BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06-08-2026

CORAM

THE HON'BLE MR JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

Arb Appeal(MD) No. 63 of 2026

J.Murugavel, S/o. Jahanathan,
D.No.980, Murugan Kovil Street,
Uttkadai Village, Silambunatha Pettai Post,
Kanakuppam, Cuddalore.

..Petitioner(s)

Vs.

Pichai, Proprietor Vel Murugan Traders,
9/278, Ayyanarburam,
Chendurai Main Road,
Kuttupatty Post, Natham, Dindigul.

..Respondent(s)

Prayer : Arbitration Appeal filed under section 34(2) and 37(2) of Arbitration and Conciliation Act to set aside the award dated 24.10.2024 passed by the 2nd respondent and this Court may be pleaded to pass such further order(s) as may do complete justice on the facts and circumstances of the case.

For Petitioner(s): Mr.S.Arjun

JUDGMENT

(By G.R.SWAMINATHAN, J.)

What is listed before us is an arbitration appeal filed under Section 37(2) of the Arbitration and Conciliation Act, 1996. But the challenge is to an arbitral award. Section 37 of the said Act catalogues what are appealable orders. The final award passed by an arbitrator is not appealable. It can only be set aside in a petition filed under Section 34 of the Act. Unfortunately, this appeal came to be filed and what is worse, it was numbered also. Since it is ex-facie not maintainable, it stands closed as not-maintainable. Of course, the so-called appellant is granted liberty to pursue his remedy in the manner known to law.

2.At this stage, the learned counsel pleaded that the court fee paid by the litigant may be refunded. Section 70 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 states that 'the fee paid by mistake or inadvertence shall be ordered to be refunded'. Since the expression "shall" is employed, the provision should be construed as casting a mandate on the court to direct refund of the fee paid by mistake or inadvertence.

3.The corollary is that if the payment of court fee is not by any mistake or inadvertence but a deliberate act for obtaining relief, Section 70 will not be applicable. This proposition was laid down in ***K.S.Venkatraman & Co. (P) Ltd. v. State of Madras [(1966) 79 LW 392].*** The petitioner therein filed writ petitions for quashing certain sales tax assessments made against it. The petitions were, however, not numbered. They were returned for rectifying certain defects. Before doing so, the petitioner succeeded in an appeal filed before the Supreme Court. Hence, the petitioner chose not to prosecute the writ petitions. They applied for refund of the court fee paid in the writ petitions. The High Court held that when the petitioner had deliberately paid the court fee for obtaining relief in the writ petitions, Section 70 cannot be invoked.

4.***Zahoorunnissa Begum Sahiba v. T.Mohammed Ali Sahib (1961) 74 L.W 745, 1961 SCC OnLine Mad 51***, went to the extent of holding that Section 70, being a beneficial provision, need not be restricted to mistakes other than mistakes of procedure. A mistake which arises as a result of the adoption of an erroneous procedure with a consequent payment of a court fee appropriate to the procedure adopted will fall within the ambit of the section. Unlike the Act of 1870 under which provision for refund depended on the discretion of the court, Section 70 is couched in mandatory terms. When instead of filing a petition under Section 47 CPC, by mistake, suit was filed, after conversion of the suit into petition the party was held entitled to refund of the excess court fee paid.

5.The above decision was followed in ***Indian Bank v. Godfrey W.Noble (2012 SCC OnLine Mad 4114).*** In the said case, the Bank had filed a suit for recovery by paying court fee of Rs.85,548/-. The suit was not maintainable before the Civil Court in view of pecuniary considerations. The plaint was returned and the bank moved the Debts Recovery Tribunal. When it applied for refund of court fee, the trial court negatived the request. Following ***Zahoorunnissa,*** the High Court directed the trial court to order refund of court fee.

6.We would not have had any hesitation to grant the prayer made by the appellant's counsel but for our encountering the Full Bench decision reported in ***(1980) 93 LW. 468 (The Official Receiver, Coimbatore v. S.A.Ramaswamy)***. The petitioner therein was one of the respondents in a Second Appeal which came to be allowed. Aggrieved by the same, the petitioner filed Letters Patent Appeal before the Division Bench. Such an appeal was not competent in view of the introduction of Section 100A of CPC. Since the LPA could not be maintained, petition for refund of the court fee was filed by invoking Section 70 of the Court-Fees Act and Section 151 of CPC. The Hon'ble Full Bench rejected the request for refund. The Hon'ble Full Bench held that since a specific provision for refund held the field, the inherent power of the court cannot be invoked. Section 151 of CPC confers judicial power which cannot be invoked to pass administrative or ministerial orders. The court however clarified that the inherent power can be invoked by the Court for granting refund of court fee only in cases where excess court-fee has been paid under orders of court which orders are subsequently reversed or set aside, for, in such cases the court is bound to rectify its own mistake in calling upon the party to pay the court fee which he is not bound to pay under the law. The Full Bench overruled ***AIR 1971 Mad 490 (Vengammal v. Ramachandran), AIR 1971 Mad 136 (M.V.Ramaswamy Nadar v. State of Madras), AIR 1950 Mad 629 (In Re: Rachakonda Nagarathnam)*** *and* ***AIR 1966 Mad 423 (Periathayaa v.. L.Narasingha Rao).***

7.We looked for ways to overcome the Full Bench so that we can grant relief to the litigant. We noted that the Hon'ble Full Bench comprised Their Lordships Ismail, C.J., Ramanujam, and Ratnam, JJ. His Lordship Mr.Justice V.Ratnam in a later decision rendered on 19.08.1980 in CRP No.913 of 1980 (***N.Rangaswamy Naidu v. Narayanan Naicker***) struck a different note. In the said case, a suit was filed against a dead person. The plaintiff was not aware that the defendant was dead when the suit was instituted. Since a suit against a dead person is a nullity, he filed a fresh suit against the legal heirs of the deceased. Thereafter, he applied for refund of the court fee paid in the first suit. The trial court dismissed the petition. The said order was set aside and the prayer for refund was allowed by the High Court.

8.The Hon'ble High Court observed that while institution of the suit may not be a mistake, it was due to inadvertence. The expression "inadvertence" occurring in Section 70 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 was explained in the following terms :

> "...an unintentional act or omission as distinguished from an intentional act or omission ; "careless" or "negligent" ; opposite of deliberate action and that doer never really meant to do what he did and he was not aware of what he was doing (*Stroud's Judicial Dictionary*)… the quality of being inadvertent, lack of heedfulness or attentiveness, inattention; negligence, an effect of inattention, a result of carelessness, an oversight, mistake or fault from negligence (*Words and Phrases*, Permanent Edition).."

Applying the aforesaid definitions, the learned Judge inferred that as a result of inattention and want of care on the part of the petitioner to ascertain whether the defendant was alive or not, the suit came to be instituted against a dead person. The learned Judge did not make any reference to the Full Bench decision rendered on 15.02.1980 to which he was a party. But reliance was placed on an earlier Full Bench decision reported in ***1925 49 MLJ 590 (Adusumilli Gopalakrishnayya v. Adivi Lakshmana Rao).*** It was a case where the sole respondent in the Second Appeal had passed away when the appeal was filed in the High Court. Neither the appellant nor his pleader were aware of the said fact. Question arose as to whether the appellant should be allowed to amend the cause title by bringing the LRs on record or he should file a fresh second appeal. The Full Bench gave the following opinion :

> "OPINION: If an appeal is presented against a person who was dead at the date of presentation, the Court may, under S. 153, Civil Procedure Code, permit the cause-title to be amended or may return the appeal memorandum for amendment and representation. We think that the Bench which decided Govindu Kaviraj Purohito v. Gauranga Saw went too far in dismissing the second appeal as incompetent, and in declining to exercise its power of correcting errors under S. 153, Civil Procedure Code. If the appeal memorandum is not allowed to be amended the party may apply for a refund of the spoilt stamp and may present a fresh appeal...
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> ….
>
> As observed by Ramesam and Wallace, II. in C. M. P. No. 2807 of 1923 the question resolves itself into one of Court-fees only, and if

the party has only made an unintentional error in inserting the name of the wrong respondent in his appeal memorandum, there is no reason to make him pay Court-fees twice over, and it is simpler for the Court to direct an amendment of the cause-title."

9.Justice V.Ratnam appears to have skirted ***The Official Receiver, Coimbatore v. S.A.Ramaswamy.*** In the interest of judicial discipline, we intend to take the bull by the horns. The said decision opens with these lines :

> "Section 70 can have no application to the facts of this case as it could not be said that the court fee had been paid by mistake or inadvertence. … Mr.Vanchinathan, learned counsel for the petitioner, concedes this position."

The scope of Section 70 of the Act did not come up for consideration before the Full Bench. The debate and discussion revolved around the availability of the inherent power to grant relief. Stroud's Judicial Dictionary of Words and Phrases (9th Edition) terms the failure to enter into a supplemental contract on account of ignorance of the provisions of Companies Act, 1867 was an "inadvertence". A decision rendered by the Queen's Bench in ***Finch v. Richardson (2009) 1 WLR 1338***) clinches the issue. The claimants therein were candidates in an election. They had committed certain illegal electoral practices. They sought relief on the ground that their omissions arose from "inadvertence". Question arose if acts done in ignorance of law can be characterised as "inadvertent". After referring to a catena of precedents, the court answered in the affirmative. It was specifically held that ignorance of law may be "inadvertence".

10.We are clearly of the view that this appeal has been filed without properly understanding the scope of Section 37 of the Arbitration and Conciliation Act, 1996. This certainly amounts to "inadvertence" within the meaning of Section 70 of the Court-Fees Act. We are, therefore, of the view that ***The Official Receiver, Coimbatore v. S.A.Ramaswamy*** cannot be an impediment for granting relief.

11.The issue can be approached from yet another perspective. A litigant has to pay court fee while invoking the jurisdiction of the court. The fee payable is reckoned as per the provisions of the Court-Fees Act. The expression "payable" has been defined in Ramanatha Aiyar's Advanced Law Lexicon as...capable of being paid; suitable to be paid; admitting or demanding payment; justly due; legally enforceable. If payment has been made by mistake or inadvertence by the litigant, it has to be refunded. Mistake would include mistake of fact as well as mistake of law (***1958 SCC OnLine SC 28 The Sales Tax Officer, Banaras v. Kanhaiya Lal Mukund Lal Saraf).***

12.The Hon'ble Full Bench of the Bombay High Court in the case of ***Prabhakarbhat v. Vishwambhar Pandit, ILR (1883) 8 Bom 313 observed as follows:***

> *"Where a Court fee on the institution of a suit has been paid in a Court which cannot possibly afford the relief sought, it does not seem consistent with sound principle that the plaintiff should be condemned to lose the fees thus paid, or that he should not be*

allowed to ask without paying a second fee for an adjudication from a Court which can really give one."

This decision was followed by a Division Bench of the Delhi High Court in the recent decision in ***Amit Jain v. Mahavir International (P) Ltd., 2023 SCC OnLine Del 2657.*** It was a case where suit was erroneously framed as a commercial suit and the counsel for the petitioner therein sought to withdraw the suit. It was observed therein that refusal to refund court fees even in a lis which remained unadjudicated and expecting the litigant to pay up again would discourage the law-abiding litigant from approaching the justice dispensation system and that such a form of docket exclusion would be highly counterproductive for any civilized society. We are in agreement with the aforesaid views.

13.Reference to the decision reported in ***(2021) 3 SCC 560*** (***The High Court of Judicature at Madras v. M.C. Subramaniam***) may be in order. The parties therein arrived at an out of court settlement and withdrew the first appeals. The Bench ordered refund of the court fee. The Registry filed an appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the provisions of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 (in that case Section 69A of the Act) must be interpreted liberally. It was held that when a dispute is settled out of court and the appeal is withdrawn, the court fee has to be refunded. In the said decision, the Hon'ble Supreme

Court approved the proposition of the Delhi High Court in ***J.K.Forgings v. Essar Construction India Ltd***., ***(2009) 113 DRJ 612*** that court fees Act is a taxing statute and the benefit of ambiguity if any has to go to the party and not to the State. Since we are academically inclined, we are tempted to cite a Constitution Bench decision reported in ***(1973) 1 SCC 162*** in which it was observed that 'fees taken in court are not taxes'. If court fee is not a tax, the Court-Fees Act cannot be taxing statute. Of course, it is a fiscal statute and if there is any ambiguity in the provision, it should be construed in favour of the citizen.

14.Be that as it may, the spirit underlying Article 265 of the Constitution of India can still be applied to the facts on hand. Article 265 forbids collection of tax without the authority of law. Court fee may not be a tax but still any improper or illegal collection of court fee cannot be justified. When an arbitration appeal against a final award will not lie before the High Court under Section 37 of the 1996 Act, the acceptance of court-fee paid therefor is without the authority of law. This is one more reason for ordering refund. If refund is not ordered, there would be unjust enrichment for the State.

15.The theory of unjust enrichment is applied more in the realm of contract. There are theories such as that of Rousseau positing that State itself is a creation of social contract. Jurist Upendra Baxi would call litigants as consumers of justice. Litigants come to the courts for adjudication of their lis. If the matter could not be taken up for adjudication at all because it was not maintainable in the first instance, the litigant did not receive any service. There has been a failure of consideration and a case for refund stands made out.

16.In view of the foregoing discussion, this appeal is closed as being not maintainable. We direct the Registry to refund the court-fee paid by the appellant forthwith and without any delay. The appellant is given liberty to pursue his remedy in the manner known to law. Time spent in prosecuting this appeal shall be excluded while computing limitation. No costs.

(G.R.S.,J.) (K.K.R.K.,J.)
06-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

SKM

Copy to :

The Registrar (Judicial),
Madurai Bench of the Madras High Court,
Madurai.

G.R.SWAMINATHAN, J.
AND
K.K.RAMAKRISHNAN, J.

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