

## Hubraj Singh And Ors. vs Mst. Rama Dasi Kuer And Anr. on 29 March, 1954

**Equivalent citations: AIR1954ALL719, AIR 1954 ALLAHABAD 719**

### JUDGMENT

Malik, C.J.

1. This appeal was referred to a Bench by a learned Single Judge on 8-5-1951. The only point raised by learned counsel for the appellant is that the suit was not cognizable by the civil Court.

The respondents here had filed Suit No. 20 of 1947 in the Court of the learned Civil Judge, Azamgarh on 25-4-1947. It is admitted by learned counsel for the appellant that on the date when the suit was filed it was cognizable by the learned Civil Judge. On 3-6-1947, however, the plaint was rejected as the court-fees paid was insufficient. On 5-7-1947, the plaintiff applied for restoration and was granted time to pay the deficiency up to the 14th July.

Again, on the 14th July the deficiency in court-fees not having been made good the plaint was rejected. On the 26th July, however, the previous order was set aside, the plaint was restored to its original number, and on 28-7-1947 the deficiency was made good. On 15-6-1947, however, the U. P. Tenancy (Amendment) Act, 1947 had come into force and it is submitted by learned counsel that any suit of this nature became cognizable by the revenue Court.

2. The point, therefore, that arises for decision is whether this suit should be deemed to have been instituted on 25-4-1947 when it was originally filed, or on 28-7-1947 when the deficiency was made good after the order restoring the plaint to its original number was passed on 26-7-1947.

3. Our attention has been drawn to several decisions of this Court. In -- 'Bachan Singh v. Dasrath Singh', AIR, 1935 All 985 (A), a learned single Judge of this Court held that it was open to the Court to treat the application for restoration as a fresh plaint and under Sections 149 and 151, Civil P. C., extend the time for payment of court-fee and treat the court-fee paid on the former plaint as part of the court-fee on the fresh plaint, and the court is not compelled to require the plaintiff to pay full court-fee on the fresh plaint.

The point raised before the learned Judge was that the lower Court had no jurisdiction to entertain an application for restoration after a plaint had been rejected under Order 7, Rule 11 (c) and the proper remedy of the plaintiff was to apply for review of judgment. It may be mentioned that if a fresh plaint had been filed under Order 7, Rule 13 it would have been barred by limitation.

Though the learned Judge has said that the application for restoration should be treated as a fresh plaint the fact that he held that Section 149 Civil P. C., was applicable and the Court must be deemed to have extended the time for payment of court-fee goes to show that he treated the plaint as having been filed on the date when the plaint, which was deficiently stamped, had been filed.

4. The second case that has been brought to our notice is an unreported decision of a Bench of this Court in -- 'Ramnath Misir v. Deota Man Misir', Civil Revn. No. 367 of 1936, D/- 18-8-1937 (All) (B), by Sulaiman, C. J. and Harries, J. The plaint in that case was rejected under Order 7, Rule 11 (c) on 13-2-1933. By that date the period or limitation for filing the suit had expired. The very next day the plaintiffs made an application offering to pay the deficiency and prayed that the learned Judge may be pleased under his inherent jurisdiction to set aside his previous order and to accept the court-fee. It was urged that the learned Judge had no jurisdiction whatsoever to make the. order restoring the suit and accepting the court-fee. The learned Judges, however, held that the lower Court had jurisdiction reserved under Section 151, Civil P. C.

5. The third case to which reference has been made is again a judgment of a learned single Judge in -- 'Anant Prasad Singh v. Chunnu Tewari', AIR 1939 All 452 (C). The suit in that case, was instituted on 29-7-1936. The promissory note on the basis of which the suit was filed was dated 30-7-1933. The plaint, however, was written on a paper insufficiently stamped and the court dismissed the suit under Order 7, Rule 11(c). This dismissal order was passed after the period of limitation had expired.

Sometime later the plaintiff made an application to the court that he would have paid the court-lee within the time allowed but he fell ill and was unable to do so. He, therefore, prayed that the order passed under Order 7, Rule 11 (e) be set aside and the additional court-fee be accepted.

This application was granted on 1-5-1937. A revision was filed against the order on the ground that the only remedy left to the plaintiff was a fresh suit and the trial Court had no jurisdiction to review its order passed under Order 7, Rule 11(c) and restore the case. The learned single Judge, Allsop J. held that the learned Judge of the Court of Small Causes who passed the order of restoration had jurisdiction under Section 151, Civil P. C., but even if he had not he would not like to exercise his discretion under Section 115, Civil P. C.

6. The only other decision of this Court is -- 'Munshi Ram v. Sun Life Assurance Cc. Canada', AIR 1944 Oudh 327 (D). The learned Judges' in that case followed the line indicated by Bennet J. in -- 'Bachan Singh's case (A)' and held that though the application for restoration may be treated as a fresh plaint yet it was possible for the court to restore the plaint already rejected and extend the time for payment of court-fee under Section 149, Civil P. C. Reliance was placed on the inherent powers of the Court under Section 151.

7. In -- 'Kumaraswamiah v. Krishna Reddi', AIR 1947 Mad S4 (E), it was held that under Order 47, Rule 1, Civil P. C., the Court had power to review its order under Order 7, Rule 11 (c) and grant further time. The facts of that case are, however," peculiar. The order rejecting the plaint was not passed till 30-1-1945, when the learned Subordinate Judge purported to reject the plaint with a back date from 25-1-1345, and on 29-1-1945, the plaintiff had filed two applications, one for review and

the other extension of time to pay the court-fee.

8. One other case to which reference was made in the course of argument is -- 'Saratchandra Sen v. Mrityunjay Ray', AIR 1935 Cal 333 (2) (F), where an order under Order 7, Rule 11(c) was passed rejecting the plaint. The plaintiff did not file an appeal against that order. The period of limitation expired and then the Court acting under Section 151, Civil P. C., restored the suit to its original number. The learned Judges in that case held that the Court had no power under Section 151, Civil P. C., to deprive a defendant of the right obtained by him by the operation of the law of limitation on account of the rejection of the plaint and to order the litigation to be revived.

9. Where, therefore, it is not possible to review an order under Order 47, Rule 1, Civil P. C., whether it is open to a Court to set aside an order under Order 7, Rule 11 (c) under its inherent powers so as to deprive the defendant of his right to plead limitation is a point on which there is some difference of opinion. Two Benches of this Court have, however, taken the view that even in such a case the Court has inherent powers, if good cause is shown, to restore a plaint dismissed under Order 7, Rule 11(c), Civil P. C. In the case before us it is admitted that no question of limitation arose on 26-7-1947, when the second application was granted or even on 28-7-1947, when the deficiency was made good. It cannot, therefore, be said that the defendant was deprived of any valuable right. The argument advanced is that in spite of the restoration order the suit must be deemed to have been instituted on the 28th July and not on 25-4-1947. In view of the decisions of this Court already cited, by which we are bound, we do not feel disposed to accept this contention. No other point having been raised by learned counsel the appeal fails and is dismissed with costs.