

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 2893 of 2020

Sanjib Kumar Ghosh
Vs.
The State of West Bengal & Ors.

For the writ petitioner	:-	Ms. Somoshree Saha, Adv.
For the State	:-	Mr. Nirmalya Biswas, Adv. Mr. Kinkar Kumar Bhattacharyya, Adv.
Heard on	:-	05.08.2024
Judgment on	:-	16.08.2024

Amrita Sinha, J.:-

Little learning is a dangerous thing - is an oft used idiom. The case at hand is a classic example of what happens when legal practitioners, without proper appreciation of the legal provision, embark upon the journey allegedly to provide relief to the client but lands himself into a problem.

The petitioner is a legal practitioner. Due to inadvertence, he purchased court fees to the tune of Rs. 63,110/- instead of purchasing non-judicial stamp paper of the like amount. He states that the non-judicial stamp paper was required in connection with a partition suit of one of his clients. The petitioner duly submitted the non-judicial stamp paper and he intends to return the court fees purchased by him which

has remained unused. He also wants refund of the amount of the court fees that will be returned. Prayer has been made to permit him to return the court fees and obtain refund of the said amount.

Reliance has been placed on the judgment passed by this Court in the matter of ***Eagle Plywood Industries Pvt. Ltd. -vs- Amulya Gopal Mazumdar & Ors.*** reported in **69 CWN 1025** wherein the Court held that the Court has inherent jurisdiction to order refund of court fees in appropriate case, to do real and substantial justice. Such appropriate cases are where mistake or inadvertence or on wrong interpretation of law excess court fees have been paid or realised.

In the instant case the petitioner inadvertently purchased court fees in place and instead of non-judicial stamp paper.

Reliance has also been placed on a judgment passed by the Hon'ble Delhi High Court in the matter of ***Aya Singh Tirlok Singh -vs- Munshi Ram Amta Ram*** reported in **AIR 1968 Delhi 249** wherein the Court permitted refund of the court fees as the same was paid erroneously. The Court cautioned that it is the duty of the counsel accepting briefs to be fully informed of the legal position and because of ignorance of the counsel refund may not be ordered in all cases. Each and every case will have to be considered on its own merit.

The Hon'ble Supreme Court in ***Special Leave Petition (Civil)*** nos. **3063-3064 of 2021** in the matter of the ***High Court of Judicature at Madras represented by its Registrar General -vs- M. C.***

Subramaniam & Ors. reported in ***(2021) 3SCC 560: AIR 2021 SC 2662***

held that in case of out of Court settlement of dispute in between the parties, the parties would be entitled to refund of the court fees.

Learned advocate representing the State submits that order may be passed in line with the law laid down in the judgments cited herein above. It has been submitted that the Court has inherent jurisdiction to order refund of court fees to do real and substantial justice.

The West Bengal Court Fees Act, 1970 is a special taxing statute. The same relates to levy of fee in Court and in public offices. The manner of computation of fees payable in suits, including suit for partition, is mentioned in the said Act.

The instruments which are chargeable with duty indicated in the Schedule of The Indian Stamp Act, 1899 are required to be stamped. A partition deed is to be stamped in accordance with the provision of the Indian Stamp Act.

Here, it appears that the petitioner failed to appreciate the purpose for which the non-judicial stamp paper was directed to be deposited. The petitioner, presumably because of ignorance, purchased court fees instead of non-judicial stamp paper. Court fees was definitely paid at the time of filing of the partition suit. After decree was passed in the partition suit there was no further requirement of depositing court fees.

In the instant case there is no settlement of dispute for which the court fee has been sought to be refunded. It is a case of bona fide mistake on the part of the learned advocate who conducted the case. The ratio laid down in *M. C. Subramaniam (supra)* will, accordingly, not be applicable in the facts and circumstances of the instant case.

It has been discussed in *Eagle Plywood (supra)* that Government should not profit by the mistake of a litigant and in cases of such mistakes, the Court should order refund for ends of justice. This is an intelligible principle. Government cannot reasonably object to refund the excess as it is not legitimately due under the Statute.

In *Aya Singh (supra)* the Court took note of the Full Bench decision of the Punjab High Court in ***Jawahar Singh Sobha Singh vs. Union of India*** reported in ***AIR 1958 P&H 38*** wherein the Full Bench opined that the inherent power of a Court to remit or refund Court fees is confined only to fees which have been illegally or erroneously assessed or collected and does not extend to fees which have been paid or collected in accordance with the provisions of the Court Fees Act.

In *Aya Singh (supra)* the Court observed that the Court Fees Act has no preamble, but it has obviously been enacted to secure revenue for the benefit of the State. Unless the liability to pay court fees is mentioned in the Statute, a litigant is not obliged to pay any court fee. If the court fees is paid under a bona fide but erroneous impression, the cause of justice demands refund of the same. In order to exercise its inherent

power, the Court has to consider the facts and circumstances of each case and come to a judicial determination whether or not the cause of justice requires refund.

The petitioner has candidly submitted that the court fees were purchased in place and instead of non-judicial stamp paper and the said court fees remained unused and may not be required by the petitioner in the near future. The petitioner, under erroneous conception, purchased the court fees.

Here also the Court would sound a word of caution. Advocates must do proper research while handling the brief of clients or else half-baked legal knowledge and understanding of the legal proposition may lead to unpalatable result. The same will be disservice to the client and in a given case the learned advocate may land up in serious trouble.

For ends of justice, the Court permits the petitioner to return the unused court fees and obtain refund of the money thereof.

The Collector of Calcutta is directed to take return of the original unused court fees of Rs. 63,110/- (rupees sixty-three thousand one hundred ten) only and if the same is found to be genuine and proper then refund the amount to the petitioner subject to payment of processing fee, if any. Steps for refund shall be taken at the earliest but positively within a period of eight weeks from the date of return of the unused court fees.

The writ petition stands disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)