

(1918) 01 CAL CK 0002**Calcutta High Court****Case No:** None

Srimati Saidunnessa

APPELLANT

Vs

Tejendra Chandra Dhar and
Others

RESPONDENT

Date of Decision: Jan. 21, 1918**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 149
- Court Fees Act, 1870 - Article 17(iii)

Citation: 44 Ind. Cas. 398**Hon'ble Judges:** Shamsul Huda, J; Fletcher, J**Bench:** Division Bench**Judgement**

Fletcher, J.

A preliminary objection has been taken to the hearing of this appeal on the ground that the appellant has not paid the appropriate Court-fee. The Court-fee paid on the memo of appeal was a Court-fee of Rs. 10 only and it was paid with a distinct statement on the memo of appeal which the learned Vakil for the appellant tells us was added subsequently--although the memo does not show on what date that addition was made--that the fee payable was under Article 17 (iii) of Schedule II to the Court Fees Act. Now, Article 17 (iii) of Schedule II to the Court Fees Act states that on a plaint or memo of appeal to obtain a declaratory decree where no consequential relief is prayed the fee payable is Rs. 10. The plaint in this case as amended in the Court below shows that that was not the nature of the present suit. Not only three declarations were asked for, but the plaintiff prayed for a perpetual injunction. It is quite clear that that is not a suit for declaratory decree where no consequential relief is prayed. Consequential relief was prayed in this case and it was the main relief, namely, an injunction restraining the defendants from putting in execution a particular decree of the Court. It seems to me quite clear, both on the authorities of this Court and on the wording of the Article of the Court-Pees Act, that

the memo of appeal in the present case was chargeable with an ad valorem fee. The question is whether any ground has been shown on which we ought to permit the deficit Court-fee to be paid now under the provisions of Section 149, Code of Civil Procedure. It is quite clear that the appellant has not got the right to pay it now because the words used in the section are that "the Court may in its discretion;" and, before the Court exercises its discretion, the appellant has got to satisfy us that some grounds exist on which the Court ought to exercise its discretion. Amongst those I take it that the principal ground is that a bona fide mistake was made. We have heard the statement of the learned Vakil who appears for the appellant and we are not satisfied that a bona fide mistake was made. That being so, we are not prepared to exercise the discretion that Section 149., Code of Civil Procedure, confers on us, to permit the payment of the deficit Court-fee now. In that view, the appeal is incompetent and must be dismissed with costs.

Shamsul Huda, J.

I agree.