

Major Punnu Ram Vs. the State

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Court : Himachal Pradesh

Decided On : May-19-1964

Reported in : AIR1964HP29

Judge : Om Parkash, J.C.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 151

Appeal No. : Civil Revn. No. 7 of 1964

Appellant : Major Punnu Ram

Respondent : The State

Advocate for Pet/Ap. : Sant Ram, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Om Parkash, J.C.

1. This revision-petition has arisen out of an application for the refund of court-fee of Rs. 94/-.

2. The petitioner had, on 6-5-63, instituted a suit, in the Court of the Senior Subordinate Judge, Bilaspur, against Bishan Dass, for the recovery of Rs. 812.80

nP. on the basis of a promissory note. On 9-5-63, the counsel for the petitioner, put in an application, for the refund of the court-fee, paid on the plaint. Both the application and the suit were dismissed, on 2-7-63, in default of appearance. On 5.7.63, a second application, purporting to be under Section 13, Court-fees Act and Section 151, Civil Procedure Code, for the refund of court-fee, was filed by the counsel for the petitioner. The allegations, made in the application, were as follows: --

3. The petitioner is in military service and was posted at Kalka. He had entrusted the papers, for the institution of the suit, against Bishan Dass, to his counsel, with the instructions that it was likely that Bishan Dass may effect a compromise with the petitioner and that the suit be instituted on the last day of limitation only (which was 6-5-63), in case no further instructions were received from the petitioner. Bishan Dass approached the petitioner, at Kalka, on 4.5.63, and effected a compromise. He paid the petitioner Rs. 200/ and executed a promissory note for the balance. On the same day, i. e., 4-5-63, the petitioner sent a telegram to his counsel, directing him not to file the suit. Unfortunately, the telegram, which should have, in the ordinary course of business, reached the counsel on the 4th or 5th May, reached him on the 8th May. As no further instructions were received, the counsel instituted the suit on 6-5-63, at 4.15 P. M. A letter was also received by the counsel, on 6-5-63, but after he had already instituted the suit. The petitioner claimed refund of court-fee on the ground that if the telegram had reached the counsel on the 4th or 5th May, as it should have, in the ordinary course of business, the suit would not have been filed and that he should not be made to suffer for the fault of the Telegraph Department, in delivering the telegram late.

4. The learned Senior Subordinate Judge rejected the application of the petitioner, holding that the case of the petitioner, for refund of court-fee, did not fall under Section 13 of the Court-fees Act or any other section of that Act and was not a fit one, in which the Court should exercise its inherent powers, under Section 151, Civil Procedure Code, for ordering refund of court-fee.

5. The petitioner has come up in revision, against the order, rejecting his application. Now, the Court-fees Act contains provisions, e. g., Sections 13, 14, for

the refund of court-fees. Admittedly, the case of the petitioner does not fall under any of those provisions. The contention of the learned counsel for the petitioner was that, in the circumstances set out in the application, refund of court-fee should have been allowed, to the petitioner in exercise of the inherent powers, under Section 151, Civil Procedure Code. The Courts, no doubt possess inherent powers to order refund of court-fees, even in cases, which are not covered by the provisions of the Court-fees Act. Such cases, broadly speaking, are where court-fee was paid in excess, either by mistake, inadvertence or oversight, vide *Vishnuprasad Narandas v. Narandas Mohan Lal*, AIR 1950 Bom 4 or was erroneously paid under orders of the Court, vide *In re, Vedaranyaswami Devasthanam*, AIR 1942 Mad 464. The extent of the inherent powers of a Court to refund court-fee was considered in a Full Bench decision of the Punjab High Court, *Jawahar Singh Sobha Singh v. Union of India*, AIR 1958 Punj 38. At p. 40, it was laid down that :

'Again a Court has power to act rightly and fairly towards all parties, to prevent abuse, oppression and injustice, and to order a refund of the money which ought in good conscience to be repaid to the person from whom it has been illegally or erroneously exacted. If, therefore, a litigant pays a Court-fee which has been unjustly assessed or is excessive in amount or has been wrongly collected, the Courts will give him relief *ex debito justitiae*, for the State has impliedly Agreed to pay back the money received by a Court but which the law had not authorised the Court to exact. Beyond this the inherent powers will not take us'.

6. In the instant case, the court-fee was not paid by the petitioner, either under a mistake or through inadvertence, or oversight. Nor was it illegally or unjustly collected from him. The petitioner had paid the court-fee in accordance with law. Refund of court-fee, which was paid in accordance with law, cannot be allowed, under the inherent powers of the court. Reference, in this connection, may be made to *Om Prakash Gupta v. State of Uttar Pradesh*, (S) AIR 1955 SC 600. In that case, the appellant, Om Prakash Gupta, had instituted a suit for a declaration that the order of dismissal was wrongful, illegal, void and inoperative and that he still continued to be a member of the Civil Service, entitled to full pay, with all increments as they fell due. In the alternative, the appellant had prayed for a

declaration that the order of dismissal was wrongful and that a decree to the extent of Rs. 1,20,000/-, with interest by way of damages may be passed in his favour. The appellant had paid the requisite court-fee on the valuation of Rs. 1,20,000/-. The alternative claim was deleted from the plaint as a result of an amendment, having regard to a subsequent decision of the Privy Council which held that a person illegally dismissed from Government service could only get a declaration that the order was inoperative, and that he still continued to be member of the Service. The appellant asked for the refund of the extra court-fee, invoking the inherent powers of the Court. The trial Court and the High Court refused to allow refund. The decision was upheld by their Lordships of the Supreme Court, with the observations that: --

'At the time the suit was instituted the law as then understood permitted such a claim to be made. The decision of the Privy Council, however, made it clear that no such claim could be made and all that a Government servant could ask for was a declaration that the order of dismissal was illegal and that he still continued to be a member of the Civil Service. The decision of the Privy Council clarifying the position could not be a ground for refund of court-fee when at the time it was paid it was in accordance with the law as then understood'. page 602.

7. In *Karfule Ltd. v. Arical Daniel Var-gheese*, A. I. R. 1953 Bom 73, an appeal, filed in the High Court was compromised, out of Court. The appellants applied for refund of court-fee, paid on the memorandum of appeal. The application was rejected. Their Lordships, Chagla, C. J. and Gajendragadkar J., laid down that: --

'Therefore, if there was a legal obligation upon the appellants to pay the court-fees before they could prefer an appeal to this Court, the mere fact that the appeal was compromised out of Court and was withdrawn, and not heard by this Court, cannot exonerate the appellants from paying the court-fees, nor can they contend that they are liable to pay less court-fees than what the law lays down is the proper court-fees. Undoubtedly, the Court has, as we shall presently point out, exercised inherent jurisdiction under Section 151 to order refund of court-fees in cases not covered by Sections 13, 14 and 15. But when we look at the principle underlying these cases, the principle is clear in all of them. There may be cases where a

litigant pays court-fees which he is not liable to pay under the Court-fees Act. The payment may be made either by inadvertence, oversight or mistake. Under these circumstances, the Court orders the revenue authorities to refund either the whole of the Court-fees or the excess which was more than what the law required. But the principle which is clearly deducible from these cases is that, as there was no legal obligation to pay the court-fees or the excess which was paid by the party, the Court orders, in substance, the law to be carried out and not to increase the liability upon the litigant. But this principle cannot be extended in support of a litigant who has paid the 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 either the full court-fees or part of the court-fees.' pages, 73-74.

8. Similarly, in the instant case, the petitioner who had paid the court-fee, for which, in law, he was liable, cannot be allowed refund of that court-fee, under the inherent powers of the Court, merely because the claim, on which the suit was based, was compromised out of Court and the telegram, sent to the counsel, directing him not to institute the suit, had reached him much later than, in the ordinary course of business, it should have reached him.

9. The conclusion, from the above discussion, is that the petitioner was not entitled to get refund of court-fee. His application for refund was rightly rejected. The revision-petition fails and is dismissed in limine.