

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 796 of 2018**

M/s Kanchan Creation Through- Mr. Mubarik Khan Ghouri (Director), S/o Late Shri Mohammed Khan Ghouri, Aged about 74 years, Branch Office at – Rehmat A Rasool Village Asgarbada, Amanaka, Raipur, District. Raipur (C.G.)
(Plaintiff)

---- Petitioner

Versus

State of Chhattisgarh, through – Collector, Raipur, District Raipur (C.G.)
(Defendant)

... .Respondent

For Petitioner	:	Mr. Mayank Chandrakar , Advocate.
For Respondent / State	:	Mr. Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/09/2018

1. The plaintiff's suit has been filed for recovery of money against the Chhattisgarh State Power Transmission Corporation Limited which was dismissed in exercise of power conferred under Order 7 Rule 11 of Code of Civil Procedure (for short, 'C.P.C.') and thereafter, the petitioner / plaintiff preferred an application under Section 13 of the Court Fees Act, 1870 (for brevity, 'Act of 1870') read with Section 151 of C.P.C. for refund of court fees which has also been rejected by the impugned order dated 09.07.2018 (Annexure – P/1).

2. Mr. Mayank Chandrakar, learned counsel appearing for petitioner would submit that since the plaint has been rejected without deciding the suit on merits,

therefore, the petitioner is entitled for refund of the court fees.

3. Mr. Aditya Sharma, learned State counsel submits that the condition precedent enumerated under Section 13 of the Act of 1870 is not fulfilled as the suit has not been ordered to be received as provided under Section 13 of the Act of 1870. Therefore, the petitioner is not entitled for the refund of the court fees.

4. I have heard learned counsel for the parties and considered their rival submissions made herein above.

5. 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 reads 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 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.'

6. The Supreme Court, in the case of **State of Uttar Pradesh v. Chandra**

Bhushan Misra¹, has held that in case of remand under Order 41 Rule 23 C.P.C., refund of Court fee can be directed under Section 13 of the Court Fees Act, 1870.

7. 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.

8. 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.

9. 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 has been rejected under Order 7 Rule 11 of C.P.C. and none of the grounds mentioned in Section 13 is available to direct the refund of the court fee and inherent power cannot be invoked for refund of the court fee. As such, I do not find any merit in the writ petition.

10. Accordingly, the writ petition deserves to be and is hereby dismissed with no order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

¹ AIR 1980 SC 591