

In Re: Sheikh Ali Ahmad

In Re: Sheikh Ali Ahmad

SooperKanoon Citation : sooperkanoon.com/462339

Court : Allahabad

Decided On : Feb-06-1908

Reported in : 1Ind.Cas.209

Judge : Aikman, J.

Appellant : In Re: Sheikh Ali Ahmad

Judgement :

ORDER

Aikman, J.

1. This is a reference under Section 5 of the Court Fees Act, 1870.

2. The question for decision is as to the proper fee leviable on an application for review of judgment presented on or after the 90th day from the date of the decree, when the application refers only to a portion of the decree. Article 4, Schedule I, of the Act provides that the fee leviable on an application for review of judgment presented on or after the 90th day from the date of the decree is the fee leviable on the plaint or memorandum of appeal.' I have had the advantage of hearing the question argued by the learned Vakil for the applicant and by the learned Government Advocate as representing the Crown. The Act, it will be seen, draws no distinction between applications for review of judgment when the application affects the whole of the decree or only a portion thereof. No doubt the leading principle of the Act is that the amount of the Court fee bears relation to the amount

of relief sought, but in the words which I have to construe, I can find nothing to make this principle applicable. The proper fee for an application for review of judgment is declared to be the fee leviable on the plaint or memorandum of appeal. Now what does the Act mean by the plaint or memorandum of appeal? In my opinion it can only mean the plaint or memorandum of appeal, in which the judgment, review of which is asked for, was passed. No doubt this provision of the law may work hardships and I do not lose sight of the fact that in cases of doubt a fiscal regulation should be construed in favour of the subject. It appeals to me, however, in this case that the words, I have quoted, do not admit of any doubt. It is to be noted that the Court Fees Act contains a special provision in regard to applications for review of judgment. This is to be found in Section 15 of the Act. That section authorises a successful applicant for review of judgment save when he succeeds wholly or in part on the ground of fresh evidence, which he could not produce at the original hearing to receive back nearly the whole of his fee he had to pay on his application for review. In the present case the application for review is based on the allegation of a mistake or error apparent on the face of the record and if successful, the applicant will receive back all but Rs. 2. If I accepted the argument of the learned Vakil for the applicant, I should have to read the Act as if it ran 'The fee leviable on a plaint or memorandum of appeal asking for the same relief as that asked for in the application for review.' In the case reported in 7 Madras H.C. Reports 7 Mad. H.C. Rep., App. 1. it appears that the majority of the Court considered that they might read the Act as if it ran in the manner indicated, but it appears to me that to do so would be to go beyond the province of a Court in interpreting the words of the Act. The learned Vakil for the applicant also relies on the decision of Melvill, J., In re Manohar Tambekar 4 B. 26. That decision is in favour of the applicant, but the learned Judge admits that he arrived at it not without hesitation.' The case of Nobin Chundra Chackerbutty v. Mohamed Uzir Ali Sarkar 3 C.W.N., 292, is against the applicant; so is also the view taken by the Taxing Officer of this Court in Imdad Hasan Khan v. Badri Prasad 18 A.W.N., 212. It is possible that the construction which I place on the section may, in some instances, be productive of hardship, but in my opinion the words of the Act admit of no interpretation other than what I place on them. If there is any hardship, the remedy is an amendment of the law. My reply to the reference is that the office

report to the effect that the application must bear the court-fee leviable on the memorandum of appeal is correct. I omitted to say that the learned Vakil based his argument on the use of the word leviable instead of levied. It appears to me that this word was used in order to provide for an application for review by a defendant or respondent in the case of a suit or appeal in forma pauperis.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com