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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ TEST.CAS. 78/2013

VINOD KUMAR ..... Petitioner

Through Mr.Prem Prakash, Advocate.

versus

HARPYARI DEVI & ORS ..... Respondents

Through None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

<u>O R D E R</u>

% **07.09.2018**

<u>I.A.Nos.12231/2014, 19967/2015</u>

Present applications have been filed for refund of the court fees.

In pursuance to the last order dated 17th July, 2018, the Registrar (Original) has filed a report. The said report dated 01st August, 2018 is reproduced hereinbelow:-

> *"In compliance with the order dated 17th July, 2018 of this Hon'ble Court directing the undersigned to file, within four weeks, a categorical report as to whether court fee is to be payable on the basis of market value or the circle rates. The report is as under:*
>
> *It is submitted that in accordance with the decision taken in the meeting of the Hon'ble Judges of the Original Side held on 20th January, 2014, read with order dated 26th September 2013 passed in Test Case No.72/2010, the court fee is to be paid as per*

the circle rate. However, the facts of the case in hand (Test Case No.78/2013) are slightly different which are as under.

1. *At the time of filing of the petition, the petitioner had assessed the value of the property in question at Rs.75,80,048.40 and accordingly the petitioner affixed a court fee of Rs.3,03,202/- i.e. at the rate of 4% of the value declared.*
2. *In the valuation report furnished by the SDM (placed in Part-I), the value of the property as per circle rate has been assessed at Rs.63,71,590/- and as per market value at Rs.80,00,000/-*
3. *During the pendency of the petition, the petitioner filed I.A.No.12231/2014 for refund of excess Court Fee paid. The petition was disposed off by the Hon'ble Court vide order dated 26.08.2015, granting probate of the Will. In paragraph 7 of the judgment, the valuation given by the SDM on the basis of the market value i.e. Rs.80,00,000/- was accepted and the petitioner was directed to submit stamp duty of difference between Rs.75,80,048.40/- (i.e. value declared by the petitioner) and Rs.80,00,000/- (i.e. value assessed by the SDM as per market rate and accepted by the Hon'ble Court). However, it appears that the I.A.No.12231/2014 escaped specific consideration of the Hon'ble Court, though in paragraph 9 of the judgment refund of excess court fee was ordered.*
4. *Consequently, the petitioner paid a further court fee of Rs.7,224/- whereas the court Fee/stamp duty on the difference amount between Rs.75,80,048.40 and Rs.80,00,000/- (i.e. Rs.4,19,959.60) comes to Rs.16,798/- @ 4%) in terms of paragraph No.7 of the judgment. At the same time, the Hon'ble Court has, vide paragraph 9, directed refund of excess court fee.*

   For the sake of clarity, the court fee position is summarised in the following table:

Value declared by petitioner (Rs.)	*Value accepted by Court* (Rs.)	*Court fee paid by petitioner* (Rs.)	*Total court fee payable on accepted value @ 4%*	*Excess court fee*	*Deficient court fee*
75,80,048.40	*80,00,000/-* *(in terms of para 7 of the judgment)*	*3,10,426/-* *(3,03,202 + 7,224 paid subsequently)*	*3,20,000/-* *(3,03,202 + 16,798 i.e. the difference on Rs.4,19,959.60/-*	*Nil*	*9,574/-* *(3,20,000/- mius 3,10,426/-)*

5. The petitioner has yet again filed another application being I.A.No.19967/2015 for refund of excess Court Fee. It is submitted that in the former application i.e. I.A.12231/2014 the ground for refund of court fee is that at the time of filing of the petition the petitioner paid the court fee in accordance with the Amended Court Fees Act that was 4% of the value of the property (Rs.75,80,048.40) and that after filing of the petition the Amended Act was abolished by judicial pronouncement and that the court fee was to be paid in accordance with the previous i.e. un-amended Court Fees Act. In this connection it is submitted that there has been no change in the percentage of the court fees payable under the un-amended as well as Amended Court Fees Act. In both the cases it has been the same i.e. 4%. The only difference was that in the un-amended Act it was 4% if the value exceeds rupees fifty thousand whereas under the Amended Act it was 4% if the value exceeds rupees fifty lakh.

6. As per the above mentioned facts, there is a deficiency in court fee/stamp duty in the sum of Rs.9,574/- which is yet to be paid.

The above report is submitted for perusal and consideration of this Hon'ble Court."

Learned counsel for the petitioner states that in view of the aforesaid report, the shortfall of the court fees/stamp duty of Rs.9,574/- shall be paid within a period of two weeks.

Holding the petitioner bound by the said statement, the present applications stand disposed of.

MANMOHAN, J

SEPTEMBER 07, 2018
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