



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5775 OF 2024

MOHAMMAD HAMIDODDIN MOHAMMAD MUNIRUDDIN
VERSUS
MOHID KHAN MOHAMMAD KHAN PATHAN AND ANOTHER

Mr. H. I. Pathan, Advocate for the petitioner

CORAM : R. M. JOSHI, J.

DATE : 8th JULY, 2024

PER COURT :-

1. Respondent in RCA No. 2/2024 takes exception to the order dated 06/01/2024 passed by First Appellate Court permitting the appellant to deposit outstanding court fees and also rejecting application filed by the respondents vide Exhibit 35.

2. The learned counsel for the petitioner submits that it was not sufficient for the respondents-appellants not only to present the memo of appeal but it was obligatory on the part of the to deposit court fees. It is his submission that once the court fees not deposited the appeal become defective and payment of court fee at later stage, would not bring appeal in limitation. He relied upon the observations made in the judgment of Full Bench of Allahabad High Court in case of *Manna Lal Vs. Chhotka Bibi and Ors. AIR 1964 Allahabad 552*.

3. Perusal of record indicates that appeal is filed in time. The

First Appellate court had granted time to the appellants to pay court fees by order dated 17/06/2023. It is thereafter application (Exhibit 10) was filed on 06/01/2024 to pay the said court fees. Learned Appellate Court permitted the outstanding/balance court fees to be paid by order dated 06/01/2024. Petitioner being aggrieved by such order moved an application vide Exhibit 35 for dismissal of appeal on the ground of the appeal being barred by limitation. While rejecting the said appeal it is specifically held that the appeal is preferred within limitation and as such the contention of the petitioner is rejected.

4. Section 149 of CPC provides for discretionary power to Court to make up deficiency of court fee. The said provision reads thus;

"Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to Court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such Court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

. Bare reading of this provision shows that discretion is left with the Court to permit party to make deficit Court fee good at any stage and such payment of Court fee has effect as if Court fee is paid in the first instance. In view of power confined upon the Court to permit party to make deficit Court fee good, this Court finds no perversity in such discretion exercised by the learned Appellate Court.

5. As far as the contention of the learned counsel for the petitioner that no specific prayer was made for condonation of delay and still the First Appellate Court has allowed the appellants to deposit the court fees is concerned the order passed by the learned First Appellate Court is in its discretionary power and since it can be made good at any stage, there is no question of delay or condonation thereof.

6. The judgment of *Manna Lal Vs. Chhotka Bibi* (cited supra) is essentially on the point that the document of any type specified in the first schedule to the Court Fee Act as chargeable with fees shall be filed along with the fees. Present case is not the one wherein no court fees at all was paid by the appellants. As it appears from orders passed by Appellate Court, there was deficit of Court fee, which is allowed to be made good in exercise of discretion given by Section 149 of CPC. The judgment cited supra therefore would not come to aid of petitioner. Exercise of such power by the Appellate Court cannot be called as perverse in order to cause any interference therein in writ jurisdiction.

7. In view of the above discussion, petition stands dismissed.

(R. M. JOSHI, J.)

ssp