

First Appeal No. 1020 of 2023
(Chandra Prakash Mishra and 3 others
vs. State of U.P. and 10 others)

Neutral Citation No. - 2024:AHC:197567

A.F.R.

Court No. - 36

Case :- FIRST APPEAL No. - 1020 of 2023

Appellant :- Chandra Prakash Mishra And 3 Others

Respondent :- State Of U. P. And 10 Others

Counsel for Appellant :- Manoj Kumar Singh

Counsel for Respondent :- Arun Kumar,Ashish Kumar Singh

Hon'ble Kshitij Shailendra,J.

**ON THE ISSUE OF REFUND OF COURT FEES IN A CASE
OF REMAND**

1. Heard Shri Rahul Sripat, learned Senior Counsel assisted by Shri Manoj Kumar Singh, for the appellants, Shri Ashish Kumar Singh, learned counsel for the contesting defendant-respondent, Shri Arun Kumar, learned counsel for respondent No.4 and Shri Vinod Kumar Sahu, learned Additional Chief Standing Counsel for the respondent Nos. 1, 2, 3 and 5.

APPEAL AGAINST REJECTION OF PLAINT

2. The instant appeal arises out of rejection of plaint under Order VII Rule 11 C.P.C. on the ground that despite earlier order of the trial court, the plaintiff has failed to deposit the *ad valorem* court fees.

PREVIOUS PROCEEDINGS IN THIS APPEAL

3. On 18.11.2024, following order was passed:

"1. A mention was made from the respondents side in the morning stating that the appeal may be allowed. Therefore, the Court has taken up the matter at 03:55 P.M.

2. When the matter was taken up, learned counsel for the appellants submitted that for non-payment of court fees pursuant to determination of issues framed in that regard, plaint was rejected and in the instant first appeal, the appellants have deposited the entire court fees as determined by the trial court, however, once the appeal is allowed and the plaint is revived, the appellants shall have to again deposit the court fees and, therefore, the court fees deposited in this first appeal be treated as court fees in the suit.

3. Shri Ashish Kumar Singh, learned counsel for the respondents however, vehemently opposes this submission and submits that against the order passed by the trial court deciding issues of valuation and court fees, the plaintiff filed First Appeal From Order under Section 6-A of the Court Fees Act, however, no order could be passed therein and, in the meantime, the plaint was rejected under Order 7 Rule 11 CPC and whatever court fees has been deposited before the first appellate court, that is the statutory requirement of law and, in no circumstances, the said court fees can be treated as court fees in the suit even if the appeal is allowed and the order and decree impugned therein are set aside

4. Both the learned counsel shall address the Court on

this issue on the next date fixed.

5. List for final hearing on 17.12.2024 at 02:00 P.M. "

4. Learned counsel for the parties agree for final disposal of the appeal. The appeal is, accordingly, **admitted** for final hearing. In view of the limited controversy involved in this case, summoning the record of the trial court is not deemed necessary.

5. Following point for determination is framed under Order XLI Rule 31 C.P.C:

"Whether in a case where decision of the trial court rejecting the plaint is reversed in Appeal, plaintiffs are required to again deposit court fees before the trial court after remand?"

SUBMISSIONS OF APPELLANTS

6. Shri Rahul Sripat, learned Senior Counsel submits that in view of the previous order of this Court and the objection raised by the other side, the point to be decided in this appeal revolves around Section 13 of the Court Fees Act, 1870 (hereinafter referred to as "Act, 1870"). The submission is that there being no requirement to deposit court fees twice as the adjudication on merits has to be made by the trial court, a certificate in terms of Section 13 of the Act, 1870 may be granted by this Court while disposing of the instant appeal. Reliance has been placed upon a Full Bench decision of this Court in *Chandra Bhushan Misra vs. Jayatri Devi; AIR 1969 All 142 (FB)* wherein the reference was answered in terms of

Section 13 of the Act, 1870. The said decision has been upheld by the Supreme Court in ***State of U.P. vs. Chandra Bhushan Misra, AIR 1980 SC 591***. It is further urged that since plaint has been rejected by the trial court on one of the grounds mentioned in the Code of Civil Procedure and since the matter has to be heard finally by the trial court on all issues, the decision in this appeal would be in the nature of an order of remand under Order XLI Rule 23 C.P.C. In support of this submission, reliance has been placed on recent decision of this Court in ***Srivatsa Goswami vs. Anant Prasad Singh and Another, 2024 (162) ALR 834***.

SUBMISSIONS OF RESPONDENTS

7. Per contra, Shri Ashish Kumar Singh submits that the appellants cannot get advantage of decision of the Full Bench judgment in ***Chandra Bhushan Misra*** (supra) and, by referring to paragraph No. 51 of the report, it is contended that the Full Bench was of the view that a litigant should be relieved of burden to pay court fees when an 'erroneous decision' of the lower court is set aside or reversed, however, in the present case, since the earlier order of the trial court deciding issues on valuation/payment of court fees was assailed before this Court in First Appeal from Order under Section 6-A of the Act, 1870 and no relief was granted to the appellant, the decision cannot said to be erroneous.

ANALYSIS OF RIVAL CONTENTIONS

8. In order to decide the issue involved, first of all reference of Section 13 of Act, 1870 should be made. It is

quoted hereinunder:

"13. Refund of fee paid on memorandum of appeal.- If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, 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, authorising him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

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 certificate so granted shall not authorise 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."

9. A Full Bench of our Court, in ***Chandra Bhushan Mishra*** (supra) has held as under:

"51. There is another consideration upon which I find myself, for the purpose of applying Section 13 of the Court Fees Act, unable to limit the reference, to Order 41, Rule 23 to its original provisions. The object behind Section 13 appears to be that court fee should be levied only once in the progress of a suit from the lower court to the appellate court even though the case is remanded, for re-trial and the movement to the appellate court repeated. It appears to be intended that the litigant should be relieved of the burden of court fee in obtaining the removal of an erroneous decision of the lower court and a retrial of the case. That is also demonstrated by the terms of the proviso to Section 13 which limit the refund of the Court fee to that part of the subject matter in respect of which the suit is remanded. Now, if a refund of the court-fee is available when the case is remanded because the appellate court disagrees with the disposal of the suit by the lower court on the preliminary point, I am

unable to discern any reason why the same right should not be recognised in an appellant if the appellate court finds it necessary to remand the case on any other ground. The remand of the case for retrial is. I think, the material event entitling the appellant to a refund of the court fee. It is immaterial that the remand has been ordered for one reason or another.

53. For all these reasons, I am of opinion that an appellant is entitled to a refund of the court fee paid on the memorandum of appeal whenever the appeal is remanded under Order 41, Rule 23 as amended by this Court. In my judgment the statement of the law to this effect in 1964 All LJ 868 accords to the true position in law. The application of the appellant under Section 13 of the Court Fees Act should be allowed with costs."

10. The Supreme Court has affirmed the aforesaid decision in the ***State of U.P.*** (supra) by holding that reference was rightly answered by the Full Bench and, consequently, the appeal filed by the State of U.P. was dismissed.

11. Though it is true that at one place in paragraph No. 51 of the decision, the Full Bench has observed regarding removal of an 'erroneous decision' of the lower court, in the same paragraph it has been observed that 'nature of remand for one reason or the other is immaterial'. Even otherwise, the entire judgment and the ratio laid down has to be seen.

12. Here, judgment of Madhya Pradesh High Court in ***Suresh Kumar Chowkse v. State of Madhya Pradesh and another, 1985 M.P.L.J. 758*** also needs reference. The said case had arisen out of an order passed by the District Judge, Shivpuri in a civil appeal, by which, he had refused refund of Court fees as provided under Section 13 of the Madhya Pradesh Court

Fees Act, 1870. The High Court, after considering the provisions of Section 13 which are *pari materia* with the one applicable in the State of U.P. as well as the provisions of Order XLI Rule 23 C.P.C. held as under:-

“This provision makes it abundantly clear that if a suit is remanded in appeal on any of the grounds mentioned in Section 351 of the Code (now Section 23 and Section 23-A) for a second decision by the lower Court, the appellate Court shall grant to the appellant a certificate authorising him to receive back from the Collector the full amount of fee paid on the memorandum of appeal. When the appellate Court remanded the case for complete re-trial, it was the bounden duty of the appellate Court to grant the said certificate to the appellant authorising him to receive back from the Collector the full amount of Court-fee paid on the memorandum of appeal. This provision of the Court-fees Act is enacted with a view that when a re-trial is ordered by the appellate Court and the case is remanded to the trial Court for complete re-trial, then the Court-fees paid by the appellant should not be withheld as a measure of penalty, the reason being that now for the second time if the party becomes aggrieved by the judgment and decree of the trial Court, then he shall have to file an appeal again in the appellate Court and then he shall be required to pay the Court-fees again. Thus, if the Court-fee is not returned, he will have to pay Court-fee twice for getting one justice. This double jeopardy, which will be caused to the party, is not only against the principles of equity and justice but is also against the principles of law. Ku. Shanti Shrivastava, learned counsel for the State, has placed for reliance in the case of Kishan Sarup, (AIR 1975 Punjab and Haryana 22). The judgment rather favours the appellant, than the party which has cited it.”

13. Therefore, it is clear that Section 13 casts an obligation upon the appellate court to grant a certificate to the

appellant authorizing him to receive back from the Collector the full amount of fees paid on the memorandum of appeal and the proviso restricts such right to the extent of the amount originally paid.

14. There is no dispute between the parties that although before the trial court, court fees of Rs. 700/- was paid, in the instant First Appeal, court fees of Rs. 2,27,000/- has been deposited by the appellant. In view of the above-referred decisions, this Court is of the view that the appellant is not liable to again pay court fees after remand and the court fees of Rs. 2,27,000/- deposited before this Court, after determination made by the competent officer of this Court, is held to be sufficient in relation to the Original Suit No. 1032 of 2006. The point for determination framed above is answered accordingly.

15. The appeal is **allowed**. The impugned judgment and order dated 23.03.2023 and the decree dated 05.04.2023 passed by the Judge Small Causes Court/Civil Judge (Senior Division), Allahabad in Original Suit No.1032 of 2006 is set aside. Matter is remanded to the trial court for decision on merits.

16. At this stage, Shri Ashish Kumar Singh has placed before this Court a copy of the order dated 02.03.2023 passed by this Court in Matter under Article 227 No.1786 of 2023 whereby the trial court was directed to decide the aforesaid suit in six months.

17. Accordingly, the trial court shall decide the suit proceedings most expeditiously. Evidence of the plaintiffs shall be concluded in three months, evidence of defendants shall be

concluded in next three months and the suit shall be decided on merits in next two months.

18. This judgment, in itself, shall be treated as a certificate in terms of Section 13 of the Act, 1870 granted to the appellant authorizing him to receive back from the Collector, Prayagraj, court fees of Rs. 2,27,000/-. The Collector, being representative of the State in district and State being a party to this appeal, he is directed to ensure that the aforesaid amount of court fees is refunded to the appellant within 2 weeks after a copy of this order is placed before him. For this purpose, the Collector shall remain competent to delegate his power to any other officer under his supervision and control.

19. **Allowed** with aforesaid observations.

Order Date :- 17.12.2024
K.K.Tiwari

(Kshitij Shailendra, J)