

Bhausing Ragho Vs Chaganiram Harchand**Civil Application No. 57 of 1917**

Court: Bombay High Court**Date of Decision:** Jan. 24, 1918**Acts Referred:**

Civil Procedure Code, 1908 (CPC) " Section 151#Court Fees Act, 1870 " Section 13

Citation: AIR 1918 Bom 157 : (1918) 20 BOMLR 348 : 45 Ind. Cas. 552**Hon'ble Judges:** Heaton, J; Beaman, J**Bench:** Division Bench

Judgement

Beaman, J.

I think it necessary to express my own emphatic opinion that an application of this kind is not within the scope or intention of

Section 151 of the Civil Procedure Code. Nor does that section confer upon us jurisdiction to deal with errors of this kind. I think it is very clear

that that section is intended to empower Courts to deal with their own decrees and orders and was not intended to give authority to superior

Courts by way of conferring supplemental jurisdiction to that conferred by Section 115. But I think that this is a good case u/s 115. What has

happened is very clear. The trial Court held that the present applicant was not an agriculturist on the ground that the question was res judicata. On

appeal, the learned Judge hold that the question was not res judicata and remanded the case under Order XLI, Rule 23. Of that there can be no

doubt whatever. Where that happens Section 13 of the Court-Fees Act makes it compulsory upon the Court to grant the certificate mentioned in

that section. The Court has no discretion in the matter. The learned Judge of the lower appellate Court appears to have confused the matter before

him in such a way as to have entirely lost sight of the imperative requirements of Section 13 of the Court-Fees Act. "Were it necessary to examine

his reasoning, it would be, I think, very easy to show that he entirely missed the point and overlooked the obvious policy and intention of that

section. It is, however, quite enough to say that as soon as he made his order of remand under Order XLI, Rule 23, he was bound by Section 13

of the Court-Fees Act to grant the certificate which the applicant now prays for. As he refused to do so, he clearly acted with illegality or with

material irregularity, whichever word be preferred, and the relief which the applicant prays for must be granted, and the Court below must be

directed to grant him the certificate which he asks for u/s 13 of the Court-Fees Act.

2. As the opponent, in spite of our opinion upon this point, given before he opened the argument, has elected to resist the application, in which, as

far as I can see, he had no interest whatever, there is no reason why the application should not now be granted with costs against him, and I would

so order. The Rule should be made absolute in the terms of the above judgment.

3. In respect of the remaining six applications of like nature (viz., Civil Extraordinary Applications Nos. 104 to 169 of 1917) Mr. Kane for the

opponent withdraws all further opposition, and we think that, while they will all be governed by the judgment just delivered, the opponent need pay

no more than his own costs in each of them. The order, therefore, at the foot of the judgment in each of those cases will be that the Rule is made

absolute, each party here bearing his own costs.

Heaton, J.

4. I agree. I say nothing as to whether the District Judge's order disposing of the appeal was correct in form or not. It has not been appealed

against and therefore remains. Taking it as it is I can account for it only by supposing that it was made under Rule 23 of Order XLI, because there

is no other provision in the Code which empowers the Court of first appeal to set aside a decree and remand the case to be decided according to

law. As it was a disposal of an appeal under Rule 23 of Order XLI, the provisions of Section 13 of the Court-Fees Act automatically came into

operation and the appellate Court was bound to grant a certificate, and as my learned brother has said its refusal to do that is a refusal to do what

the law specifically says the Court must do and is either an illegality or material irregularity. Therefore, the matter comes, in my opinion, within

Section 115 of the Code. I agree entirely that it cannot come within Section 151, because I feel quite sure that the powers of this Court of

interfering with the orders of the Subordinate Courts are to be found either in sections relating to appeal or in the section relating to revision, or, it

may be, in the Charter of the High Court or the Letters Patent. And I feel perfectly certain that Section 151 of the Code was not intended to

extend those powers but was intended, as its words to my mind clearly indicate, to show what the trial Court can do whilst it is seized of the case.

5. I think, therefore, that the order proposed is the correct order to be made in this case.