

In Re: H.C. Studd and ors.

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Court : Kolkata

Decided On : Dec-09-1898

Reported in : (1899)ILR26Cal124

Judge : Ghose and ;Rampini, JJ.

Appellant : In Re: H.C. Studd and ors.

Judgement :

Ghose, J.

1. I have considered the application of the petitioners for leave to put in five, instead of the twenty-nine, sets of process fees required by the Rules of the Court on the subject, and I think that no sufficient ground has been made out for the granting of such indulgence. I accordingly refuse the application.

2. I express no opinion upon the question whether or not the Court has the power to relax in any case the process fee rules.

Rampini, J.

3. In this case, in consideration of his presenting twenty-nine analogous appeals, the applicant applies for a relaxation of the High Court Process fee rules, and prays that five sets instead of twenty-nine sets of process fees may be levied. There has hitherto been some diversity of practice in this Court in respect of this

matter, some Benches readily granting a relaxation of these rules, and others refusing to do so.

4. I am of opinion that this Court has no power to relax the process fee rules in any way. Process fees are levied under the Rules framed by the High Court in accordance with the provisions of Section 20 of the Court-fees Act. These rules have the force of law and therefore must be followed, and though the High Court may from time to time alter and add to the Rules, it is necessary that the altered Rules should before being put in force be confirmed by the Local Government and sanctioned by the Governor-General of India in Council.

5. Now, the Rules which have been drawn up by this Court on the authority of this provision of the law are to be found in Chapter XIV of the High Court Rules for the Appellate Side of the Court, and it is by them prescribed that certain fees are to be levied on the processes issued in each case. It is to be observed that no power is given by these Rules to relax them or to remit the fees in any case whatever, and it appears to me that in these circumstances they cannot be relaxed, and that the fees prescribed by them must be levied, there being no power given to the Court to remit them. The absence in Chapter XIV of all power to relax the Rules or remit the fees is the more noticeable, as in Chapter IX of the High Court Rules, which relates to the preparation of the paper books in appeals from appellate decrees, by Clause 11 of Rule 8, power is given to the Court upon the application of any party and upon good and sufficient reason being shown to give such special directions, as to any of the matters to which the Rules in Chapter IX relate, as it may deem fit and even by special order to exempt any party from the operation of any portion of those Rules. The absence of any analogous provisions in Chapter XIV in my opinion points to the conclusion that no discretion is given to the Court in any way to remit the process fees or to depart from the rules relating to them in any respect.

6. The learned pleader for the applicant, however, argues that, though such power may not be given to the Court by the High Court Rules on the subject, such power is given by Section 93 of the Civil Procedure Code, which prescribes that 'every process issued under this Code shall be served at the expense of the party on

whose behalf it is issued, unless the Court otherwise directs.' But this provision of the Civil Procedure Code does not appear to me to give a Court any power to depart from the Rules of the High Court, on the subject of the levy of process fees, or to remit these fees. The section relates to the payment of process fees by the parties to a suit, and gives the Court acting judicially power to make an order between party and party only, as to who should pay the process fees. It does not expressly give power to remit the fees, or what comes to the same thing, to order that the process should be served free, or, in other words, at the expense of Government, and in the present cases we cannot, I think, make such an order under Section 93 of the Civil Procedure Code, seeing that the Government is no party to the suits.

7. For these reasons I am of opinion that there is no power anywhere given under which we could comply with the application of the pleader for the appellants in these cases, and I would therefore refuse it.

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