MANU/BH/0116/1961

Equivalent Citation: AIR1961Pat390

IN THE HIGH COURT OF PATNA
FULL BENCH

Civil Review No. 4 of 1957

Decided On: 27.04.1960

Appellants: **Dwarka Singh and Ors.**
Vs.
Respondent: **Nagdeo Singh and Ors.**

Hon'ble Judges/Coram:
S.C. Mishra, Udai Sinha and Anant Singh, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Harinandan Singh, Adv.

For Respondents/Defendant: Govt. Pleader

JUDGMENT

S.C. Mishra, J.

1. This reference to a full Bench by two of us constituting a Division Bench arises out of an application for refund of court fee paid on an application for review of an order passed by this Court being Civil Review No. 4 of 1957. The petitioners claimed a certificate from this Court for refund of the amount of Rs. 500/- as Civil Review No. 4 of 1957 was allowed by this Court. The application was filed under Section 15 of the Court Fees Act and Section 151 of the Code of Civil Procedure. The order of dismissal of First Appeal No. 240 of 1955 giving rise to Civil Review No. 4 of 1957 was passed on the ground of non-payment of deficit court-fee on the memorandum of appeal to this Court within the time allowed by the Court.

The petitioners stated in the petition that although the son of the petitioner, Dwarka Singh, had arrived at Patna on the 9th April, 1956, with the full amount of court-fee, he was informed by his advocate that the amount of court-fee being Rs. 974/- and odd, the requisite court-fee stamp had to be obtained from the Treasury; and the working of the Treasury being in the morning hours the stamp required could not be available on that date. It is unnecessary to detail the other facts and it is enough to mention that the explanation offered on behalf of the petitioners in the review application for failure to comply with the: peremptory order of the bench regarding payment of court-fee was accepted, and, as mentioned above, Civil Review No. 4 of 1957 was allowed and First Appeal No. 240 of 1955 was accordingly restored to file.

2. The application of the petitioners for granting the certificate of refund was taken up for consideration by a Division Bench and notice was issued to the Government Pleader to appear in the case. On a consideration of the contentions advanced by the learned counsel for the petitioners as also on behalf of the State by the learned Government Pleader, the Division Bench concluded that the certificate of refund prayed for could not be granted. In view, however, of the order passed by another Division Bench, in Civil Review No. 64 of 1948, which was an ex parte order and

which was specifically mentioned to be as such by the learned Judges holding a different view, it was considered necessary to have this point decided by a larger Bench, and accordingly the present Bench has been constituted to decide the question raised on behalf of the petitioners.

3. It may be stated at the outset that after having heard the learned counsel for the parties I have come to the conclusion that the opinion expressed by the Division Bench must be accepted as correct. Learned counsel for the petitioners has, however cited a few decisions which were not cited by him on the previous occasion and it is accordingly necessary to consider the point with reference to those cases. Section 15 of the Court-fees Act on which reliance was placed in the first instance on behalf of the petitioners, provides as follows :

> "15. Where an application for a review of judgment is admitted, and where, on the re-hearing, the court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorising him to receive back from the Collector so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under the Second Schedule to this Act No. 1, Clause (b) Of Clause (d),
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> But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing."

Prima facie, this section, as it stands, bars out the present case from the purview of the above section. Learned counsel has not urged, and in fact he could not urge, that the petitioners' review application was allowed on the ground of mistake in law or fact On the part of the Court. Of the three grounds mentioned for review under Order 47, Rule 1, Code of Civil Procedure, the first two viz. discovery of new matter and error apparent on the face of the record, cannot be applicable to the facts of the present case.

The matter, if at all, can only be covered by the third Clause under Order 47, Rule 1, Code of Civil Procedure, which relates to the existence of sufficiency of cause Section 15 of the Court-fees Act, however, evidently, does not take into account "sufficient cause" as one of the grounds on which certificate of refund can be granted. It is true, no doubt, that Order 47, Rule 1, finds place in the Code of Civil Procedure enacted in 1908 whereas the Court-fees Act was enacted in 1870 when the Code of Civil Procedure of 1859 dealt with the question of review under Section 376 which provided for a review on the ground of

> "discovery of new matter or evidence which was not within the applicant's knowledge, or could not be adduced by him at the time when such decree was passed, or for any other good or sufficient reason."

The matter was clarified further under Section 623 of the Code of Civil Procedure of 1877 which provided that an application for review could be entertained on the ground of

> "discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge, or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or

for any other sufficient reason".

It is thus clear that the wording of Order 47, Rule 1, in the Code of Civil Procedure of 1908, is the same as that of Section 623 of the Code of 1877 or Section 623 of the Code of 1882. If, therefore, Section 15 of the Court-fees Act was incorporated therein, keeping in view the provisions of Section 376 of the Code of Civil Procedure of 1859, the provision with regard to the mistake of law or fact would come under the second part of the section providing for review on the ground of existence of sufficient cause inasmuch as it would not come under the first part of the Clause dealing with the discovery of new matter or evidence.

But since 1877 onwards "mistake or error apparent on the face of record", may be a mistake of fact or law of a character which might justify a review, although, as it is well-settled^ normally, it is not a ground for review. But there can be no doubt that if at all there is any parity between the provisions of Section 15 of the Court-fees Act and the provision for review contained in the Code of Civil-Procedure, it must come under the Clause dealing with mistake or error apparent on the face of re-cord.

It must be so in the very nature of an application for review because it can be granted only in terms of Order 47, Rule 1, Code of Civil procedure, and therefore, the provision of that Code bearing on review must be taken into consideration in interpreting Section 15 of the Court-fees Act inasmuch as it provides for grant oÂ£ a certificate of refund with reference to some limited grounds alone on which review application is allowed.

The second paragraph of Section 15 lays down further that where the reversal or modification is based on fresh evidence which might have been produced at the original hearing, certificate of refund cannot be granted. The obvious intention of the Legisla-lature seems to be to confine the grant of a certifi-cate of refund only to the limited grounds provided for in paragraph one of Section 15. The underlying policy of the Legislature in enacting Section 15 is that if the review is necessitated on account of mistake in law or fact occurring in the judgment, the responsibility in the long run must be that of the Court and if the review is allowed, therefore, on this ground, it must be taken that the party is not to blame and, in that view of the matter, it would be wholly unjust for the State to claim any court-fee on such a review application.

It is originally payable because there is no cer-tainty that the allegations in the application are correct, but once the allegations are accepted and the review application is allowed on the ground of mistake in law and fact, there can be no legal justification for the retention by the Government of the amount paid as court-fee by the applicant seeking a review of the judgment passed by the Court. It also postulates, therefore, that the mistake of law or fact must be anterior to the date when the judgment or order sought to be reviewed is passed, because if that be not so, the question of a mistake in the judgment does not arise. In the present context however, where the reference is to the circumstances occurring after the passing of the order by the Bench which was not complied with and led to the dismissal of the appeal, they are clearly outside the purview of mistake of law or fact as contemplated within the meaning of Section 15 of the Court-fees Act.

4. Learned counsel for the petitioners has, however, contended further with reference to the Full Bench decision of this Court holding a failure to comply with an order for payment of court-fee leading to the rejection of the memorandum of appeal or the plaint, as the case may be, capable of being remedied only by review application,

that it has led further to the amendment of Order 47. Rule 1, of the Code of Civil Procedure. He has contended that after the amendment of Order 47, Rule 1, providing that although the allegations in such circumstances refer to events after the passing of the order sought to be reviewed, the same can be gone into by a review application which could not be done according to Order 47, Rule 1, as it stood prior to the amendment, the position is allowed.

He has urged that after the provision referred to above made by the Patna High Court by amending this rule it should follow as a necessary corollary that such a case also would be covered under Section 15 of the Court Fees Act and a refund order may be passed when the review application is allowed in the aforesaid circumstances. The argument is devoid of force. This Court has no doubt made the amendment referred to above in Order 47, Rule 1, On account of its decision in the Full Bench. case of Ramautar Tiwari v. Jagdish Singh," (S) MANU/BH/0125/1957 : AIR 1957 Pat. 430 (FB) and a Division Bench decision in the case of Mahanth Ram Das Chela v. Ganga Das MANU/BH/0006/1956 : AIR 1956 Pat 20, but this Court is not competent to modify, accordingly, Section 15 of the Court Fees Act.

The only three sections dealing with refund in the Court Fees Act are Sections 13, 14 and 15. If Section 15 in terms does not apply, as I have Pointed out above, Sections 13 and 14, evidently, have no bearing on the question inasmuch as they deal with a different situation altogether. Sections 13 and 14 run as follows:

> "13. If an appeal or plaint, which has been rejected by the lower court on any of the grounds mentioned in the Code of Civil Procedurei is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in Section 351 of the same Code for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:
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> Provided that if in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certi- ficate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.
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> **14.** Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, 'n its discretion, grant him a certificate authorising him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day".

5. Thus, if the three sections are out of the question, there is no power left in the Court to grant a certificate of refund where court fee has been paid in accordance with the provisions of the Court fees Act on the document filed in Court.

6. Learned counsel has, however, contended, in any case, the petitioners are entitled to the order of refund under Section 151, Code of Civil Procedure. He has pressed into his argument the analogy of the exercise of the power under Section 151, Code of Civil Procedure, for refund of court fee when a higher amount of Court-fee has been realised than required in law to be paid. In my opinion, however, the analogy is wholly groundless. When the party by mistake has paid an excess amount of court

fee than is payable by him, and the court is satisfied about it, it is obvious that - the excess amount was never paid under any provision of the Court Fees Act in any of the schedules and, as such, it was never the money of the Government.

When it is not the Government money, the Court would be doing only the proper thing in passing a formal order for refund in exercise of its inherent jurisdiction to stop the abuse of the process of the court. Where, however, the amount has been duly paid as requisite for entertaining in court the document filed, the amount of court fee has duly become Government money and, thereafter, the court can order refund only with reference to the provisions of Sections 13, 14 and 15 of the Court Fees Act, and its jurisdiction under Section 151 of the Code of Civil Procedure cannot be invoked as it would go against the provisions of the Court Fees Act altogether.

It is clear, therefore, on an examination of the inherent jurisdiction under the C. P. C., that there can be no legal justification for the Court passing. an order for refund of the amount of court fee paid on a review application when it is allowed on a ground other than that of a mistake in law or fact. Learned counsel has, however, drawn our attention to the following decisions which have no bearing on the point.

7 . The first case relied upon by the learned counsel for the petitioners in this connection is that of Chaudra Hari Singh v. Pipan Prosad Singh MANU/BH/0048/1918 : AIR 1918 Pat 496. In this case the facts were that the defendant-appellant paid a court fee of Rs. 295/-which was the amount Paid by the plaintiff in the trial court as court fee. The Stamp Reporter gave: his opinion that the amount paid on the memorandum of appeal was insufficient. Then the attention of the appellant was drawn to this and he was advised by his counsel that not only was the amount of court-fee sufficient but, in fact an excess amount had been paid, as the proper court-fee-should have been a sum of Rs, 10/- only as the-relief sought was merely declaratory .

The Taxing Judge decided that matter in favour of the appellant and then the appellant applied for grant of a certificate for refund in regard to the excess amount paid as court fee. A Division Bench of this Court decided, in the circumstances, that the appellant was entitled to get back the excess court-fee and the Taxing Officer was directed to issue the necessary certificate to enable the appellant to apply to the revenue authorities to obtain a refund of the sum of Rs, 285/-, the amount of the excess court fee.

It is thus clear that this was a case where the amount paid was above that which was held to be requisite for the memorandum of appeal to be presented to this court, unlike the present one where the amount of court-fee paid on the review application in terms of Article 5 of Schedule I, Court Fees Act, was the proper amount. The next Patna case relied upon, is that of Tej Narayan Singh v. Secy, of State MANU/BH/0053/1931 : AIR 1932 Pat 86. In that case a review application was allowed on the ground that the applica.it had not appeared at the original hearing of the appeal.

There the suit of the plaintiffs was decreed by the trial court for recovery of possession as also for mesne profits against which one of the defendants appealed. The appeal was decreed in part by this court and then the applicants, who were defendants first party, filed an application for review of the judgment which was allowed by the Court on the ground of an error apparent on the face of the record and the appeal was ordered to be re-heard. On a fresh hearing, the appeal was dismissed.

Thereafter, the petitioners applied under Section 15 of the Court Fees Act for refund of court fee paid on the application.

In the circumstance, it was held that the previous decision of the Court allowing the appeal was substantially modified on the ground of mistake in law or in fact and, accordingly, Section 15 was available to the petitioners, and refund of court fee paid could be ordered. This can be no authority for the contention urged on behalf of the petitioners by Mr. Harinandan Singh that in the present case also the same principle is applicable because the allegations, as I have mentioned above, justifying a review of the order and restoring the appeal, related to a period posterior to the passing of the order.

The next case referred to is Mayasankar Vyas v. Gouri Shankar Matilal MANU/WB/0095/1954 : AIR 1954 Cal 256. That was a case wherein the appellants filed an appeal valuing it at a sum of Rs. 10,081/8/-with court fee stamp of Rs. 772/8/-. The Stamp Reporter objected to the valuation as also to the sufficiency of the amount of court fee. The Taxing officer accepted the objection and held that the court fee paid was short by Rs. 660/-. The appellants were accordingly required to file the deficit court fee.

The appellants, however, failed to make the payment and applied to the court for refund of the amount already paid stating that they were not in a position to arrange for the extra amount required to pay the full amount of court-fee. They prayed, therefore, that the memorandum of appeal be returned to them along with the court-fee Paid. A Division Bench of the Calcutta High Court referring to a number of decisions including the one reported in MANU/BH/0041/1923 : AIR 1923 Pat 600 Bhuneshwari Prasad Singh v. Kishen Dayal Bhagat held that refund of court fee might be ordered in a proper case where the part failed to pay the deficit court-fee for some justifiable cause.

The Patna decision in which refund was ordered by the Court was distinguished on the ground that there the appellant was able to make out a case where the deficit court-fee could not be paid for a justifiable cause and accordingly the court ordered the refund of the amount already paid. The actual order passed by the Calcutta High Court, however, was that the memorandum of appeal could be returned but with a note that the appellants were not entitled to refund of the court-fee paid.

This case, therefore is on a different point and has no bearing on the question of refund of court-fee when a review application has been allowed. In the case of J.C. Galstaun v. Janaki Nath Roy MANU/WB/0352/1933 : AIR 1934 Cal 615, it has been held that Section 13 is not exhaustive and the High Court in suitable cases may exercise the inherent power vested in it under Section 151, Code of Civil Procedure, and order refund of the court-fee paid. That also, how ever, was a case where the appeal was filed out of time and the delay in filing the memorandum of appeal was not due to any negligence on the part of the appellant himself, but to some gross negligence on the part of his legal adviser.

Learned counsel for the petitioners has relied upon this case in support of the broad proposition that the inherent jurisdiction of the Court under Section 151, Code of Civil Procedure, is sufficiently wide to cover every case of refund. It may, how ever, be mentioned that in the above case also the appeal having been filed out of time through a bona fide mistake, it was held that there was no presentation of the appeal at all in the proper sense and the memorandum of appeal was rejected in limine and

as such the amount of court fee paid could be ordered to be refunded by the court in the exercise of its inherent jurisdiction.

This also is in consonance with the principle I have enunciated above that Section 151, Code of Civil Procedure, may be available when there is no proper presentation of the appeal in the particular circumstances of a case and not where there is a due presentation of a document bearing court fee and which has been entertained by the Court and considered. In that case Section 151, Code of Civil Procedure, for ordering refund would not be available but the Court will have to proceed in accordance with the provisions of Ss. 13, 14 and 15 of the Court Fees Act. In the case of China Varahalu v. Reddayya MANU/TN/0254/1951 : AIR 1951 Mad 801 a plaint was filed with insufficient court-fee.

The plaintiff having been ordered to make up the deficit within the time allowed failed to do so and, instead, he re-presented the plaint with proper court-fee stamp after the expiry of the time given, accompanied by an application for condonation of delay. The application for condonation of delay was dismissed and then the plaintiff applied to the learned Subordinate Judge for refund of court-fee, which was rejected, Under Section 151, Code of Civil Procedure.

Against that an application in revision was pre sented in the High Court and it was held that Sections 13, 14 and 15 of the Court-Fees Act making specific pro vision for refund of court-fee did not apply to that case. But the court-fee was paid on the plaint and it was represented only on the understanding that the application for condonation of the delay would be allowed. The same not having been allowed, in the eye of law, there was no valid presentation of the plaint and there was no impediment in the way of the plaintiff in filing a fresh suit altogether.

In the circumstances, refund could be ordered on equitable grounds and the application in revision was accordingly allowed. This case also, therefore, follows the principle that the exercise of inherent jurisdiction under Section 151 can be made only when there is no valid presentation of a document, such as a plaint, memorandum of appeal or an application for review etc. in which case the Court would not be justified in ordering the retention of the amount paid as court-fee and is of no assistance to the learned counsel for the petitioners in Ms contention in support of the present application.

The decision in the case in re Narayana Reddiar, MANU/TN/0318/1941 : AIR 1942 Mad 316 is also a case of the same category. In the case of Kasi Mangalath Illah Vishnu Nambudiri v. Pathath Ramunni Marar MANU/TN/0382/1938 : AIR 1940 Mad 208 refund was ordered under Section 151, Code of Civil Procedure, relying on the case of Thaimayya Naidu v. Venkataramanamma MANU/TN/0004/1932 : AIR 1932 Mad 438 : ILR 55 Mad 641. That too was a case of excess payment of court-fee and which accordingly never became Government property. In the circumstances it was held that a certificate for refund of the excess amount of court fee paid could be granted by the court in exercise of its inherent jurisdiction.

8. In the result, it must be held that there is no power in the Court to order refund of the amount of court-fee Paid under Section 151, Code of Civil Procedure in the circumstances, and Section 15 of the Court Fees Act is not available to the petitioners. Accordingly, the question formulated for consideration by the Full Bench must be answered in the negative against the contention for refund put forward on behalf of the petitioners. The application fails and is dismissed.

Udai Sinha, J.

9. This is an application under Sea. 15 of the Court Fees Act and under Section 151 of the Code of Civil Procedure praying that a certificate be issued by this Court authorising the petitioners to receive from the Collector a sum of Rs. 500/- which was paid as Court fee for review.

10. The following facts are necessary for the determination of the question referred to us.

11. The petitioners had filed an appeal in this Court from an original decree, which was numbered as First Appeal No. 240 of 1955. The appeal had been filed on deficit Court fee and time was granted by a Bench of this Court to the appellants to make up the deficiency in the Court fee required on the memorandum of appeal: The petitioners, who were the appellants did not deposit the deficit Court fee within the time allowed with the result that the appeal stood dismissed for default.

Thereafter the petitioners filed an application for review, which was numbered as Civil Review No. 4 of 1957. According to the petitioner's case as made out in their application under Order 47 Rule 1 of the Code of Civil Procedure, what had happened was that court fee stamps amounting to Rs. 974 and odd had to be withdrawn from the Treasury and although the son of appellant no. 2 had come to Patna in due time with the full amount of money, the court-fee could not be paid on that date as the Collectorate was sitting in the morning.

The application for review was admitted by this Court in due course and ultimately, by order dated the 4th of May, 1959, the application for review was allowed and the last date for payment of deficit court-fee was extended. It may be mentioned here that the application for review was governed by Order 47 Rule 1 of the Code of Civil Procedure as amended by this court the relevant portion of which runs as follows:

> "1. (1) Any Person considering himself aggrieved-
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> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
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> (b) by a decree or older from which no appeal is allowed, or
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> (c) by a decision on a reference from a Court of Small Causes,
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> and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at. the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or on account of non-payment in spite of due diligence, of court-fee within the time allowed by the Court, or for any other sufficient reason, desires to obtain a review oÂ£ the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

12. The petitioners have now filed the present application with the prayer mentioned above.

13. It appears, however, that the prayer made in the application has been drafted without due regard to accuracy, so far as it purports to be one under Section 15 of

the Court-fees Act. The Court-fee paid for the civil review application was Rs. 484-14-0. The petitioners are, therefore, not entitled to a certificate for a refund of Rs. 500/- in any event. The application should have been made for a certificate for refund of a sum of Rs. 484-14-0 less the fee payable on an ordinary application to this Court under schedule II of the Court-Fees Act.

14. The present application had, in due course, been placed for orders before a Division Bench of this court and on the 28th of January, 1960, the following question was formulated by the Bench for consideration by an appropriate Bench-:

> "Let the records of this case be placed before Hon'ble the Chief Justice for constituting an appropriate Bench to deal with the matter as to whether refund of Court-fee can be ordered by the Court when review is allowed on grounds other than those of mistake of law and fact,"

The matter has thus come before us.

15. Section 15 of the Court-fees Act under which the application has been filed, runs as follows :

> "Where an application for a review of Judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the court authorising him to receive back from the Collector so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. 1, Clause (b) or Clause (d).
>
> But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing."

Learned counsel for the petitioners has submitted that after this Court has amended order 47 Rule L of the Code of Civil Procedure, by introducing the following words, namely, "or on account of nonpayment in spite of due deligence, of Court-fee within the time allowed by the court", when an application for review is admitted and allowed under that amendeH Rule, the applicants should be entitled to a certificate from the Court under Section 15 of the Court-Fees Act authorising them to receive back from the Collector the Court fee paid for review less the appropriate amount.

In my opinion, the contention of learned Counsel for the petitioners is unacceptable. Although the Court has amended Order 47 Rule 1 of the Code of Civil Procedure, this Court cannot pass an order under the first paragraph of Section 15 of the Court Fees Act, except on the grounds mentioned therein. It has been faintly urged by learned Counsel for the petitioners that the former order of this Court passed in First Appeal No. 240 of 1055, granting the petitioners time to deposit deficit Court fee on the memorandum of appeal, was modified upon a mistake of fact.

This contention is incorrect. All that can be said is that this Court was satisfied that the petitioners had made out a case under Order 47 Rule 1 of the Code of Civil Procedure as amended by this Court, and hence the peremptory order granting the petitioners time for Payment of deficit Court, fee on the memorandum of appeal was extended. The former order of this Court was modified neither on the ground of mistake in law nor on the ground of mistake in fact, In ray opinion, therefore, the

arguments advanced by learned Counsel for the petitioners based upon the first paragraph of Section 15 of the Court Fees Act must fail.

16. So far as the power of this Court under Section 151 of the Code of Civil Procedure is concerned, I am of the opinion that this Court cannot pass an order in favour of the petitioners under that section. If a case does not fall within the words of Sea. 15 of the Court-fees Act, there is no inherent power in the Court to pass an order entitling the petitioners to receive back the Court-fee paid by them on their application for review.

17. The decisions cited by learned Counsel for the petitioners are really not in point. They have been elaborately dealt with by my learned brother Misra, J., and it is not necessary for me to deal with them once again. It is enough to say that I concur in his views.

18. In the result, the question referred to this Bench must be answered in the negative, The application is, therefore, dismissed.

Anant Singh, J.

19. I have had the advantage of perusing the judgments prepared by my learned brothers Misra and U. N. Sinha, JJ.

20. The inherent power of the court under Section 151 of the Code of Civil Procedure can be invoked for the ends of justice or to prevent abuse of the process of the court only when the matter is not covered by the express provisions of law.

21. In the instant case before us, there is no question of any injustice or abuse of the process of the Court involved.

22. The petitioners were the appellants in First Appeal No. 240 of 1955. That appeal stood dismissed for default, as the deficit court-fee was not paid within the time allowed. They filed an application under Order 47, Rule 1 of the Code for review. This application was numbered as Civil Review No. 4 of 1957, and the petitioners paid the necessary amount of court-fee which was payable under Article 5 of Schedule I of the Court-fees Act. This application was admitted and considered in due course.

It was ultimately allowed by the order dated the 4th May 1959, and the time for payment of the deficit court-fee on the memorandum of the First Appeal was extended. The justification they had pleaded for the default in payment of the deficit court-fee on the memorandum of appeal was that, although the son of appellant no. 2 had come to Patna on the due date with the requisite amount, the necessary court-fee stamp could not be obtained from the Treasury that day as the Collectorate was having morning sitting. Their Lordships, who had heard the application, felt satisfied with the plea and thought it fit to allow the application in those circumstances.

But this cannot be a ground for allowing a refund of the amount of the court-fee which had been paid under the provisions of the Court-Fees Act on an application for the Civil Review. The petitioners can claim no advantage of the provisions of Section 15 of the Court-Fees Act, for, a refund under this Section is permissible only when the Court reverses or modifies its former decision on the "ground of mistake in law or fact", and not otherwise. The proviso to this section further limits the scope for refund even on the ground of mistake in law or fact by laying down that refund is not permissible where the reversal is due to "fresh evidence which might have been

available at the original hearing".

23. The present petitioners have not been able to show that their review petition was allowed on the ground of any mistake in law oÂ£ fact. It was allowed obviously on the ground that there was no want of "due diligence" on their part within the meaning of Order 47, rule 1 of the Code, as amended by this Court, and "due diligence" is not co-extensive with "mistake in law or fact" within the meaning of Section 15 of the Court-Fees Act. The mere .fact that the application for review was allowed, because there was no want of due diligence on the part of the petitioners in, paying the deficit court-fee on the memorandum of appeal, is no ground for refund of the court-fee paid on the application for review.

A refund of the court-fee is permissible only under certain provisions of the Court-Fees Act, which is a self-contained one. Nothing can be 'imported into it From outside. The petitioners' application for refund does not fall within the provisions of Section 15 or any other section of the Court-fees Act and therefore, no refund is permissible.

24. Since the prayer for refund does not fall within the express provisions of the Court-Fees Act, there is no scope for the exercise of the inherent power of the Court under Section 151 of the Code of Civil Procedure. The decisions relied upon by learned Counsel for the petitioners in this connection have no bearing. They have been referred to in details by my learned brother Misra, J., and I need not repeat them. They were, generally speaking, cases where excess or undue court-fees had been paid, or where there was no proper presentation of plaint, memorandum of appeal or application, when refunds were ordered under the inherent powers of the Court, None of those conditions exist in this case so as to attract the inherent powers of the Court.

25. I agree that the application be dismissed.