

Jagannath vs United Provinces on 31 October, 1950

Equivalent citations: AIR1952ALL443, AIR 1952 ALLAHABAD 448

JUDGMENT

Agarwala, J.

1. This is an application for special leave to appeal against an order of the Tribunal of the Development Board of Kanpur. Along with the application for special leave memorandum of appeal was also filed but on a court fee stamp of Rs. 3-12 only. The Stamp Reporter reported that the court fee on the memorandum of appeal was insufficient by Rs. 878.2-0, according to the valuation "if special leave to appeal is granted by the Court."

2. We granted special leave to appeal to the applicant on 30.10-1950. After we had granted the leave, Mr. S. N. Sahai, learned counsel for the appellant, prayed that time may be given to him for making good the deficiency on the memorandum of appeal. In view of the recent Full Bench decision of this Court, In the matter of the application of Wajid Ali v. Isar Bano, (A. I. R. (38) 1951 ALL. 64 F. B.), we thought that the applicant should give sufficient reasons why he did not file the memorandum of appeal with sufficient court-fee stamps. Learned counsel asked for time and the case was adjourned for to-day.

3. Learned counsel has drawn our attention to an order in F. A. No. 445 of 1946, passed by the Hon'ble Iqbal Ahmad C. J. In that case also, which was similar to present one, an application for special leave to appeal was asked for and it was prayed that the appellant be allowed to make good the deficiency of court-fee on the memorandum of appeal after the application for special leave to appeal had been decided. His Lordship observed as follows:

is stated by Mr. Gajadhar Prasad Bhargava that along with the memorandum of appeal he filed an application for leave to appeal in this Court. He states that in the event of the leave being refused, this appeal will become infructuous and he, therefore, prays that he "should not be called upon to make good the deficiency in court-fees till the application for leave has been granted. I consider the prayer to be reasonable and accordingly I direct that this report about the deficiency in court-fees, should be put up for orders before the Court after the disposal of the application for leave to appeal in this Court."

4. We have no hesitation in endorsing the observations made by the learned Chief Justice. In our opinion when a memorandum of appeal is filed along with an application for special leave to appeal and the memorandum can be considered only after the application for special leave to appeal has been decided, it is proper that the question of deficiency in court-fee should be considered after the

special leave for appeal has been granted. In such a case reasonable time may be granted to the appellant to make good the deficiency after the application has been granted. The reason is that the appellant himself is not expected to be present on the date of hearing of the application for special leave to appeal, and the counsel concerned should have time to communicate with his client in order that deficiency in court-fee may be made good.

5. We, therefore, grant six weeks' time to the appellant to make good the deficiency.