

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Shahid Waheed
Justice Shahid Bilal Hassan

CIVIL PETITION NO. 385-L OF 2021

(On appeal against the judgment dated 03.12.2020 passed by the Lahore High Court, Lahore in Civil Revision No.75892/2017)

Province of Punjab through the District Collector, Bhakkar ...Petitioner

VERSUS

Muhammad Chiragh, etc ...Respondent(s)

For the Petitioner : Mr. Baleeg-uz-Zaman, Additional A.G
along with Imran Safdar, Tehsildar

For the Respondent(s) : Ch. Ijaz Akbar Nusrat, ASC

Date of Hearing : 22.08.2025

JUDGMENT

Shahid Waheed, J: The phrase "**off on a technicality**" aptly encapsulates the situation before us and underscores its complexity and implications. In our assessment, we believe that the order issued by the District Judge was flawed and ought to have been revised by the High Court. Before delving into the specific reasons for this conclusion, it is important to acknowledge that legal practitioners sometimes make unintentional mistakes when drafting pleadings or filing cases. Such errors, while regrettable, often result in outcomes that can attract sanctions or penalties. However, in the administration of justice, it is crucial to recognise that not all mistakes warrant strict punitive measures. To give life to the principle that wrong must not go unpunished, and that right must not go unenforced, a degree of leniency must be accorded to errors that do not stem from contumacy or intentional misconduct. By adopting a more forgiving approach towards certain minor

mistakes, the judiciary can prevent the rigid application of rules from hindering the broader mission of justice delivery. This perspective is vital because the judiciary is respected not because it has the technical ability to legitimise unfairness. Instead, its respect is rooted in its fundamental role as an arbiter of fairness—capable of identifying and rectifying injustices. The expectation that the judiciary must act to eliminate any form of injustice serves as a cornerstone of trust in the legal system. It is this ability to prioritise substantial justice over mere technical compliance that fortifies the integrity and efficacy of our legal processes.

2. The question that has compelled us to make the prefatory observations is legal, which does not require an elaborate recounting of the underlying facts. It suffices to state that the petitioner allotted 100 kanals of land to Abdullah, the predecessor of respondents No. 2 to 5, under a tubewell scheme established pursuant to the Colonization of Government Lands (Punjab) Act of 1912. In connection with this land, Abdullah's legal heirs executed a general power of attorney in favour of Muhammad Hussain, who subsequently agreed to sell the land to respondent No. 1. When Muhammad Hussain failed to fulfil his part of the agreement, respondent No. 1 resorted to legal action, initiating a suit against both the petitioner and respondents No. 2 to 5, seeking a decree for the specific performance of the sale agreement. The suit traversed multiple stages in the trial court, wherein the evidence presented was thoroughly evaluated. Ultimately, the trial court decided in favour of respondent No.1, granting the decree as requested. The petitioner, dissatisfied with the trial court's findings, sought to appeal the decree. In this endeavour, the petitioner's counsel made a mistake by submitting a memorandum of appeal that was inadequately stamped and lacked the necessary court fees. After that, the petitioner's counsel repeatedly requested adjournments to rectify this deficiency but ultimately failed to do so. Consequently, the District Judge rejected the appeal due to the failure to address the deficiency in court fees. When the matter was later brought before the High Court, it opted not to reverse this rejection during

the revision process. Thus, the question presented in this petition is whether the rejection of the petitioner's first appeal was conducted in compliance with legal standards, given the circumstances surrounding the case.

3. It is clear that the kernel of the moot question revolves around the issue of court fees. Before looking into this matter, it is imperative to consider the established principle regarding the judiciary's perspective on the collection of court fees, which operates as an agent of the State. Like other fiscal legislation, the Court Fees Act of 1870 should be construed strictly. The primary intention behind this legislation is to ensure a steady stream of revenue that benefits the State rather than to empower litigants with a tool of technicality that could be used to burden their adversaries unjustly¹. This understanding underscores the importance of upholding justice and fairness within the legal system. Thus, the focus should remain on the true purpose of the Act—facilitating the administration of justice while safeguarding the interests of the State without compromising the integrity of legal proceedings.

4. This analysis leads us to go through the jurisprudence that has evolved to strike a delicate balance between the State's interests in the collection of court fees and the imperative of fairness in legal proceedings. This balance is crucial when determining the rights of the parties involved in a dispute. To begin with, it is essential to highlight the organisational structure of the charging provisions outlined in the Court-Fees Act, 1870. These provisions are systematically divided into two main chapters: Chapter II, which encompasses sections 3 to 5, explicitly addresses the fees applicable in High Courts. In contrast, section 6 of Chapter III pertains to fees levied in other courts as well as in public offices. The overarching effect of these legislative provisions is apparent: no

¹ (Banwari Lal Vs. Mahesh and others) AIR 1918 PC 188, (Siddique Khan and 2 others Vs. Abdul Shakur Khan and another) PLD 1984 SC 289, (Sardar Muhammad Kazim Ziauddin Durrani and others Vs. Sardar Muhammad Asim Fakhuruddin Durrani) 2001 SCMR 148

document categorised as chargeable according to the First or Second Schedule of the Act may be filed, exhibited, or recorded in any Court of Justice, nor may it be received or processed by any public officer unless the prescribed court fee has been paid in full. But how is this fee paid? This process is elaborated in Chapter V of the Act. According to section 25, in conjunction with section 26, the collection of court fees is mandated to be executed through the use of stamps. The legislation specifies that the stamps intended to signify the payment of these fees may be of impressed, adhesive, or a combination of both types. Moreover, section 28 stipulates that a document requiring a stamp will be deemed invalid unless it bears the appropriate markings indicating that the court fee has been duly paid. However, the statute recognises the possibility of human error; if a document is inadvertently accepted, filed, or utilised in any court without the necessary stamping, the presiding judge possesses the discretion to allow for its subsequent proper stamping. If the judge deems it appropriate to grant this allowance, once the document is correctly stamped, it and all related proceedings will be considered as valid as if the necessary stamping had been executed at the outset. These provisions impose a dual responsibility on the court, particularly when documents are not properly stamped. Firstly, the court must ascertain the exact amount of applicable court fees. Secondly, it may provide the necessary timeframe for the party involved to remedy any deficiencies in the payment, ensuring both compliance with the law and the preservation of fairness in the legal process.

5. There exists an additional legal provision that facilitates the rectification of certain procedural deficiencies. This is articulated in Section 149 of the Code of Civil Procedure, 1908 (CPC). This section empowers the court to permit a party to remedy any shortcomings in the court fees owed on various legal documents, including complaints, memorandum of appeal, and applications for the review of judgments, etc. Notably, this allowance extends even beyond the expiration of the statutory limitation period required for

the submission of these documents². In essence, Section 149 provides a mechanism by which a flawed document can be retrospectively validated, provided that the deficiency in the court fee is rectified with the leave of the court³. When one examines Section 28 of the Court Fees Act, 1870, in conjunction with Section 149, the law can be summarised as follows:

(a) Ordinarily, a document that is insufficiently stamped is not to be received, filed, or recorded in a court.

(b) When, however, an insufficiently stamped document is presented, the court has the authority to assess the precise amount of court fees required and may grant the submitting party a reasonable timeframe to address the deficiency.

(c) Should the party rectify the fee shortfall within the given time limit, the document is to be considered to have been presented and accepted on the original date of its filing.

(d) If the deficiency is not remedied within the timeframe fixed, the document will be rendered invalid and without legal effect.

6. It is important to emphasise a significant aspect of Section 28 of the Court Fees Act, 1870, along with Section 149 CPC. These provisions do not obligate the Court to grant an extension of time for parties to address any deficiencies in court fees. Instead, the authority to remedy such deficiencies lies within the Court's discretion⁴, meaning that it cannot be assumed as an automatic right. However, it is essential to recognise that the pursuit of law fundamentally aims to deliver justice; it is not merely a series of rigid procedures but a pathway to achieving fair outcomes. The

² (Mst. Parveen Vs. Mst. Jamsheda Begum and another) PLD 1983 SC 227, (Siddique Khan and 2 others Vs. Abdul Shakur Khan and another) PLD 1984 SC 289

³ (Yaqoob Khan Vs. Rasool Khan and others) 1981 SCMR 155, (Ch. Nazir Ahmed Vs. Abdul Karim and another) PLD 1990 SC 42, (Assistant Commissioner and Land Acquisition Collector, Badin Vs. Haji Abdul Shakoor and others) 1997 SCMR 919

⁴ (Siddique Khan and 2 others Vs. Abdul Shakur Khan and another) PLD 1984 SC 289

objective of every judicial proceeding goes beyond providing a platform for the disputing parties to present their cases; it ultimately strives for the realisation of justice itself. In this context, the principles of fairness and the integrity of the judicial process must be upheld. To prevent the legal system from deteriorating into a mere technicality-driven process, Courts usually exercise their discretion—granted by these two sections—in favour of the litigants. This approach generally holds true except in cases where there are clear indications of contumacy, malicious intent, or other disqualifying factors that may compromise the pursuit of justice⁵.

7. In examining this matter, it is also essential to highlight the significance of another provision outlined in Order VII, Rule 11 (c) of CPC. This rule stipulates that a plaint must be rejected if the relief sought is appropriately valued, yet the plaint is submitted on insufficiently stamped paper. In such instances, if the Court directs the plaintiff to provide the proper stamped paper within a specified timeframe and the plaintiff fails to comply, the plaintiff's claim stands to be rejected. It is also crucial to note that, under the provisions of section 107 in conjunction with Order XLI, Rule 3 CPC, the stipulations of Order VII, Rule 11 (c) CPC extend to the memorandum of appeal as well⁶. Consequently, an appellate Court possesses the same authority and obligations as a Court of original jurisdiction when dealing with suits filed before it. Therefore, just as a Court of original jurisdiction is mandated by Order VII, Rule 11 (c) CPC to grant sufficient time for rectifying any court fees deficiencies in the plaint, an appellate Court is equally obliged to do the same concerning a memorandum of appeal. In this context, it is essential to emphasise that the question of discretion does not come into play. The appellate Court is required to first explicitly and accurately assess the amount of the Court fee deficiency before proceeding further. Following this determination, the Court must grant a reasonable period for the appellant to rectify the deficiency.

⁵ (Ch. Nazir Ahmed Vs. Abdul Karim and another) PLD 1990 SC 42

⁶ (Siddique Khan and 2 others Vs. Abdul Shakur Khan and another) PLD 1984 SC 289, (Assistant Commissioner and Land Acquisition Collector, Badin Vs. Haji Abdul Shakoor and others) 1997 SCMR 919

Thus, rejecting a memorandum of appeal is deemed unlawful without first adhering to these essential criteria⁷. It is necessary to clarify that when a plaintiff or an appellant is granted time to rectify a deficiency in court fees as stipulated under Order VII, Rule 11 CPC, they must conform to this requirement within the given timeframe. Should they fail to fulfil this obligation and subsequently request additional time without providing a valid justification, it may be interpreted as an act of obstinacy and a deliberate disregard for the authority of the law. In such circumstances, the court may reasonably determine that the plaintiff or appellant forfeits his entitlement to any further extensions, as his actions reflect a refusal to comply with legal mandate⁸.

8. On the canons of law stated above, we now examine the present case. It is reiterated that the petitioner's grievance is that their first appeal was illegally rejected due to an inadequately stamped memorandum of appeal. To determine whether the principles alluded to in the preceding paragraphs were adhered to by the first appellate court, we thoroughly examined the proceedings sheet. Upon reviewing the record, we noted that when the memorandum of appeal was initially presented, the ministerial staff reported that court fees were needed. However, the specific amount of the deficient court fee was not indicated, leaving a crucial gap in the proceedings. The file was subsequently presented to the District Judge, who, rather than determining the exact sum owed in court fees, opted to adjourn the case at the petitioner's request to allow time to submit the required fee. In a bid to rectify the situation, the petitioner sought seven adjournments to address the fee deficiency. Despite these attempts, the petitioner failed to fulfil this requirement. As a result, the District Judge ultimately

⁷ (Noor Muhammad and others Vs. Muhammad Sharif and others) 1988 SCMR 1955, (Malik Allah Dad deceased through his legal representatives and others Vs. Yasin and another) 1990 SCMR 1638, (Muhammad Hanif and others Vs. Muhammad and others) PLD 1990 SC 859, (Mukhi Chatromal and another Vs. Khubchand and 6 others) 1993 SCMR 1113, (Sardar Ahmed Yar Jang Vs. Sardar Noor Ahmed Khan) PLD 1994 SC 688, (Zulfiqar Ali and others Vs. Mst. Sajida Begum) 1995 SCMR 911

⁸ (Siddique Khan and 2 others Vs. Abdul Shakur Khan and another) PLD 1984 SC 289,

rejected the memorandum of appeal. This procedural approach, characterised by an improper handling of the case, defeated substantial justice and fell short of the established principles of law. It was incumbent upon the District Judge to first ascertain the precise amount of the deficient court fee and subsequently grant a reasonable period for the petitioner to remedy this shortfall. This essential exercise was neglected, rendering the rejection of the memorandum of appeal invalid. Consequently, the petitioner was deprived of a fair trial, which is a right protected under Article 10-A of the Constitution. The significance of this oversight alone warranted a revision of the order that led to the rejection of the first appeal. However, the High Court overlooked this critical aspect when it dismissed the petitioner's application under Section 115 CPC. So viewed, the order of the High Court is also illegal.

9. Given the abovementioned circumstances, this petition is converted into an appeal and is hereby allowed. Consequently, the High Court judgment dated 3rd of December 2020, along with the District Judge's order of 14th of April, 2016, is set aside. The case is referred back to the District Judge of Bhakkar, who is directed to determine the exact amount of the court fee owed. After this assessment, the District Judge must provide the petitioner with a reasonable opportunity to rectify any deficiencies in the payment of the court fee. Once this opportunity has been granted, the District Judge shall proceed to adjudicate the matter according to the law. The parties are also directed to appear before the District Judge, Bhakkar on 30th of September, 2025. There will be no order regarding the costs of this appeal. Any pending applications related to this case are hereby disposed of.

Judge

Judge

