

Tej Pal and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Mar-09-1999

Reported in : 1999(4)AWC3175

Judge : Binod Kumar Roy and ;S.K. Jain, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 148, 149 and 151 - Order XLI, Rule 1; Court Fee Act, 1870 - Sections 4

Appeal No. : F.A. No. 796 of 1993

Appellant : Tej Pal and Others

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Pankaj Mithal, Adv.

Judgement :

ORDER

Binod Kumar Roy and S. K. Jain, JJ.

1. Miscellaneous Application dated 22.12.1997 filed under Sections 148, 149 and 151 Code of Civil Procedure has been put up for consideration along with the report dated 29.11.1993 of the Stamp Reporter. According to the Stamp Reporter

stamp worth Rs. 95,877.50 paise are deficit. The office note states that three months time was earlier granted to the appellant vide order dated 8.3.1995 to pay the deficit court fee which has not been complied with.

2. Through this miscellaneous application, a prayer has been made to allow time to make good the deficiency in the court fee.

3. Sri Mithal, learned counsel for the appellant, contended that the appellants are not at all in a position even by now to pay the deficit court fee but for the said reason the memorandum of appeal cannot be rejected rather it has to be returned as laid down by 5 Judges Full Bench in *Wajid Ali v. Isar Banu*, AIR 1951 All 54 (Paragraph 181).

4. There is no tangible material before us to satisfy as to why despite expiry of time of one year two months by now, the appellants have not paid the deficit court fee. In view of the failure of the appellants to deposit the deficit court fee, and in view of the stand taken by Mr. Mithal that they are not in a position to pay the deficit court fee, now being left with no option we reject this miscellaneous application.

5. Now we come to the prayer of Mr. Mithal to return the plaint. Section 4 of the Court Fee Act. 1870 reads thus :-

'4. Fees on documents filed, etc., in High Courts in their Extraordinary Jurisdiction.--No document of any of the kinds specified in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its Extraordinary Original Civil Jurisdiction ;

or in the exercise of its extraordinary original criminal jurisdiction:

In their appellate jurisdiction--or in the exercise of its jurisdiction as regards appeals from the judgments (other than Judgments passed in the exercise of the Ordinary Original Civil Jurisdiction of the Court) of one or more Judges of the said Court, or of a division Court :

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence :

As Courts of Reference and Revision--or in the exercise of its Jurisdiction as a Court of Reference or Revision ;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.'

The schedule mentions memorandum of appeal and the quantum of proper court fee which is required to be paid thereon.

6. Sections 148 and 149 of the Code of Civil Procedure reads thus :

'148. Enlargement of time.--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. Power to make up deficiency of Court-fees.--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.'

7. The Supreme Court in Mannan Lal v. Mst. Chhotka Bibi, AIR 1971 SC 1374, while reversing the Full Bench decision of our own High Court in AIR 1964 AW 552, had observed and held as follows :

'(i) On a parity of reasoning it is difficult to see why if a memorandum of appeal insufficiently stamped is not to be rejected.....' (Vide paragraph 17)

(ii)there can be no difficulty in holding that an appeal was presented in terms of Order XL1, Rule 1 of the Code inasmuch as all that this provision of law

requires for an appeal to be preferred is the presentation in the form of a memorandum as therein prescribed. If the Court fee paid thereon be insufficient it does not cease to be a memorandum of appeal although the Court may reject it. If the deficiency in the fee is made good in terms of an order of the Court, it must be held that though the curing of the defect takes place on the date of the making good of the deficiency, the defect must be treated as remedied from the date of its original institution. (Vide Paragraph 211).

(iii) The filing of a memorandum of appeal therefore brings an appeal into existence if the memorandum is deficient in Court-fee, it may be rejected and if rejected, the appeal comes to an end.' (Vide Paragraph 22)

8. In view of this clear cut pronouncement, we do not feel persuaded to refer this question to a larger Bench and hold that we possess powers to reject a memorandum of appeal on account of deficiency of the Court fee under Sections 148, 149 as well as Section 151 of the Code of Civil Procedure to prevent abuse of the process of our own High Court.

9. We, accordingly, reject the memorandum of this appeal. Consequently the appeal stands dismissed. The office is directed to consign its record to the record room of the Court.