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Kiran Electricals Vs. State Bank of Indore and anr.

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Court : Madhya Pradesh

Decided On : Jan-07-1983

Reported in : AIR1983MP110

Judge : G.G. Sohani and ;R.K. Vijayvargiya, JJ.

Acts : Court-fees Act, 1870 - Sections 13; Code of Civil Procedure (CPC) - Order 41, Rule 23A

Appeal No. : Misc. Civil Case No. 153 of 1981

Appellant : Kiran Electricals

Respondent : State Bank of Indore and anr.

Advocate for Def. : A.K. Chitale, Adv.

Advocate for Pet/Ap. : Y.I. Mehta, Adv.

Disposition : Application dismissed

Judgement :

Sohani, J.

1. This is an application praying for refund of court-fees under Section 13 of the Court-fees Act.

2. The material facts giving rise to this application briefly are as follows:--

The applicant, aggrieved by the judgment and decree dated 8th May, 1980, passed by the learned Additional District Judge, Indore, in Civil Suit No. 5-B of 1976, had filed an appeal in this Court, which was registered as First Appeal No. 81 of 1980. A Divisional Bench of this Court by its judgment dated 18th July, 1981, allowed the appeal and remanded the case to the trial Court under Order 41, Rule 23-A, C.P.C. The applicant has now filed this application praying that as the suit has been remanded, the court-fees paid by him on the memorandum of appeal be directed to be refunded to the applicant in accordance with the provisions of Section 13 of the Court-fees Act.

3. Having heard the learned counsel for the applicant, we have come to the conclusion that this application deserves to be rejected. The learned counsel for the applicant conceded that while remanding the case to the trial Court, this Court had acted in exercise of the powers conferred by Order 41, Rule 23-A of the Civil P. C. Section 13 of the Court-fees Act, which deals with refund of court-fees paid on the memorandum of appeal, expressly provides that refund shall he ordered when the suit is remanded on the grounds mentioned in Order 41, Rule 23, C.P.C. Section 13 of the Court-fees Act is, therefore, not attracted. It was however urged on behalf of the applicant that refund of court-fees could be directed in exorcise of the inherent powers of this Court. Reliance was placed on the decision of a learned single Judge of this Court in Goverdhandas v. Bhaiyya-lal (1963 MPLJ (SN) 250).

4 On the question as to whether an order of refund of court-fees paid on a memorandum of appeal could be passed when the suit is remanded in exercise of inherent powers of the Court, there are conflicting decisions. The decision of a learned single Judge of this Court in 1963 MPLJ (SN) 250 (supra) no doubt lays dawn that an order for refund of court-fees can be passed by a Court in exercise of its inherent powers. That decision however does not take note of another decision of the Court in Ramballabh Jasraj Marwadi v. Dharamsi Jetha & Co. (AIR 1937 Nag 268) which lays down that where a case is remanded under Section 151, C.P.C., the appellant is not entitled to a refund of court-fees. Moreover, the

decision in 1963 MPLJ (SN) 250 (supra) relies on the decision reported in Sohansingh v. Oriental Bank of Commerce (AIR 1956 Punj 215) which has been overruled by a Full Bench of that Court in Jawahar Singh Sobha Singh v. Union of India (AIR 1958 Punj 38). The Full Bench held that the inherent power of a Court to refund court-fees is confined only to fees which have been illegally or erroneously assessed or collected and does not extend to fees which have been paid in accordance with the provisions of the Court-fees Act. We respectfully agree with that decision. In this view of the matter, it must be held that the decision in 1963 MPLJ (SN) 250 (supra) does not lay down correct law. It is also significant to note that after the introduction of Rule 23-A in Order 41, C.P.C. by the amending Act of 1976, there has been no amendment in Section 13 of the Court-fees Act to bring within its sweep a remand of a suit under Order 41, Rule 23-A, C.P.C. In case of a remand under Order 41, Rule 23-A C.P.C., it cannot be said that the order of remand is passed in exercise of inherent powers of a Court and hence refund of court-fees in exercise of inherent powers of a Court should be ordered. It has been held in Smt. Shantaben Jerambhai Chavda v. Lallubhai Jerambhai Chavda (AIR 1980 Guj 152) that refund of court-fees cannot be ordered in case of remand of suit under Order 41, Rule 23-A, C.P.C. We respectfully agree with that decision.

5. For all these reasons, this application is rejected. No order as to costs.

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