

**In Re: Chukka Durgiah**

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**SooperKanoon Citation :** [sooperkanoon.com/801154](http://sooperkanoon.com/801154)

**Court :** Chennai

**Decided On :** Aug-19-1938

**Reported in :** (1938)2MLJ647

**Appellant :** In Re: Chukka Durgiah

**Judgement :**

**Pandrang Row, J.**

1. The point raised in this petition is that decided in Sadasivam Pillai v. Varadaraja Odayar : AIR1937 Mad325 . In that case Venkataramana Rao, J., purported to follow a previous decision, namely, that of Venkatasubba Rao, J., in Lakshmana Aiyar v. Palaniappa Chettiar : AIR1935 Mad927 . The point is whether when a Court has passed a judicial order fixing the correct court-fee payable on a memorandum of appeal it is open to that Court to revise it afterwards either at the instance of a party or of its own motion. This question was answered in the negative in the cases referred to above and I see no sufficient reason for not following those decisions. It is urged however by Mr. Sitarama Rao that the word 'final' found in Section 12(1) of the Court-Fees Act is capable of the meaning that there should be no appeal from that order and not that it shall not be open to review by the same Court which made the order. This argument does not appear to have been put forward in the course of arguments in the previous cases, but it appears to me that this argument is hardly available in view of Clause (2) of the same section which provides for an alteration of the order by a superior Court of

appeal or revision. In the particular case before us there was no application for a review of the order by, the petitioner himself against whom the present order was made modifying the order which was favourable to him. Nor did the Court purport to act under its inherent powers. Finally it is impossible in a case like this to say that it was necessary for the ends of justice to modify the order already passed. In these circumstances I am of opinion that the learned District Judge had no jurisdiction to vary the order dated 28th September, 1937, to the prejudice of the petitioner by his subsequent order dated 11th December, 1937, in the matter of the court-fee payable on the memorandum of appeal.

2. The petition is therefore allowed and the order of the District Judge, dated 11th December, 1937, is set aside. There will be no order as to costs of this petition.

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