

Ramlal Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : May-14-2002

Reported in : 2002(3)MPHT400

Judge : Deepak Verma and ;A.K. Gohil, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order XLI, Rule 23 and 23A; [Court Fees Act, 1870](#) - Sections 13

Appeal No. : Misc. Civil Case No. 255/2001

Appellant : Ramlal

Respondent : State of M.P.

Advocate for Def. : Z.A. Khan, Addl. Adv. General

Advocate for Pet/Ap. : P.K. Saxena, Sr. Adv., ;M.D. Arya, ;Hardia, ;A.S. Garg, ;S.K. Behl and ;Vinita Phaye, Advs.

Disposition : Misc. civil case dismissed

Judgement :

ORDER

1. This order shall also govern disposal of connected matters, the details of which have been given in the Annexure appended to this order.

2. This application has been filed under Section 151, CPC for refund of Court-fee paid by the petitioners in earlier set for litigation, which was at their instance.

3. The facts giving rise to filing of this application are mentioned in nut-shell as under: The case has a long and chequered history. Petitioner's land was sought to be acquired for setting up of Centre for Advance Technology (CAT) and wholesale fruit market. Notifications under Sections 4 and 6 of the Land Acquisition Act were issued. The parties appeared before the Land Acquisition Officer and submitted their objections. Land Acquisition Officer passed an award in favour of the land owners. Being dissatisfied with the award reference was made to the Civil Court. The Civil Court passed an award enhancing the amount of compensation, but still being dissatisfied the petitioners as land owners preferred first appeals or cross-appeals in the appeals preferred by CAT against the same award. There were two batch of appeals. Both batch of appeals were decided by different Division Benches of this Court, on 11-5-99 and on 18-10-2000. The matters were remanded to the Reference Court as the sale deeds on which reliance was placed by the parties in the award were not proved either by examining vendor, vendee or attesting witnesses of the same. This remand had become necessary on account of the judgment of the Supreme Court reported in P. Ram Reddi and Ors. v. Land Acquisition Officer, Hyderabad, (1995) 2 SCC 305. While remanding the matter to the Reference Court following order came to be passed :--

'Reference Court award is set aside. Each matter shall be remitted to respective Reference Court for fresh consideration and disposal under law. Parties shall be afforded a reasonable opportunity to lead their evidence and to prove the unproved sale-deed borne by record, if they can.'

4. It appears that at that time also the petitioners made a prayer for refund of the Court-fees, but the Court directed as under :--

'At this stage appellant's Counsel prayed for refund of Court-fees deposited by them for maintaining these appeals. Consideration on the prayer is deferred leaving appellants free to seek adjustment of paid Court-fees in the event they are advised to take fresh appeals against the new award passed by Reference Court or to ask for refund otherwise.'

5. After the aforesaid remand to the Reference Court, a fresh award came to be passed. Same was again challenged by parties by filing first appeals in the High Court. In the second round of litigation, the amount of compensation awarded to the land owners was enhanced from Rs. 50,000/- per acre as awarded by the Reference Court to Rs. 1 lac per acre in the first appeals, by the High Court. The said first appeals were disposed of on 9-11-2001. Main judgment in the said appeals was passed in F.A. No. 360 of 2000. All other connected appeals also stood disposed of by the said common order. In these appeals also, the petitioners had initially filed the appeals without payment of requisite Court-fees, but filing an application seeking exemption from payment of Court-fees on the ground that Court-fees paid in earlier set of appeals, should be given adjustment. However, during the pendency of the second round of litigation in the High Court, at a subsequent stage, all the land owners paid Ad Valorem Court-fees on the memo of appeals. They did not press the interlocutory applications filed by them either for refund of the Court-fees or for adjustment of the same in the subsequent appeals.

6. After deciding the first appeals on merits, now the petitioners have filed applications under Section 151, CPC for refund of the Court fees which was paid by them in the earlier set of litigations when the matter was remanded to the Reference Court, for the purposes of proving the unproved sale-deeds.

7. We have, accordingly, heard the Counsel for parties at length and perused the record. Refund of fee paid on memorandum of appeal is dealt with in Section 13 of the [Court Fees Act, 1870](#). It contemplates-- 'if a suit is remanded in appeal on any of the grounds mentioned in Order 41, Rule 23, CPC, 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 Collector the full amount of fee paid on the memorandum of appeal'.

8. In view of the aforesaid provision, now two questions arise for consideration for refund of Court-fees-- (1) Whether the remand made earlier was under Order 41, Rule 23 or it was under Order 41, Rule 23-A, CPC ?, (2) If it was under Order 41, Rule 23-A, CPC, then recourse to Section 151, CPC for refund of Court-fees can be taken or not It is pertinent to mention here that when the petitioners filed

second round of litigation by filing first appeals in the High Court after the remand and after the new award was passed by the Reference Court, they had filed the appeals without payment of Ad Valorem Court-fees, but moved applications for adjustment of Court-fees already paid by them in the earlier litigation. But when the matter came to be heard by Division Bench of this Court, it appears from the record, that the petitioners never pressed their applications for adjustment of Court-fees. On the other hand, on objection being raised by the office they deposited the Court-fees. Thus, in the considered opinion of this Court the petitioners had , waived their right to claim refund as even though they had filed applications for refund of the Court fees, but they never made any prayer in this regard when the appeals of the petitioners along with other connected appeals were being heard. If the petitioners were really interested either for refund of the Court-fees or for adjustment of the same, then they should have argued the applications filed by them in this regard. Not having done so, we are of the considered opinion that this act of the petitioners would amount to waiver of their right to claim Court-fees.

9. It may also be pertinent to mention here that against the second award passed by the Reference Court, the amount has been enhanced by almost 100%. Reference Court had awarded the petitioners compensation at the rate of Rs. 50,000 per acre, whereas in appeal, this Court has enhanced the same at the rate of Rs. 1 lac. Only after getting the amount enhanced, they have woken up from their slumber and have made the instant application. For this reason also we find that the petitioners had waived their right to claim refund or adjustment of Court-fees in the second round of litigation.

10. Shri P.K. Saksena, learned Senior Counsel appearing with Shri Rauka has not disputed before us that the wholesale remands made earlier by orders dated 11-5-99 and 18-10-2000 respectively by the Division Bench of this High Court, were nothing but orders passed under Order 41, Rule 23-A, CPC. However, this position has been disputed by some of the other Advocates appearing for other land owners. According to them it was only on preliminary point that the matters were remanded to the Reference Court, therefore, it would be a case which would come squarely under Section 13 of the Court Fees Act as the said orders of

remand were under Order 41, Rule 23, CPC. With an intention to examine whether the remand was under Order 41, Rule 23 or it was under Order 41, Rule 23-A, CPC, it is necessary to go through the aforesaid two provisions. Order 41, Rule 23, CPC, contemplates 'where a matter is disposed of on a preliminary point and the decree is reversed in appeal' whereas Order 41, Rule 23-A deals with remand in other cases. It contemplates 'where the case has been disposed of otherwise than on a preliminary point and the decree is reversed in appeal and a retrial is considered necessary'. Thus, the distinguishing feature in both the Rules is that in earlier Rule the matter is disposed of on preliminary point, whereas in the latter Rule it is decided otherwise than on a preliminary point.

11. The question, therefore, is to consider whether the earlier remand was under Rule 23 or under Rule 23-A of Order 41, CPC. From the reading of these judgments passed earlier, it is clear that remand had become necessary on account of the fact that the parties had not proved the sale-deeds on which they had placed reliance so that the amount of compensation could be worked out properly and effectively. No doubt it is true that it had become necessary on account of the order passed by the Supreme Court, as it was prevailing then, which has now been overruled in a later judgment of the Supreme Court reported in *Land Acquisition Officer and Mandal Revenue Officer v. Narasayya*, AIR 2001 SC 1117. Thus, it was a wholesale and open remand not only on preliminary point but also on merits of the matter for retrial. The parties were given opportunity to lead evidence and to prove the unproved sale-deeds which could facilitate the Reference Court to work out the amount of compensation and then to pass a new and fresh award on the basis of the evidence available on record. Such a remand made earlier would not be a remand only on preliminary point. The Reference Court had been directed to decide the matter afresh on the new evidence that was to be led by the parties. A full retrial was directed to be held as per the remand. In our considered opinion such a remand would not be a remand under Order 41, Rule 23, CPC but would be a remand only under Order 41, Rule 23-A, CPC.

12. Shri P.K. Saksena has strenuously placed reliance on a Full Bench judgment of the Allahabad High Court reported in *Chandra Bhushan Misra v. Smt. Jayatri Devi*, AIR 1969 All 142. Before the Full Bench the question was with regard to

refund of Court-fees when a remand was made under Order 41, Rule 23, CPC (as amended in U.P.) on the ground that it was in the interest of justice to do so. The majority view was that whenever an appeal is remanded by the High Court under Order 41, Rule 23, CPC (as amended in U.P.) on the ground that it is in the interest of justice to do so, the appellant is entitled to a refund of the Court-fees paid on the memorandum of appeal. The Full Bench had ordered refund of the Court-fees on account of the amendment made by High Court in Rule 23 in U.P. This judgment of the Full Bench was taken to the Supreme Court at the instance of State of U.P. and the Supreme Court also upheld the majority view of the Full Bench of Allahabad High Court and held that if the case is remanded in the interest of justice as provided by amended Rule 23, refund of Court-fees can be ordered under Section 13 of the Court Fees Act. As has been mentioned above, there was an amendment in Rule 23 of Order 41, CPC, made by High Court applicable in U.P. The amended Rule reads as under :--

'Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, or where the Appellate Court, while reversing or setting aside the decree under appeal, considers it necessary in the interest of justice to remand the case, it may by order remand the case.'

13. Here in the case in hand, we find that remand was not considered necessary in the interest of justice, but it was made on account of earlier view of the Supreme Court wherein it was held that for working out the amount of compensation payable to land owners, it would be incumbent on the part of the land owners to prove the sale-deeds on which reliance has been placed either by examining the vendor, vendee or the attesting witnesses. We have already mentioned above that this view of the Supreme Court now stands over-ruled in the matter of *Narasayya* (supra). Thus, it cannot be said that the remand was in the interest of justice. We are, therefore, of the considered opinion that the remand was only under Order 41, Rule 23-A, CPC, If the remand was only under Rule 23-A, then of course the petitioners would not be entitled to claim refund of the Court-fees. It has been held so by a Division Bench of this Court in a judgment reported in *Kiran Electricals v. State Bank of Indore and Anr.*, AIR 1983 MP110. The Division Bench has held

while interpreting Section 13 of the Court Fees Act that if remand to the Lower Court has been made by the High Court exercising the powers conferred on it under Order 41, Rule 23-A, CPC, then there cannot be any order for refund of Court-fees. This view was also followed by a learned Single Judge of this Court in a case reported in *Radhaklshan Biharilal v. Mohanlal Radhakishan-ji*, 1989 MPLJ 199. While discussing the issue learned Single Judge has also distinguished the Supreme Court judgment of *Chandra Bhushan Misra* (supra).

14. We, therefore, hold that against such a remand, which was essentially under Rule 23-A, CPC, refund of Court-fees cannot be ordered.

15. Learned Counsel thereafter submitted that at least in the interest of justice and keeping the interest of the petitioners, powers conferred on this Court under Section 151, CPC should be invoked. To press this submission further, reliance has been placed on a judgment reported in *Arjun Govinda v. Amrita Keshiba and Ors.*, AIR 1956 Nagpur 281. This was a case where on account of objection of the Stamp Reporter the appellant had paid additional Court-fees which was not leviable at all. In view of the peculiar facts and circumstances of the case, the Court directed that recourse to Section 151, CPC can be taken. However, it does not deal with the situation where Rule 23 or Rule 23-A of Order 41, CPC was involved.

16. The principle with regard to refund of Court-fees is that when there is no legal obligation to pay the Court-fees the Court orders, in substance, the law to be carried out, and not to increase the liability upon the litigant. But the principle cannot be extended in support of a litigant who has paid Court-fees for which, in law, he was liable, but who, because of certain circumstances feels that equitable considerations require that he should not be asked to pay the Court-fees. This has been held so in a judgment report in *Ranjan Lal v. ShankarLatt*, AIR 1953 Nagpur 300.

17. It may also be pertinent to mention here that in the aforesaid case admittedly petitioners had taken advantage of the order of remand in as much as the sale-deeds which were not properly proved could be proved by them subsequent to the order of remand. Not only this, after the remand and after passing of the new and

fresh award by the Reference Court they have been adequately compensated by enhancement in the amount of compensation by this Court. Having taken full advantage of the litigations it will neither be proper nor just for the petitioners to seek refund of the Court-fees for the litigation which has ended in great benefit to them, merely on the ground of some observation made by the Division Bench earlier while remanding the matter.

18. Therefore, we are of the considered opinion that no case is made out for refund of the Court-fees. Thus, this and the connected M.C.Cs. are hereby dismissed. Parties bear their own costs.

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