

MANU/BH/0162/1919

Equivalent Citation: 51Ind. Cas.756

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Miscellaneous Judicial Case No. 35 of 1919

Decided On: 28.05.1919

Appellants:**Kumar Radhika Raman Prasad Singh**
Vs.

Respondent:**Janki Kuer**

Hon'ble Judges/Coram:

Atkinson, Jwala Prasad and Das, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Mr. Sultan Ahmad

For Respondents/Defendant: Mr. Gour Chandra Pal

JUDGMENT

Atkinson, J.

1. This Full Bench has been constituted under an order of reference made by my learned brothers Mr. Justice Jwala Prasad and Mr. Justice Das, with the sanction of the Chief Justice, for the determination of a point arising on the construction of the Court Fees Act.

2. It appears that on the 10th March 1919 notice was issued, by leave of this Court, on the respondent, Musammat Janki Kuer, to show cause why she should not be restrained from executing the decree obtained by her in the lower Appellate Court until she paid and satisfied the deficit due in respect of Court-fees on her appeal to that Court.

3. At the time that this order was passed, the appeal presented to the High Court by the appellant against the order of the lower Appellate Court had been dismissed.

4. The respondent, Musammat Janki Kuer, appeared in response to the notice served upon her, and alleged that some of the respondents were dead, and she applied for time to substitute parties. The application was adjourned from time to time and eventually it came before a Bench constituted of Mr. Justice Jwala Prasad and Mr. Justice Das for disposal.

5. Their Lordships were of opinion that a decision of Mr. Justice Roe and myself in a case entitled Mahant Sadho Bhagat v. Ramrup Gossain embodied in an order dated the 31st January 1919, conflicted with a subsequent ruling of Mr. Justice Mullick and Mr. Justice Jwala Prasad in the case of Babu Baldeo Narain Singh v. Ramdil Singh, both cases involving the same question of principle; and that thus there was a conflict of authority between two Division Benches of this Court touching the propriety of the matter now arising for decision; and consequently with the assent of the Chief Justice they referred the application now before us for a ruling by a Full

Bench of this Court, seeking a judicial pronouncement as to what the law is in such cases.

6. The point requiring determination may be stated as follows:--

When an appeal by an appellant to this Court is dismissed owing to his failure to pay the deficit due in respect of the Court-fee payable by him on a memorandum of appeal or for other good and sufficient reasons, has the High Court any power or right, after dismissal of such appeal, to call on and require a respondent to make good any deficit in the Court-fee due in respect of the Court-fee payable by him in the lower Appellate Court?

7. Mr. Justice Roe and myself were of opinion that the High Court had such power. Mr. Justice Mullick and Mr. Justice Jwala Prasad took a different view, and held that once the appeal had been dismissed this Court was functus officio; and that the Court was powerless to make any order which could oblige or compel the respondent under the order of this Court to pay whatever deficiency might be due by him in respect of Court-fees payable in the lower Appellate Court, as a condition precedent to his right to execute such decree.

8. Having considered the matter very carefully, we all are of opinion that the view taken by Mr. Justice Mullick and Mr. Justice Jwala Prasad is the correct view; and that once an appeal has been dismissed, the High Court ceases to have seisin of the appeal or case and is powerless to call upon the respondent to pay any deficiency due by him in respect of Court-fees payable in the lower Court and consequently that the High Court has no jurisdiction in such circumstances to restrain the respondent from executing the decree obtained by him.

9. It might be different if the High Court had taken cognizance of the deficiency in the Court-fee payable in the lower Appellate Court before the appeal was dismissed, provided the appeal had come before the Court in a proper manner, under the provisions of section 12, clause 2, of the Court Fees Act of 1870. But once an appeal has been dismissed from whatever cause, then this Court is functus officio, and no subsequent order can be made for the recovery of any deficiency in Court fees due in the lower Courts. A similar principle was enunciated in a case reported as Mahadei v. Ram Kishen Das 7 A. 528 : MANU/UP/0051/1885 : A.W.N. (1885) 140 : 4 Ind. Dec. (N.S.) 554, in which Mahmood, J., said: "As soon as the Judge had passed the decree of the 1st March 1883 he ceased to have any power over it; and was incompetent to introduce new matters not dealt with by the judgment," and that to that extent the order was ultra vires.

10. We are of opinion, therefore, that the correct interpretation of section 12, sub-section 2, of the Court Fees Act of 1870 on general principles is as stated herein and in accordance with the decision of Mullick and Jwala Prasad, JJ., referred to above, and consequently we declare that the order in the case referred to us was illegal and improper and that this Court had no jurisdiction to pass the order of the 10th March 1919. The same is accordingly hereby set aside.

Jwala Prasad, J.

I agree.

Das, J.

I concur.

© Manupatra Information Solutions Pvt. Ltd.