

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Civil Revn. No. 4 of 1955

Decided On: 25.04.1957

Appellants:**Ramautar Tiwari and Ors.**

Vs.

Respondent:**Jagdish Singh and Ors**

Acts/Sections/Rules:

CPC - Sections 107(2), 151, 2(2); Order 47, Rule 1; Order 7, Rule 11

Cases referred:

Radhanath Jha v. Bacha Lal Jha, (S) MANU/BH/0093/1955 : AIR 1955 Pat
370 (C)

Kotagiri Venkata Subbamma Rao v. Vellanki Venkatrama Rao 27 IA 197

Mahanth Ram Das Chela v. Ganga Das MANU/BH/0006/1956 : AIR 1956 Pat
20 (A)

Application - Under Order 47, Rule 1 of CPC - for review of the peremptory order passed by a learned Judge directing that deficit court-fee on the memorandum of appeal should be paid by certain date, failing which the Second Appeal would stand rejected without further reference to a Bench.

Application was placed for hearing in the first instance before Misra and Chaudhari, JJ., who felt that the matter required consideration of a larger Bench.

Held - Section 151 of the CPC not appropriate for the restoration of an appeal dismissed for default of payment of requisite court-fee. - Remedy is review under Order 47, Rule 1, CPC, on payment of the proper court-fee on such application. - View taken by this Full Bench is the correct view. (Para 4)

Application dismissed. (Para 5)

It is possible that hardship will be caused in certain cases where deficit court-fee can't be deposited on the memorandum of appeal for extraordinary or unavoidable reasons. - Proper remedy is by an amendment of Order 47, Rule 1, CPC, and not to modify the law in the guise

of interpretation. - Matter directed to be placed before the Registrar for being placed before the Rules Committee for consideration if Order 47, Rule 1, CPC, requires amendment so that a case of non-payment of deficit court-fee may be one of the additional grounds of review of a decree. (Para 6)

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Hon'ble Judges/Coram:

Vaidynathier Ramaswami , C.J., Jamuar and Chaudhuri , JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Jaleshwar Prasad and Thakur A.D. Sinha, Advts.

For Respondents/Defendant: A.N. Chatterji and Gupteshwar Prasad, Advts.

ORDER

1. This application is made on behalf of Ramautar Tiwari and other petitioners under the provisions of Order 47, Rule 1 of the Code of Civil Procedure, for review of the peremptory order passed by a learned Judge of this Court on the 22nd of September 1954, directing that deficit court-fee on the memorandum of appeal should be paid by the 20th of October 1954, failing which the Second Appeal would stand rejected without further reference to a Bench.

2. The application was placed for hearing in the first instance before Misra and Chaudhari, JJ., who felt that the matter required consideration of a larger Bench.

3. In support of this application Mr. Jaleshwar Prasad put forward the argument that the principle of the decision of the Division Bench reported in Mahanth Ram Das Chela v. Ganga Das MANU/BH/0006/1956 : AIR 1956 Pat 20 (A), would not apply to this case because it must be taken that the Second Appeal was actually dismissed on the 21st of October 1954, and that was, therefore the date of the decree within the meaning of Order 7, Rule 11, read with Section 107(2) of the Code of Civil Procedure. On this basis it was contended by learned counsel that there is a proper ground for review under Order 47, Rule 1, because the petitioners had sent the required money on the 10th of October 1954, and the petitioners were not responsible for the failure of the lawyer to deposit the amount in the High Court because he had gone away to Daltonganj.

We are unable to accept the argument of learned counsel as correct. The peremptory order off Misra, J, was made on the 22nd of September 1954, and that is the date of the decree within the meaning of Section 2(2) read with Order 7, Rule 11, Code of Civil Procedure. We do not accept the argument of, learned counsel that the date of the decree in this case is the 21st of October 1954, when the Second Appeal stood dismissed because of the default on the part of the petitioners to pay the deficit court-fee. If that view is correct, the principle of the decision in MANU/BH/0006/1956 : AIR 1956 Pat 20 (A), applies to this case. It was laid down in that case that the

ground for review under Order 47, Rule 1, must be something which existed on the date of the decision or decree and that the rule did not authorise the review of a decree or decision which was right when it was made on the ground of the happening of some subsequent event. It was further held in that case that an application for review of a decree on the ground that the applicant was taken ill subsequent to the date of the decree would not lie.

This view is supported by a decision of the Privy Council in *Kotagiri Venkata Subbamma Rao v. Vellanki Venkatrama Rao* 27 IA 197 at p. 205 (B); in our opinion, the reasoning of the decision in MANU/BH/0006/1956 : AIR 1956 Pat 20 (A) is right. Applying that reasoning we hold that the petitioners in the present case have not made out any ground for review under the provisions of Order 47, Rule 1, Code of Civil Procedure.

4. It has also been held by a Full Bench of this Court in *Radhanath Jha v. Bacha Lal Jha*, (S) MANU/BH/0093/1955 : AIR 1955 Pat 370 (C), that an application under Section 151 of the Code of Civil Procedure is not competent for the restoration of an appeal preferred in the High Court which was dismissed for default of payment of the requisite court-fee on the memorandum of appeal to the High Court. The appropriate remedy is by way of an application for review under Order 47, Rule 1, Code of Civil Procedure, on payment of the proper court-fee on such application. Mr. Jaleshwar Prasad on behalf of the petitioners made the submission that this decision of the Full Bench required further consideration. Having given full hearing to the learned counsel on this point we are satisfied that the view taken by this Full Bench is the correct view and does not require any further consideration.

5. Taking this view of the law we hold that there is no merit in this application of the petitioners. We accordingly dismiss it; but there will be no order as to costs of this application.

6. It is possible that hardship will be caused in certain cases where the petitioners fail to deposit the deficit court-fee on the memorandum of appeal for extraordinary or unavoidable reasons. In their order dated the 8th of October 1956, *Misra and Chaudhari, JJ.*, have referred to an extreme case where after the fixation of the time-limit for payment of court-fee the appellant proceeds in person to the High Court to deposit the amount in time, but fails to do so because of a railway disaster involving loss of life of the person coming to Court or other similar reason beyond the control of the party. That would undoubtedly be a case of hardship; but in our opinion the proper remedy is by an amendment of Order 47, Rule 1, Code of Civil Procedure, and not to modify the law in the guise of interpretation. We, therefore, direct that the matter should be placed before the Registrar on the administrative side for being placed before the Rules Committee for consideration whether the provisions of Order 47, Rule 1, Code of Civil Procedure, required amendment so that a case of non-payment of deficit court-fee may be one of the additional grounds of review of a decree under the terms of that rule.