

Mahommad Salimullah Khan Vs Khalilurrahman Khan

Court: Allahabad High Court

Date of Decision: Jan. 2, 1932

Hon'ble Judges: King, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

King, J.

This is a reference u/s 5, Court-fees Act, 1870. The question is whether a court-fee is chargeable upon a memorandum of

objections filed under Order 41, Rule 26, Civil P.C. There is no express provision in the Act making such a document liable to the payment of a

court-fee. The practice hitherto has been to levy a court-fee of Rs. 2 on such documents. It is suggested that this practice is justified under Article

1(d), Schedule 2, which makes an application or petition presented to a High Court chargeable with a court-fee of Rs. 2. The question is whether

a memorandum of objections filed under Order 41, Rule 26, Civil P.C., should be held to be an application or petition presented to the High

Court. In my opinion the answer is in the negative. The memorandum does not request the Court to take any action or to pass any order. Its object

is to inform the Court and the opposite party that the objector challenges the finding of the Court below on certain points or on certain grounds. I

do not think it can properly be held to be either an application"" or a petition."" Fiscal statutes must be strictly construed and if a document is not

clearly chargeable under the statute the person sought to be charged in respect of a document is entitled to the benefit of doubt.

2. In Damodar Prasad Vs. Masudan Singh, a single Judge of the Patna High Court has expressly held that no court-fee is chargeable upon a

memorandum of objections filed under Order 41, Rule 26. I agree to his reasoning and conclusion. No authority to the contrary has been shown to

me following the ruling cited I hold that no court-fee is chargeable upon a memorandum of objections filed under Order 41, Rule 26, Civil P.C.