

Court No. – 19

Case: - FIRST APPEAL DEFECTIVE No. - 239 of 1997

Petitioner: - M/S Prakash Automobiles Hata Tahsil Hata & Another

Respondent: - Union Of India & Others

Petitioner Counsel: - R.P.Khare

Hon'ble Shishir Kumar, J.

This First Appeal was filed on 17.4.1997 before the Registry only after payment of Court fees to the tune of Rs.1/- only instead of Rs.13,062.50p. Court fee was not paid then appeal was listed before the Court on 26.4.2005 and this Court has passed the following orders:-

"Case was taken up in the revised list. None is present for the appellant. Even deficiency in the Court fees has not been made good. Appeal is pending since 1997. The memo of appeal is, therefore, rejected under Order VII Rule 11, CPC.

In spite of aforesaid fact, no application for restoration or recall of the said order was filed till 2009. It was only on 21.12.2009 an application was filed to recall the order dated 26.4.2005 with another application of the same date bearing No.345502 of 2009 with a prayer for granting three months time to make good deficiency in the court fees. Though application was filed for seeking time but from perusal of record it appears that with the said application and affidavit, court fees has also been paid. The said court fees has been accepted and it has been cancelled by the office.

The case was listed on 6.4.2011 under the heading 'Defective'. The Court has perused the order-sheet and record. Then it was found that appeal was already dismissed due to non-payment of court fees on 26.4.2005. An application was made on 21.12.2009 for recalling the order dated 26.4.2005 as well as for extension of time to make good the deficient court fee. There was no explanation in the application as to under what circumstances, though appeal was filed in 1997 but up to 2005, when appeal was dismissed due to deficiency of court fee, what were the reasons for not payment of court fee. Further from 2005 to 2009 no explanation as to why application for recall of the order dated 26.4.2005 was not filed within a reasonable time. In such circumstances, Court is inclined to dismiss the application for recall of the order. In such circumstances, as explanation is not proper, therefore, application for recall of the order dated 26.4.2005 is hereby rejected without imposing any cost.

But one thing is to be noted in the present case that admittedly appeal was dismissed on 26.4.2005 for non-payment of court fees. In 2009, an application has been filed for recall of the order as well as for extension of time with court fees. How office has accepted the court fees and cancelled it in a dismissed appeal, unless and until the order dated 26.4.2005 is recalled. In the eye of law the appeal cannot be held to be pending before this Court, therefore, office should not have accepted the court fee unless and until the order is recalled and time is granted to appellant to make deficiency good of court fee. Further it has also to be noted that immediately after accepting the court fees it has been cancelled. Normally, if court fees has been paid and it is cancelled in case of dismissal of the appeal or if the appeal is permitted to be withdrawn, appellant is not entitled to refund of the court fees in view of Full Bench Decision of this Court reported in AIR 1958 Allahabad, 766 Munna Lal and another Vs. Abir Chand but it is not the case here. It is a case in which appeal was not pending, it was dismissed in deficiency of court fees but office has accepted the court fees in a dismissed appeal, therefore, principle as stated above will not be applicable in the present case. It is due to mistake of office, court fee has been accepted, therefore, appellant cannot be made sufferer. Though in view of Section 54 of the Indian Stamp Act, 1899, Collector has a power to refund the same after

deducting ten naya paise for each rupee or portion of a rupee upon such person delivering up the same to be cancelled.

But I am of opinion that in the present case, court fees has wrongly been accepted in a dismissed appeal, therefore, if a requisition is sent to the District Magistrate for the purposes of approaching by appellants for refund of the Court fees, then according to Section 54 of the Indian Stamp Act, certain amount will be deducted and un-necessarily he will be harassed. Appellants should not be made suffer for the mistake of the office. Therefore, I am of opinion that appellants are entitled for refund of the court fees paid by them to the tune of Rs.13,062.50p. In such circumstances, registry is directed to prepare a requisition/Cheque/Draft of the amount of court fees to be paid to the appellants within a period of two weeks and compliance to that effect be reported to the Court.

Registrar General is further directed to issue letter to all concerned officers of the High Court who are dealing in such matters not to commit such mistake in future.

Order Date: - 6.4.2011