

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO. 4064 OF 2019

IN
FIRST APPEAL NO. 1661 OF 2019

Rajaram s/o Kishan Ghate

..VS..

State of Maharashtra, thr. Collector and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.U. Nemade, Adv. Assisted by Adv. S.S. Nemade, for
appellant.

Shri K.L. Dharmadhikari, A.G.P for respondent nos. 1 and 2.

Shri R.C. Raibhandare, Adv. for respondent no. 3.

CORAM : VINAY JOSHI, J.

DATED : 21st NOVEMBER, 2019

Heard.

2. The appellant has taken out this Civil Application seeking exemption in payment of court fee.
3. The appellant/original claimant has initially approach to the Court in terms of Section 18 of the Land Acquisition Act 1894, for enhancement of compensation by way of Land Acquisition Case No. 147 of 1997. The Reference Court has granted enhanced compensation at certain rate.
4. Being aggrieved and dissatisfied by quantum of enhancement, the State has preferred First Appeal No. 486 of 2005 in which the appellant has filed cross-objection bearing no. 14 of 2006, seeking further enhancement. The Appeal as well as the Cross-objection was decided by this Court vide common order dated 06.07.2017, by which this

Court allowed both cross-objection, appeal and ultimately remitted the matter back to the Reference Court for fresh adjudication. This Court while remanding the matter, allowed to lead additional evidence including to file measurement map based on joint measurement. After remand Land Acquisition Case No. 141 of 1997, was reheard by the Trial Court and considering the material on record, the Trial Court partially allowed the reference vide judgment and order dated 23.01.2018. The appellant would submit that, while this Court remanded the matter, certain directions were given which according to him, are not followed. The appellant/claimant feeling aggrieved by the rate of compensation, has preferred this First Appeal.

5. In such background, the Civil Application is filed by the appellant seeking from exemption in payment of court fee. Admittedly, when the appellant filed cross-objection no. 14 of 2006, he had deposited requisite court fee to the sum of Rs.15,000/-(Rupees Fifteen Thousand Only) on claimed enhancement. The appellant would submit that, since the matter is remanded for fresh adjudication, he is entitled for refund of entire court fee in terms of Section 15 of the Maharashtra Court Fees Act, 1959. The statement is made that this Court while remanding the matter neither passed the order for refund of court fee nor the appellant has received refund of court fee.

6. According to the appellant, as he has not received refund of court fee, he be exempted from deposit of court fee to this Appeal. The State resisted application

by contending that, this Court has allowed the appeal as well as cross-objection with costs. Secondly, though in appeal matter was remanded but, appeal was decided on merit on adjudicating issue, hence, the appellant is not entitled for refund of court fee in First Appeal No. 486 of 2005 decided alongwith the cross-objection no. 14 of 2006.

7. It is also submitted that, the appeal is decided with costs hence, the costs would include the court fee.

8. In other words, learned Assistant Govt. Pleader submits that, this Court while remanding the matter has directed parties to bear their own costs. Since, the argument advanced by State is based on the operative order passed in Appeal No. 486 of 2005 alongwith the cross-objection no. 14 of 2006. I find it appropriate to reproduce the same herein below :

“

ORDER

- i) Appeal and Cross Objection both are allowed with costs.*
- ii) The impugned judgment and order are hereby quashed and set aside.*
- iii) The matter is remitted back to the Reference Court for decision afresh, in accordance with law, in the light of the observations made hereinabove.*
- iv) Leave to produce additional evidence is granted to the claimant including leave to file re-measurement map based on joint measurement.*
- v) The Reference Court is requested to dispose of the Reference Application as early as possible,*

preferably within six months from the date of appearance of the parties before it.

vi) Parties to appear before the Reference Court on 24.7.2017.”

9. Bare perusal of clause (i) of the order indicates that, the appeal and cross-objection both are allowed with costs. This Court has neither clarified whether, the party to bear their own costs or who shall bear the costs of whom. Secondly, though the appeal and cross-objection are allowed, the ultimate results is remand of the matter. Certainly, this Court has considered the matter on merit but the assessment was to the extent of entertaining prayer of remand. There is no adjudication of the grievance raised by either side, neither the appeal of State was allowed nor the cross-objection for enhancement was allowed. The wholesome result is that, there is no adjudication in real sense but, considering the facts, this Court felt it necessary for fresh adjudication. In such circumstances, the matter is remanded back with certain directions. Therefore, though certain facts and observations are recorded by this Court it cannot be termed as a decision on merit as regards to the claims of the parties.

10. Learned Counsel for the appellant took me through the provisions of Section 15 of the Maharashtra Court Fees Act, 1959 which reads as follows :

“15. 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, 1908, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in rule 23 of Order XLI in the first schedule to 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 or by way of e-payment, in the manner as prescribed by rules] the full amount of fee paid on the memorandum of appeal :

Provided that if, in the case of remand in appeal, the order of remand shall not cover the whole of th 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 f such subject-matter in respect whereof the suit has been remanded.”

11. It provides that when the suit is remanded in appeal, on any of the grounds mentioned in Rule 23 of Order XLI then Appellate Court shall grant the certificate for refund of full amount. The textual provision as it stands has to be read. There is no proviso or rider carved out that, if the order of remand is after hearing the parties then there would be no refund of court fee. The plain reading of Section 15 provides that, in case of remand, the appellant is entitle for full refund of court fee. The reading of this Section otherwise than what it stands, would frustrate the very legislative intent behind incorporating Section 15 of the Act. Section 15 contemplates the

situation, where remand is under Order XLI Rule 23 of the Code. Rule 23 is enabling provision to remand the case by Appellate Court. The said provision would come into play, when the Court from whose decree appeal is preferred has disposed of the suit upon a preliminary point. Admittedly, in case at hand, the Reference Court had not decided the matter on preliminary point but, it was decided on merit. In the circumstances, the remand would be under Rule 23-A of Order XLI which authorizes the Appellate Court to remand the matter, when the trial Court has disposed of the case otherwise, than on preliminary point.

12 Learned Counsel for the appellant submits that, in case of remand under any count, Section 15 of the Maharashtra Court Fees Act, 1959 would come into play. In this regard, he relying on the judgment of Hon'ble Supreme Court in the case of **Surender Singh v. State of Haryana and ors. 2018(6) Mh.L.J. 818**. In said case, similarly under Land Acquisition, the matter was traveled up to the Supreme Court. Ultimately, the hon'ble Supreme Court has remanded the matter for fresh adjudication on merit has held that, the appellants were entitled to get back the amount of court fee paid by them to their appeal memo before the High Court as well as before the Supreme Court as provided under Section 13 of the Court Fees Act, 1870. In said case equally, the remand was not on preliminary issue, however, the Hon'ble Apex Court has refunded the court fee by invoking Section 13 of the Court Fees Act, 1870. In our case, Section 15 of the Maharashtra Court Fees Act, is a relevant provision which is pressed into service. On perusal of Section 13 of the Court Fees

Act, 1870, we find that it is *para materia* to Section 15 of Maharashtra Court Fees Act. It is apparent that, no distinction is made in the remand under Order XLI Rule 23 or remand under Order XLI Rule 23-a, still the Apex Court has refunded the court fee. The legislative intention appears to be to refund court fee, in case of remand of the matter.

13. In true sense, when the matter is remanded back, there is no adjudication of lis since, it requires rehearing and fresh adjudication. Even otherwise, the party would not get any relief by way of remand, perhaps this is the reason to refund the entire court fee.

14. In case at hand though this Court had expressed that the appellant's cross-objections are allowed, however, the matter is remanded, meaning thereby none of the parties gained anything as prayed in appeal or cross-objection. Therefore, the order of this Court is to be read as a whole without drawing inference on the parts of the order. The effect of order is to be seen which nevertheless is remitting the matter back for fresh trial. In the circumstance, the appellant who has earlier paid court fee is entitle for refund in terms of Section 15 of the Maharashtra Court Fees Act, since the matter is remanded for fresh trial. It is illogical to pay double court fee or tax party twice.

15. In view of that, I find substance in the application. Hence, as applicant has earlier paid court fee and it was not refunded. In view of Section 15 of the Maharashtra Court Fees Act, he is exempted from payment

of court fee to this appeal. The Civil Application stands disposed accordingly.

FIRST APPEAL NO. 1661 OF 2019

Heard.

Admit.

Call R & P.

Learned Assistant Govt. Pleader Shri K.L. Dharmadhikari waives notice for respondent nos. 1 and 2.

JUDGE

Trupti