911. But Section 158 of the new Civil P. C., runs as follows :

'In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any chapter or section of Act VIII [8] of 1859 or any Code of Civil Procedure or any Regulation amending the same or any other enactment hereby repealed, such reference shall, to far as may be practicable, be taken to be made to this Code or to its corresponding part, order, section or rule.'

It will thus be seen that Section 562 mentioned in Section 10, Court-fees Act, has to be read as Rule 23, Order 41 and if that is so Rule 23, Order 41, as it stands amended has to be read in place of Section 662 of the old Code in Section 10, Court fees Act. As Rule 23, Order 41, Civil P. C., as it now stands enables the Appellate Court to remand the suit on the ground that it is necessary to do so in

the interests of justice, it follows that a refund of the court-fee paid on the memo of appeal could be made when a suit is remanded for disposal by the lower Court in the interests of justice. I may add here that this view is in accordance with the practice of this Court as could be seen from the orders passed in F. A. Ho. 226/42-43 and B. A. NO. 224/46 47.

2. In the result the order of the learned District Judge is set aside and it is directed that be shall grant to the appellant a certificate authorising him to receive back from the Deputy Commissioner the full amount of fee paid on the memorandum of appeal.

3. Revision allowed.

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