

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE K.LAKSHMAN**

CIVIL REVISION PETITION NO.2490 OF 2019

ORDER

(Per Honourable Sri Justice M.S.Ramachandra Rao)

Heard the learned counsel for the petitioner and the learned Government Pleader for Appeals for the State.

2. In this Revision, the Docket Order dt.25.06.2019 in I.A.(SR) No.7010 of 2018 in C.O.S. (SR) No.5390 of 2018 of the XXIV Additional Chief Judge-cum-Commercial Court Judge, City Civil Court, Hyderabad is questioned.

3. The petitioner had filed the said suit before the said Court against the respondents for a perpetual injunction against the 1st respondent Corporation or their officials or their agents restraining them from encashing the Bank Guarantee of Rs.69,60,1000/- through Bank Guarantee No.107/2013 of Corporation Bank, Jubilee Hills Branch, Hyderabad dt.28.11.2013 furnished by the petitioner, and also sought a consequential direction to the 1st respondent to return the same with NOC and for other reliefs including payment of Rs.43,07,749/- together with interest @ 24% per annum from the date of filing of the suit till the date of realization. The petitioner paid Court fee of Rs.1,18,342/-. However, the petitioner subsequently had to approach the NCLT (National Company Law Tribunal), Hyderabad and so the petitioner sought for refund of the said payment made towards Court fee at the time of filing of the plaint in C.O.S. (SR) No.5390 of 2018.

4. The basis of the claim of the petitioner is Section 66 of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956, which states that if the Court fee is paid by mistake or inadvertence, it shall be ordered to be refunded.

5. By the Docket Order dt.25.06.2019, the said Court dismissed the said Application.

6. It is not in dispute that when the plaint was presented, the Court had taken objection regarding jurisdiction, and after hearing the petitioner, the Court returned the plaint questioning the legality of filing of the suit when an Application was filed before NCLT, Hyderabad. The petitioner filed the returned plaint also along with I.A. (SR) No.7010 of 2018 and sought refund of the Court fee amount mentioned above.

7. The Court below was of the view that the Court fee was paid by the petitioner not on account of mistake or inadvertence. It relied on a decision of this Court in **Yandra Brahman In re.**¹ and that of a Madras High Court in **Factors (P) Ltd. Vs. Amalgamated Commercial Traders (P) Ltd.**² apart from the decision of the Supreme Court in **Om Prakash Gupta Vs. State of U.P.**³.

8. Learned counsel for the petitioner relied upon a Division Bench Judgment of this Court in **Polyprint Private Limited and others Vs. Canara Bank and others**⁴ and contended that Section 66 of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 is not exhaustive and there is power inherent in this Court as Court of Record and as a Court

¹ 1957 (1) An.W.R. 167

² 1970 MLJ 529

³ AIR 1955 SC 600

⁴ 1997 (4) ALD 281

of Law and a Court of Justice and equity to see and weigh in each case whether the Court fee is liable to be refunded or not. Such contention found favour with the Division Bench in this decision and the Division Bench held that there is such inherent power vested in the Court where there is equity in favour of the party. In that case, the appellants had filed an appeal challenging a preliminary decree in a mortgage suit. Thereafter, the appellants satisfied the decree and a compromise was entered into between the parties and they sought permission to withdraw the Appeal. The Appeal was thus dismissed as withdrawn. Later the appellants contended that since the Appeal was withdrawn pursuant to the compromise, the Court fee payable by the plaintiff on the institution of the suit is to be refunded, and the suit debt, having been discharged to the extent of the appellants' liability pursuant to the compromise, equity warrants refund of the Court fee paid in the Appeal. The Court accepted this plea and directed refund of the Court fee.

9. In **M.Dasarath Vs. K. Omprakash and another**⁵, a Division Bench of this Court held that if a Letters Patent Appeal is withdrawn, Court fee can be refunded where equity requires that the Court fee shall be refunded, and even if there is no provision in the Act for refund of Court fee, there is inherent power vested in the Court to grant such refund.

10. The Madras High Court in **Zahoorunnissa Begum Vs. T.Mohammed Ali Saheb and another**⁶ also permitted refund of Court

⁵ 1994 (1) An.W.R. 109 (D.B.)

⁶ 1961 (2) Mad.L.J. 331

fee in a suit filed for setting aside a sale upon holding that the suit was not maintainable because there was remedy under Section 47 CPC. It therefore permitted the claim for refund of the Court fee in those circumstances observing that a mistake which arises as a result of adoption of erroneous procedure with the consequent payment of a Court fee appropriate to the procedure adopted would be within the ambit of Section 70 of the Madras Court Fees and Suits Valuation Act (which is in *pari materia* with Section 66 of the Andhra Pradesh Court Fees and Suits Valuation Act).

11. In **Om Prakash Gupta Vs. State of U.P.**³ followed by the Court below, suit for damages was filed by a Government Servant who was dismissed from service and Court fee was paid on the claim of damages in the suit. But thereafter, a decision of the Privy Council came which made it clear that no such claim can be made by a Government servant and that the Government servant only ask for a declaration that the order of his dismissal was illegal, and that he still continued to be a member of the Civil Service. Refund of Court fee was sought on this ground but the Supreme Court held that the Court fee when paid, was in accordance with law as it then stood, and merely because there is change in law pursuant to the decision of the Privy Council, Court fee cannot be directed to be refunded.

12. We are of the opinion that the situation in the said case is entirely different and the said decision could not have been followed by the Court below.

13. When at the stage of filing of the appeal, there could be a compromise as held in **Polyprint Private Limited and others** (4 supra) and Court fee can be refunded, the petitioner would be entitled to refund of Court fee even in a situation when filing of the suit itself was adoption by it of wrong procedure and effective remedy of petitioner is before the NCLT, more so, because there is no contest from any of the respondents at this stage.

14. Therefore, the Civil Revision Petition is allowed; order dt.25.06.2019 in I.A.(SR) No.7010 of 2018 in C.O.S. (SR) No.5390 of 2018 of the XXIV Additional Chief Judge-cum-Commercial Court Judge, City Civil Court, Hyderabad is set aside; the State is directed to refund the Court fee amount of Rs.1,18,342/- to the petitioner within four weeks from today.

15. Pending miscellaneous petitions, if any, shall stand closed. No costs.

M.S.RAMACHANDRA RAO, J

K. LAKSHMAN, J

4th DECEMBER, 2019

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