

(1933) 11 CAL CK 0012

Calcutta High Court

Case No: None

J.C. Galstaun

APPELLANT

Vs

Janaki Nath Roy and Others

RESPONDENT

Date of Decision: Nov. 23, 1933

Acts Referred:

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

Citation: AIR 1934 Cal 615 : 152 Ind. Cas. 215

Judgement

1. This is an application for return of a memorandum of appeal (which was not registered on the ground that it was filed out of time) with a certificate authorising the petitioner to receive back from the Collector the amount of the court fee paid on the memorandum. The application Was opposed on behalf of the Government. The first ground on which the application was opposed was that the application did not come within the purview of Section 13, Court fees Act, which is the rule on the subject of refund of court-fees paid on a memorandum of appeal. The application strictly speaking is true and does not come within the purview of Section 13. But it has been held in more than one decision that Section 13 is not exhaustive and that the High Court in suitable cases may exercise its inherent powers vested in it by Section 151, C.P.C, and order refund of court-fees paid.

2. The learned Government pleader next contended that this is not a fit case where this inherent power should be exercised. I am unable to agree with him in this view of the matter. From the order by which the application for registration of the appeal was rejected it would appear that if there was any delay in filing the memorandum of appeal it was not due to any negligence on the part of the petitioner himself but to some gross negligence on the part of his legal adviser. That being so it cannot be said that there was any want of bona fides on the part of the petitioner in the present case. It is to be observed moreover that for rejecting the application for registration it was not only not necessary to make any use of the contents of the

memorandum of appeal but even to read the document. In the circumstances, we are of opinion that this is a fit case where the inherent powers of this Court should be exercised in favour of the petitioner u/s 151, Civil P.C. We would therefore allow the petition and direct return of the memorandum of appeal with the certificate prayed for. We make no order for costs.