

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 20.10.2020

Date of decision: 02.12.2020

+ **W.P.(C) No.8221/2020**

KRISHAN KUMAR

..... Petitioner

Through: Mr.Prashant Kumar Mittal, Adv.

versus

THE SUB-DIVISIONAL MAGISTRATE ROHINI & ANR.

..... Respondents

Through: Mr.Gautam Narayan, ASC for
GNCTD with Ms.Dacchita Shahi
& Mr.Adithya Nair, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed by the petitioner praying for a Writ of Mandamus directing the respondent to refund the amount of Rs. 7,45,000/- of unused/un-utilized e-court fees purchased by the petitioner.
2. The petitioner had purchased e-court fees for an amount of Rs. 7,45,000/- on 31.10.2017 from the Stock Holding Corporation of India Limited (SHCIL). The petitioner claims that the said court fees was purchased for filing of a Suit, however, later the Suit was not filed and the court fees remained unutilized. The petitioner applied for refund of the court fees vide application dated 22.02.2018 to the respondent no.1. By the Impugned Order dated 27.08.2019, the respondent no.1 advised the petitioner to submit the Court order in respect of refund of the e-court fees. The petitioner has thereafter filed the present petition praying for the above direction.

3. The court fees is payable on a document at the time of its filing in terms of the Court-Fees Act, 1870 (hereinafter referred to as the 'Act'). Section 25 of the Act provides for collection of the fee by Stamps. Section 26 of the Act further provides that the stamps used to denote any fee chargeable under the Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the appropriate Government may, by notification in the Official Gazette, from time to time direct. Section 27 of the Act empowers the appropriate Government to make Rules for regulating the supply of stamps; the number of stamps to be used for denoting any fee chargeable under the Act; the renewal of damaged or spoiled stamps; and the keeping of accounts of all stamps used under the Act. Section 30 of the Act provides that no document requiring a stamp under the Act shall be filed or acted upon in any proceedings in any Court or office until the stamp has been cancelled.

4. A reading of the above provisions would clearly indicate that the stamp is the mode of payment of court fees at the time of filing of the document. The incident of payment of such fees is the filing of the document and not the purchase thereof.

5. In *Secretary, Government of Madras, Home Department and Another vs. Zenith Lamp and Electrical Ltd.*, (1973) 1 SCC 162, the Supreme Court has held that the 'fees taken in Court' are not taxes and must have relation to the administration of civil justice. While levying fees, the appropriate legislature is competent to take into account all relevant factors, the value of the subject matter of the dispute, the various steps necessary in the prosecution of a suit or matter, the entire

cost of the upkeep of Courts and officers administering civil justice, the vexatious nature of a certain type of litigation and other relevant matters, however, the legislature is not competent to make litigants contribute to the increase of general public revenue as it cannot tax litigation.

6. In *Aya Singh Tirlok Singh vs. Munshi Ram Amta Ram*, MANU/DE/0014/1968, this Court while considering the issue of refund of the excess court fee on the Memorandum of Appeal, held that unless the liability to pay court fees is clearly supportable on the plain statutory language, a suitor is not liable to pay any court fees; the Court has inherent power to direct refund of excess court fee paid either under compulsion or under a *bona fide* but erroneous impression, if the cause of justice so demands.

7. In relation to the Stamp Act, 1899, this Court in *Dr.Poornima Advani & Anr. vs. Govt. of NCT of Delhi & Anr*, 2018 SCC OnLine Del 10698, has held that the State cannot retain money without authority of law. It cannot be so retained if the event of charge has not occurred.

8. In the present case, the event of charge of collecting court fee has not occurred as the petitioner claims that he did not file the Suit for the purposes of which the e-stamp paper was purchased. Therefore, there was no authority with the State to retain the amount once the petitioner wishes to return the same without it being utilized or spoiled in any manner. Infact, for utilization of the stamp, as noted in Section 30 of the Act, the same has to be cancelled. In such cases, insistence of the respondent on Court order would also be completely unnecessary. It will lead to unnecessary litigation and pressure on court. The policy of the State has

to be to avoid and not encourage the same. The respondent must refund this amount on being satisfied of its non-use.

9. In view of the above, it is directed that the respondent, on being satisfied that the e-stamp paper purchased by the petitioner has remained unutilized, shall refund the amount of Rs.7,45,000/- to the petitioner within a period of four weeks from today.

10. It is noticed that in many other cases, request for refund of court fee wrongly purchased or remaining unutilized, is being denied by the respondent advising the party to obtain court order allowing such refund. It is therefore, directed that in such other cases as well, on being satisfied that the court fee has remained unutilized/ unspoiled, the respondent must refund the court fee without insisting on any further court order in this regard.

11. The petition is allowed with the above directions. There shall be no order as to cost.

NAVIN CHAWLA, J.

DECEMBER 02, 2020/rv