

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.186 of 2017

Tirupati Steel Traders, Proprietor Mahamaya Mines Pvt. Ltd.,
through Director Anand Agrawal, S/o B.D. Agrawal, aged about 56
years, R/o 67/1, Behind Ralas Motors, Tatibandh, Raipur, Tahsil
and District Raipur (C.G.)

(Plaintiff)
---- Petitioner

Versus

1. Abhijeet Projects Limited, through its Director/Representative,
Village Totatalwadi, District Saraikela, Kharswan, Jharkhand.
2. Abhijeet Integrated Steel Limited, through its Director/
Representative, Plot No.DN- 23, Sector V, Salt Lake City, Kolkata,
West Bengal-700091.
3. Abhijeet Group, Through its Director/Representative, 39, Ambazari,
Layout Nagpur, Maharashtra-440010.
4. Abhijeet Project Limited Chandwa (2 x 270 MW Power Plant)
Through its Director/Representative, Village Bana, Block and P.O.
Chandwa, Jharkhand.
5. Jagannathpur Steel Limited, Through its Director/Representative,
Village Govindpur, District Saraikela, Kharswan, Jharkhand.
6. Corporate Ispat Alloys Limited, Through its Director/
Representative, Plot No.DN-23, Sector V, Salt Lake City, Kolkata,
West Bengal-700091.
7. Corporate Power Limited, Through its Director/Representative,
Address-The Knowledge Hub, 5th Floor, DN-23, Sector V, Salt Lake
City, Kolkata, West Bengal-700091.
8. Arun Gupta, Director, Corporate Power Limited, R/o A/2/B, 2nd
Floor, Belair Apartment Complex, P.S. Hindpiri Main Road, Ranchi
823001, Jharkhand.
9. Ravindra Jayaswal (Director), Corporate Ispat Alloys Limited, R/o
4, Manicktalla Bazar Lane, P.O. Beadon Street, Kolkata, West
Bengal-700091.
10. Rajiv Kumar (Director), Corporate Ispat Alloys Limited, R/o
Sourabh Kunj, A-1, "A" Block, 1st Floor, Kanke Road, Ranchi
823008, Jharkhand, India.

11. Manoj Jayaswal (Director), Abhijeet Project Limited, R/o 246, Usha Sadan, Pt. R.S.S. Marg, Nagpur, 440001, Maharashtra, India.
12. Radheshyam Prasad, Director, Abhijeet Integrated Steel Limited, R/o Plot No.9, Dronacharya Nagar, Nagpur, 440022, Maharashtra.
13. Ashok Prasad, Director, Abhijeet Integrated Steel Limited, R/o Plot No.9, Dronacharya Nagar, Nagpur, 440022, Maharashtra.

(Defendants)
---- Respondents

For Petitioner/Plaintiff:	Mr. Manoj Paranjpe, Advocate.
For State:	Mr. Prafull Bharat, Additional Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/03/2017

1. The petitioner / plaintiff filed a suit for recovery of a sum of ₹ 98,40,586/- jointly and severally against the defendants / respondents. The defendants were proceeded ex parte and ex parte evidence of the plaintiff was recorded and the case was fixed for final hearing, but during the course of final arguments, a specific query was raised with regard to maintainability of suit. The plaintiff took time and filed application under Order 23 Rule 1(3) of the CPC seeking withdrawal of suit with liberty to file fresh suit and also filed an application seeking return of court fees, under Section 151 of the CPC. The trial Court by its impugned order allowed the application under Order 23 Rule 1(3) of the CPC and granted liberty to file fresh suit in respect of same cause of action and same subject-matter, but rejected the application under Section 151 of the CPC for refund of court fees against which this writ petition under Article 227 of the Constitution of India has been preferred.
2. Mr. Manoj Paranjpe, learned counsel for the plaintiff/petitioner,

would submit that since the plaintiff himself has moved an application for withdrawal of suit before the final judgment could be pronounced after hearing the arguments, he is entitled for remission of court fees under Section 13 of the Court Fees Act, 1870 read with Section 151 of the CPC.

3. Since the matter relates to court fees, Mr. Prafull Bharat, learned Additional Advocate General for the State of Chhattisgarh, was requested to address the Court. He would submit that the suit was instituted for recovery and suit was taken cognizance of and ex parte evidence was recorded and even the case was fixed for final arguments. Therefore, the trial Court has tried the suit fully and as such it cannot be held that the suit was at preliminary stage. He would further submit that when there is an express jurisdiction conferred under Section 13 of the Court Fees Act, 1870, even under Section 151 of the CPC, inherent power cannot be exercised and the said application was rightly rejected by the trial Court, no interference is warranted and the writ petition deserves to be dismissed.
4. I have heard learned counsel for the petitioner on the question of admission of the writ petition.
5. Concededly and undisputedly, the suit was apparently instituted by the plaintiff seeking recovery of the aforesaid sum jointly and severally from the defendants and it was put to trial though no issue was framed on account of defendants being proceeded ex parte and as such, the case was fixed for final arguments and arguments were heard at some length, as it appears from the

impugned order. Since a specific question regarding maintainability of the suit was raised, the matter was adjourned to the next date and on the next date, application for withdrawal of suit with liberty to file afresh was filed. The trial Court, in all fairness, finding that the suit suffers from formal defects allowed the plaintiff to withdraw the suit with liberty to file fresh suit in respect of same cause of action and same subject-matter, but the application for return of court fees has been rejected relying upon the judgment of a Full Bench of the Allahabad High Court in the matter of **Munna Lal and another v. Abir Chand**¹.

6. In order to appreciate the point in dispute, it would be appropriate to notice Sections 13, 14 and 15 of the Court Fees Act, 1870, which read as follows: -

“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, authorizing 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 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.

14. Refund of fee on application for review of judgment.—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, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the

1 AIR 1958 Allahabad 766

application as exceeds the fee which would have been payable had it been presented before such day.

15. Refund where Court reverses or modifies its former decision on ground of mistake.—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 authorizing 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.”

7. The principle underlying Section 13 of the Court Fees Act, 1870 seems to be that the Government should not earn profit by mistake of reduction as the amount of court fees payable under the Act and in case of such mistake, the court should order refund in the ends of justice, but, at the same time, the court by ordering refund of court fees cannot impose upon them by the Statute towards payment of court fees and thereafter nullify the provisions of the Act as required under Section 6 of the Act except in certain contingencies mentioned in Section 13 of the Court Fees Act, 1870.
8. The question as to whether, in case of withdrawal of suit or appeal, court fees can be directed to be refunded also came to be considered before a Division Bench of this Court in the matter of **Premalal and others v. Smt. Basanti Bai Kesharwani and another**² and this Court while considering the Full Bench decisions of the Allahabad High Court, the Punjab and Haryana High Court

2 2009(1) C.G.L.J. 287 (DB)

and the Madras High Court, held as under: -

“20. We are in respectful agreement with the law laid down in the Full Bench decisions of Allahabad, Punjab & Madras High Courts that where proper court-fee has been paid, as required under the law, the same cannot be ordered to be refunded on the ground that the proceeding has been subsequently withdrawn by the party. The inherent power to remit or refund the court-fee is confined only to fees which has been illegally or erroneously assessed or collected.”

9. Thus, the court-fee can be ordered to be refunded only on the ground that the proceeding has been withdrawn by the party and inherent power can be exercised only to fees which has been illegally or erroneously assessed or collected. Therefore, refund of court-fee can be ordered only under the contingencies enumerated in Sections 13, 14 and 15 of the Court Fees Act, 1870.

10. It is well settled law that taxing statute has to be construed strictly and where the court-fee is paid as per the provisions of the Court Fees Act, 1870, the same cannot be directed to be refunded under the inherent powers of the Court.

11. Applying the principles of law laid down in the afore-cited cases (supra) to the facts and circumstances of the present case, it would appear that the plaintiff's suit was validly instituted, it was tried in accordance with law and ultimately, the petitioner/plaintiff finding the suit to be not maintainable and noticing formal defects in the suit, which transpired during the course of hearing, decided to move an application for withdrawal of suit with liberty to file afresh which was found favour by the trial Court and thereafter, the trial Court granted the plaintiff the liberty to file fresh suit in respect of same cause of action and same subject-matter, but the trial Court

has rightly refused to exercise the inherent power to refund the court-fee, as Section 13 of the Court Fees Act, 1870 or inherent power cannot be invoked for refund of court-fee when the suit is being withdrawn after a full-dressed trial before the trial Court. Therefore, I do not find any jurisdictional error in the impugned order warranting interference by this Court under Article 227 of the Constitution of India.

12. In view of the above, the writ petition deserves to be dismissed and is accordingly dismissed *in limine*. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge