

J.C. Galstaun Vs Janaki Nath Roy and Others

Court: Calcutta High Court

Date of Decision: Nov. 23, 1933

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 151
Court Fees Act, 1870 â€” 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.