

BUTA SINGH (DEAD) BY L.RS.

v.

UNION OF INDIA

APRIL 17, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Code of Civil Procedure, 1908—Ss. 148, 149—Order 41 Rule 9—Payment of deficit Court fee after appeals are allowed and higher compensation granted—Party deliberately not paying earlier—Held: To allow such a thing is not judicial discretion but showing undue indulgence.*

Notification under Section 4(1) of the Land Acquisition Act was published on June 8, 1979. The Land Acquisition Officer made his award on March 13, 1981 determining the compensation. On references under Section 18, the Additional District Judge in his award and decree dated November 6, 1985, enhanced the compensation varying between Rs. 32,772 to Rs. 6,250 per acre depending upon the quality of the land. Claimant filed appeal in the High Court under Section 54 of the Land Acquisition Act. Single Judge further enhanced the compensation by judgment and decree dated May 21, 1987. On appeal, the Division Bench further enhanced the compensation varying between Rs. 90,000 to Rs. 30,000 per acre depending upon the quality of the land.

In some of the cases, applications were filed after the judgment was pronounced and permission was sought to pay deficit court fee claiming the enhanced compensation. The applications were rejected by the Division Bench. Hence these appeals.

The appellants contended that they were entitled to pay the deficit court fee for receiving the enhanced compensation granted by the Division Bench as they had kept the matters alive.

On behalf of the Union of India it was contended that there were no bonafides on the part of the claimants, who awaited the decision of the court and sensing the mood of the court, they came forward with an application to condone the delay to pay the deficit court fee; that the claimants were required to pay requisite court fee while presenting the Memorandum of Appeals; and that the claimants would not be permitted

A to pay the deficit court fee after the appeals are listed for hearing.

Dismissing the appeals, this Court

B HELD : 1. It is true that s.149 CPC gives power to the Court to give time to the appellant to make up deficiency of court fee when the whole or any part of the fee prescribed under the Court Fee Act on the Memorandum of Appeal (MOA) but had not been paid while presenting the same; but the power of the court is one of discretion and not as of right. Generally, before the appeal is admitted under Order 41 Rule 9, the court would exercise the discretion on showing sufficient cause for not making the required fee on the MOA. The discretion conferred on the court by C s.149 is a judicial discretion. The court is not bound to exercise the discretion unless the applicant shows sufficient cause for the failure to pay deficit court fee or he was under *bona fide* mistake in payment thereof. D Merely poverty or ignorance or inability to pay the court fee at the time of presenting the appeal is not always a good ground for indulgence under s.149. *Bona fide* mistake on the part of the appellant in making the deficit court fee may be a ground to exercise discretion in favour of the appellant. It is the duty of the Registry to point out to the appellant or his counsel that deficit court fee is payable on the MOA and some reasonable time may be given for payment of the court fee. The MOA would be returned to E do the needful. If the deficit court fee is not made up and presented within the time enlarged under s.149 CPC, there would be no appeal in the eye of law unless the delay is condoned. If the party deliberately, to suit his convenience, paid insufficient court fee, the mistake is not a *bona fide* but one of choice made by the party in making the deficit court fee. In that F situation, even after pointing out the need to make the court fee and given time, if the court fee is not paid and MOA is represented within the enlarged time, it would be open to the court either to reject the MOA or refuse to condone the delay for not to order showing sufficient cause thereon. Therefore, the court is required to exercise its judicial discretion keeping the facts and circumstances in each case and not to order for mere G asking that indulgence be shown to make good the deficit court fee. In the latter event, it is not the exercise of the judicial discretion but showing undue indulgence. [363-H, 364-A to F]

H 2. Under the relevant provisions of the Court Fee Act applicable to appeals filed in the High Court of the Punjab & Haryana, the claimants

are required to value the appeals in the MOAs and need to pay the required court fee. Thereafter the appeal would be admitted and the notice would go to the respondents. The respondents would be put on notice of the amount the appellant would be claiming so as to properly canvass the correctness of the claim or entitlement. The claim cannot be kept in uncertainty. If in an appeal under Section 54 of the Land Acquisition Act, the amount is initially kept low and then depending upon the mood of the appellate court, payment of deficit court fee is sought to be made, it would create unhealthy practice and would become a game of chess and a matter of chance. That practice would not be conducive and proper for orderly conduct of litigation. [365-B, C]

3. The appellant must have paid proper court fee on the MOA and should have claimed higher compensation. In view of the fact that the claimants have paid lesser court fee or restricted the value of the appeals it must be taken that their claims were restricted to the amount to which the court fee was paid. The adjudication should be confined to that amount. [365-G]

*Buta Singh & Ors. v. Union of India*, [1995] 3 SCR 359, followed.

*Scheduled Caste Co-operative Land Owning Society Ltd. v. Union of India and Others*, [1991] 1 SCC 174, relied on.

*Chand Kaur & Ors. v. Union of India*, [1994] 4 SCC 663, referred to.

4. The observation in *Scheduled Co-operative Land Owning Society* case must be understood in the background of the facts therein. It was not meant to lay down that in spite of choosing to pay a particular court fee, the claimants would still be entitled to pay the deficit court fee on the doubtful claim after the appeals are allowed and higher compensation was determined. [366-B]

*Scheduled Caste Co-operative Land Owning Society Ltd. v. Union of India and Others*, [1991] 1 SCC 174, referred to and explained.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5285 of 1995 Etc.

From the Judgment and Order dated 31.1.89 of the Punjab & Haryana High Court in C.M. No. 1519 of 1989 in L.P.A. No. 173 of 1988.

A Ujagar Singh and P.N. Puri for the Appellants.

M.K. Banerjee, Attorney General, A.K. Ganguli, Ms. Anil Katiyar and Navin Prakash. for the Respondents.

The following Order of the Court was delivered :

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Leave granted.

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The appeals 5286, 5289, 5290, 5291-92/95 arising out of SLP (C) Nos. 1672/94, 1716/94, 3052/94, 6581/94 and 5004-05/89 are filed against the order of the Division Bench of the Punjab and Haryana High Court dated January 30, 1989 in C.M. No. 1519/89 and batch dismissing their applications for permission to pay additional court fee claiming enhanced compensation. Appeals 5287- 88/95 arising out of SLP 2380-81/94 filed by the Union of India arise against an order of the Division Bench dated 15.9.92 made in C.M. No. 425 of 1992 etc. permitting the claimants to pay the additional court fee.

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The admitted facts are that notification under Section 4(1) of the Land Acquisition Act was published on June 8, 1979. The Land Acquisition Officer made his award on March 13, 1981 determining the compensation. On references under Section 18, the Additional District Judge in his award and decree dated November 6, 1985 enhanced the compensation varying between Rs. 32,772 to Rs. 6,250 per acre depending upon the quality of the land. Dissatisfied therewith, the claimant filed appeal in the High Court under Section 54 of the Land Acquisition Act. The learned single Judge further enhanced the compensation by judgment and decree dated May 21, 1987. On that, a further appeal was filed and the Division Bench still enhanced the compensation varying between Rs. 90,000 to Rs. 30,000 per acre depending upon the quality of the land.

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In the Letters Patent Appeal, some of the claimants valued the amount of Rs. 1,05,000 per acre. But they paid only court fee of a sum of Rs. 2784 etc. It would roughly work out at the rate of Rs. 31,000. After the arguments were heard and judgment was reserved, impugned applications in the first case were made on January 27, 1989. The judgment was delivered on January 29, 1989 enhancing the compensation. In rest of the cases, applications were filed after the judgment was pronounced and sought permission to pay deficit court fee claiming the enhanced compen-

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sation. The application when came up before the Division Bench on January 30, 1989 the Division bench declined the request with the order thus: A

"This application has been filed after we had settled the judgment and awaiting pronouncement. We find no ground interfere. The application is dismissed." B

Thus, these appeals.

Shri Ujjagar Singh, learned senior counsel, leading the claimants contended that this Court in the *Scheduled Caste Co-operative Land Owning Society Ltd. v. Union of India and Others*, [1991] 1 SCC 174, has held that the parties had not kept the matter alive and so are not entitled to the payment of deficit court fee on the higher compensation awarded by the High Court, which view was approved by the Constitution Bench in the *Buta Singh & Ors. v. Union of India*, S.L.P. (C) NO. 1672/94. The claimants herein are entitled to pay the deficit court fee for receiving the enhanced compensation granted by the Division Bench as they had kept the matter alive. C D

Learned counsel appearing for the Union of India has contended that there are no bonafides on the part of the claimants. They awaited the decision of the court and sensing the mood of the court, they came forward with an application to condone the delay to pay the deficit court fee. There are no bonafides in not paying the said fee earlier. The claimants are required to pay requisite court fee while presenting the Memorandum of Letters Patent Appeals. Since they had chosen to pay the court fee on the amount claimed, they would be entitled only to the extent of the court fee paid. The claimants would not be permitted to pay the deficit court fee after the appeals are listed for hearing. E F

Shri Ujjagar Singh also placed reliance on Section 149 of C.P.C. and contended that the Court can always permit the appellant to pay the deficit court fee and the High Court, therefore, was not right in refusing to accept the deficit court fee. G

Having given anxious consideration to the respective contentions, question arises whether the claimants would be allowed to pay the deficit court fee. It is true that s.149 CPC gives power to the Court to give time H

A to the appellant to make up deficiency of court fee when the whole or any part of the fee prescribed under the Court Fee Act to pay court fee on the Memorandum of Appeal (MOA) but had not been paid while presenting the same; but the power of the court is one of discretion and not as of right. Generally, before the appeal is admitted under Order 41 Rule 9, the court would exercise the discretion on showing sufficient cause for not making the required fee on the MOA. The discretion conferred on the court by s.149 is a judicial discretion. The court is not bound to exercise the discretion unless the applicant shows sufficient cause for the failure to pay deficit court fee or he was under bona fide mistake in payment thereof.

B Mere poverty or ignorance or inability to the court fee at the time of presenting the appeal is not always a good ground for indulgence under s.149. *Bona fide* mistake on the part of the appellant or applicant in making the deficit court fee may be a ground to exercise discretion in favour of the appellant. It is the duty of the Registry before admitting the appeal to point out to the appellant or his counsel that deficit court fee is payable on the MOA and some reasonable time may be given for payment of the court fee. The MOA would be returned to do the needful.

C If the deficit court fee is not made up and presented within the time enlarged under s.148 CPC, there would be no appeal in the eye of law unless the delay is condoned. If the party deliberately to suit his convenience paid insufficient court fee, the mistake is not a bona fide but one of choice made by the party in making the deficit court fee. In that situation, even after pointing out the need to make the court fee and given time, if the court fee is not paid and MOA is represented within the enlarged time, it would be open to the court either to reject the MOA or refuse to condone the delay for not showing sufficient cause thereon.

D Therefore, the court is required to exercise its judicial discretion keeping the facts and circumstances in each case and not automatically for mere asking that the indulgence be shown to the party to make good the deficit court fee. In the latter event, it is not the exercise of the judicial discretion but showing undue indulgence.

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G After the arguments were heard in the appeals, an impression obviously gained that the appeals would be likely to be allowed enhancing the compensation. We find that the method adopted by the claimants should not be encouraged. There are no bona fides on their part. The aid of Section 149 could be taken only when the party was not able to pay court fee in circumstances beyond his control or under unavoidable circumstan-

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ces and the court would be justified in an appropriate case to exercise the discretionary power under s.149, after giving due notice to the affected party. But that was not the situation in this case. Under the relevant provisions of the Court Fee Act applicable to appeals filed in the High Court of the Punjab & Haryana, the claimants are required to value the appeals in the MOAs and need to pay the required court fee. Thereafter the appeal would be admitted and the notice would go to the respondents. The respondents would be put on notice of the amount, the appellant would be claiming so as to properly canvass the correctness of the claim or entitlement. The claim cannot be kept in uncertainty. If in an appeal under Section 54 of the Land Acquisition Act the amount is initially kept low and then depending upon the mood of the appellate court, payment of deficit court fee is sought to be made, it would create unhealthy practice and would become a game of chess and a matter of chance. That practice would not be conducive and proper for orderly conduct of litigation.

In *Scheduled Caste Co-operative Land Owning Society Ltd.* case, the facts were that the claimants had restricted their claim to Rs. 4,00,000 and paid the court fee. Thereafter in other matter when the amount was further enhanced, they filed an application under s.149 for permission to pay the deficit court fee and claimed enhanced compensation. This court had not encouraged such a practice and dismissed the applications confirming the order passed by the High Court. When similar matters have come up before a Division Bench of two Judges of this Court in *Chand Kaur & Ors. v. Union of India*, [1994] 4 SCC 663, without noticing the above case, delay was condoned and deficit court fee was ordered to be made good. When the present cases came up for hearing, the matter was referred to a Constitution Bench. The Constitution Bench has considered the controversy and held that the ratio in the *Scheduled Caste Co-operative Land Owning Society* case is correct and should hold the field. In that view, it must be held that the appellant must have paid proper court fee on the MOA and should have claimed higher compensation. In view of the fact that the claimants have paid lesser court fee or restricted the value of the appeals it must be taken that their claims were restricted to the amount to which the court fee was paid. The adjudication should be confined to that amount.

It is next contended that since in *Schedule Caste Co-operative Land Owning Society* case, this Court held that when the appeals were kept alive,

- A the claimants would be entitled to the higher compensation by permitting them to pay the additional deficit court fee as their appeals were pending in the High Court. We do not agree with the contention. This court did not appear to have intended to lay down that it would be open to the appellant to pay deficit court fee for a lesser value of appeal and pay the deficit court fee after the compensation was enhanced.
- B The observation in Scheduled Co-operative Land Owning Society case must be understood in the background of the facts therein. It was not meant to lay down that in spite of choosing to pay a particular court fee, the claimants would still be entitled to pay the deficit court fee on the doubtful claim after the appeals are allowed and higher compensation was determined.
- C Under these circumstances, the contention of the learned counsel for the appellants is not correct. On the other hand, the contention of the State appears to be correct and acceptable. Accordingly, we accept the same. The appeals of the claimants are dismissed. The appeals of the Union are allowed. The applications for permission to pay deficit court fee stand dismissed. In the circumstances the parties are permitted to bear their own costs throughout.
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G.N.

Appeals dismissed.