

## CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7597 OF 2004

Muktar Steels Pvt. Ltd. Co.

.....Appellant(s)

- Versus -

Hind Ro-Rolling Industries Ltd.,

.....Respondent(s)

## O R D E R

Dharmadhikari J.

This appeal arises from an order passed by the High Court dismissing application under section 151 CPC filed by the present appellant who was plaintiff in the suit.

On the basis of the plaint allegations, the trial court directed that the plaintiff is liable to pay ad valorem court fee under section 20 of the Andhra Pradesh Fee Act, on the sum of Rs. 2,97,93,310/-. The appellant approached the High Court by way of Civil Revision Petition No. 677 of 1999. The learned Judge of the High Court by order made on 28.7.99, came to the conclusion that the suit essentially being for relief of permanent injunction and not for recovery of the aforesaid amount, ad valorem courts was not payable. The plaint allegations were taken note of in which the plaintiff merely averred that the

aforesaid amount which was paid by plaintiff on behalf of defendant unless returned, the latter had no right to interfere with the possession of the property leased by him to the plaintiff. In the operative part of the order of the learned Single Judge, it seems, at two places, there is omission of the word 'not'. The relevant portion of the order of the learned Single Judge holding in favour of the appellant that ad valorem court fee was not payable on the aforesaid amount, reads thus :-

"In the prayer No. (b), what is sought for essentially is a permanent injunction. Though the relief prayed for involves peculiarly worded lengthy sentence, the plaintiff is not really seeking any decree for recovery of a sum of Rs. 2,97,93,310/-. The plaintiff is contending that unless such amount is paid to him, the defendant has no right to interfere with the possession of the leased property. Hence it is not a claim for money. So, Court Fee is liable to be paid under section 20. [In the last sentence word 'not' seems to be an inadvertent omission].

Coming to prayer no. (d), it appears the petitioner-plaintiff deposited certain amounts during the pendency of the suit and he is only seeking leave to withdraw the same and he is not seeking any decree for money. Therefore, the Court fee is liable to be paid on the amount deposited of which the petitioner seeks withdrawal. The CRP is thus allowed. No costs." [In the last but one sentence, there seems to be omission of word 'not' between the words 'court fees' and 'is liable'].

[Emphasis supplied]

We have gone through the contents of the order of the learned Single Judge and we have also seen the memo of Revision Petition. The prayer made by the petitioner in the Revision Petition against demand of ad valorem court fee on the above-mentioned amount, has clearly been allowed. It is also clear from the contents of the order of the learned Single Judge (quoted above) that he has construed the pleadings in the plaint to mean that there is a mention of the aforesaid amount as having been paid by the plaintiff on behalf of the defendant and the said amount having not been returned, the plaintiff is entitled to remain in undisturbed possession of the leased property. After reading the entire order and the prayer made in the memo of Revision Petition, it is clear to us that the decision of the learned Single Judge is that no ad valorem court fee is payable on the aforesaid amount as no relief of recovery of the said amount has been claimed. Clearly no monetary decree has been sought by the plaintiff in the suit. In such circumstances, in the underlined portion of the order of the learned Single Judge (quoted above), there seems to be clearly omission of the word 'not' in the two sentences. This mistake or omission in the order of the learned Single Judge made it necessary for the appellant to approach for necessary correction by application under section 151 CPC to the Court. Review Petition could also have been filed for the purpose but the appellant filed the application under section 151 CPC.

A mention was made by the counsel appearing for the petitioner before the High Court to take up the matter for correction of the mistake in the order of the learned Single Judge. The learned Single Judge before whom the application under section 151 CPC was mentioned for being listed, heard the counsel and rejected the said application stating thus :- It is difficult for this Court at this point of time to assess the real intent of the learned Single Judge. Therefore, I am of the view, this Court cannot come to the rescue of the petitioner and carry out the so called mistake crept in the request."

We find that the learned Single Judge before whom mention was made for listing the application under section 151 CPC for orders, adopted a highly hyper-technical attitude. A careful perusal of the order of the learned Single Judge passed in the Revision Petition would have made it clear that there was an inadvertent omission of the word "not" in the two appropriate places in the order.

In the appeal before us, the opposite party although served is not represented obviously because the question involved is only one of court fee. It is reported by the learned counsel for the appellant that the suit between the parties has been compromised and a compromise decree has also been passed. We would have made final order by allowing the application under section 151 CPC but since the State has

neither been made a party nor noticed, we consider it fit to send back the matter to the High Court to reconsider the application under section 151 CPC filed by the petitioner by treating the same as an application under Order 47 Rule 1 of CPC. The High Court, if necessary, after hearing the State Government pass an appropriate order for correction of the order passed by High Court in the Revision Petition.

The appeal stands allowed with the above directions.

No order as to costs.

.....J  
[D. M. Dharmadhikari]

.....J  
[B. N. Srikrishna]

New Delhi.

3rd May, 2005.

ITEM NO.106

COURT NO.10

SECTION XIIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

MUKTAR STEELS PVT.LTD. CO.

Appellant (s)

VERSUS

HIND RO-ROLLING INDUSTRIES LTD.

Respondent(s)

(With prayer for interim relief and office report )

Date: 03/05/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant(s)

Mr.T.M.Mohammad Yousuf, Sr.Adv.

Mr. Shakil Ahmed Syed, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

No order as to costs.

( Satish K. Yadav )

( Phoolan Wati Arora )

Court Master

Court Master

( Signed order is placed on the file )