

In Re: Narayana Reddiar

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Court : Chennai

Decided On : Sep-19-1941

Reported in : AIR1942Mad316; (1942)1MLJ226

Appellant : In Re: Narayana Reddiar

Judgement :

Abdur Rahman, J.

1. This is a revision against an order refusing an application for the grant of a certificate in respect of court-fee paid by the plaintiff to the extent of Es. 183-14-0 on the 11th January, 1939, in the following circumstances. A suit for money due on a hypothecation bond was instituted by the plaintiff in the Court of the District Munsif of Cuddalore. The plaint had a stamp of rupee one to start with, but it appears that a stamp of Es. 70 was paid later on while the suit was pending. The plaint should have had a stamp of the value of Rs. 254-14-0. There was thus a deficit of Rs. 183-14-0. Since the plaintiff did not make up this deficiency, his plaint was rejected on the 9th January, 1939. Two days later he applied for a review of this order by I.A. No. 139 of 1939, and along with this application for review he tendered the deficit court-fee of Rs. 183-14-0; but his application was rejected on the 25th April, 1939. The petitioner therefore asked for a certificate authorising him to receive the refund of court-fee. This was refused on the ground that if the sum of Rs. 71 which was paid by him when the suit was pending could not be refunded to him the sum of Rs. 183-14-0 would not be equally refundable. In coming to that

conclusion the District Munsif relied on Janak Prasad v. Askaran Prasad I.L.R.(1927) Pat. 602 but the case has obviously no application. In that case the appellant had applied for refund of court-fee that he had affixed on the memorandum of appeal. Had he paid the court-fee after the appeal was dismissed, this decision might have had some application to the facts of the present case. But there the money was paid in before ' the appeal was disposed of. The plaintiff is not asking for a refund of Rs. 71 which he had paid before the suit was dismissed. The reasoning therefore given by the lower Court for the dismissal of this application is fallacious. A court-fee of Rs. 183-14-0 was put in by the plaintiff with his application with the object of its being utilised if and when the application for review was accepted by the Court. If the application for review was not to be accepted as in this case it was not, the court-fee put in with the petition for review would have had to be refunded. In accordance with the rules the court-fee stamp in this case was cancelled as soon as it was put in. What the lower Court should have done when it rejected the 'application for review was therefore to grant a certificate to the petitioner authorising him to receive the amount which he had paid. It is true that Sections 13, 14 or 15 of the Court-Fees Act have no application, but it has been held that the court-fee can be refunded under the inherent powers of the Court. It may be that the court-fee in this case was not paid by a mistake of either party or in obedience to a wrong order of the Court, but it is equally clear that it was not meant to be utilised until the petition for review presented on behalf of the petitioner was accepted by the Court. The Munsif was therefore wrong in rejecting the application for the grant of a certificate. He should have granted one under Section 151, Civil Procedure Code. I would therefore accept the revision and direct that a certificate in regard to the court-fee of Rs. 183-14-0 should be issued to the petitioner by the lower Court.