IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT APPEAL NO. 1867 OF 2024 (GM-DRT)

BETWEEN:

1. THE REGISTRAR
   DEBT RECOVERY TRIBUNAL BANGALORE
   BSNL BUILDING
   TELEPHONE HOUSE
   RAJBHAVAN ROAD
   BANGALORE - 560 009

…APPELLANT

(BY SMT. NAYANA TARA B.G., ADVOCATE)

AND:

1. SRI NARAYANA MURTHY H.M.
   S/O. MADAPPA H.T.
   AGED ABOUT 60 YEARS
   RESIDING AT NO.117
   SAPTHAGIRI, N BLOCK
   KUVEMPU NAGARA
   MYSORE - 570 023

2. SMT. CHANDRAKALA R.
   W/O. NARAYANA MURTHY H. M.
   AGED ABOUT 51 YEARS
   RESIDING AT NO.117
   SAPTHAGIRI, N BLOCK
   KUVEMPU NAGARA
   MYSORE - 570 023

3. UNION BANK OF INDIA
   MYSORE-KAMAKSHI HOSPITAL BRANCH
   KAMAKSHI HOSPITAL
   SARAWATHIPURAM
   MYSORE - 570 009

…RESPONDENTS

(BY SRI SAMEER SHARMA, ADVOCATE FOR C/R-1 & 2,
SMT. DIVYA PURANDAR, ADVCOATE FOR R-3)

THIS WRIT APPEAL FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE PRESENT APPEAL BY SETTING ASIDE THE ORDER DATED 19.11.2024 PASSED BY THE LEARNED SINGLE JUDGE IN W.P. No.11177/2023 & ETC.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

CAV JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

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1. The Registrar, Debts Recovery Tribunal, Bengaluru [**the DRT**] has filed the present appeal impugning an order dated 19.11.2024 passed by the learned Single Judge of this Court in W.P.No.11177/2023 (GM-DRT) [**impugned order**] allowing the said petition.

2. Respondent Nos.1 and 2 [**the writ petitioners**] had preferred the said petition impugning an order dated 08.08.2022 passed by the learned DRT rejecting their application – I.A.No.2280/2022 in S.A.No.277/2022 – for refund of court fee of ₹79,225/- (Rupees Seventy Nine Thousand Two Hundred and Twenty Five only). In the alternative, the writ petitioners had prayed to quash the said order and place the matter before the learned DRT for reconsideration of their request for refund of the court fee.

I. PREFATORY FACTS

3. Respondent No.1 [**writ petitioner No.1**] had availed a loan of ₹2,50,00,000/- (Rupees Two Crore and Fifty Lacs only), which was secured by mortgage of several properties. Respondent No.2 [**writ petitioner No.2**], who is the spouse of writ petitioner No.1, had stood as a surety for the repayment obligations. The writ petitioners state that thereafter the repayments were scheduled and respondent No.3 [**The Bank**] sanctioned further loans of ₹30,00,000/- and ₹6,50,000/-.

4. The writ petitioners claim that they were not in default of servicing the loans for more than a period of ninety days and yet the Bank had classified the loan account as a Non-Performing Asset [**NPA**]. The Bank had issued a notice dated 17.02.2022 under Section 13(4) of the Securitisation and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002 [**SARFAESI**], to take possession of the secured assets. The Bank thereafter issued an e-auction notice on 11.05.2022 to enforce its secured interest. The writ petitioners claim that the said notice was served on writ petitioner No. 1 on 17.05.2022. Upon receiving the notice, he made a representation dated 27.05.2022 offering to pay an amount of ₹50,00,000/- in two instalments subject to the Bank refraining from proceeding with the auction. The writ petitioners claim that since the Bank did not respond to the said offer, they filed an application, being S.A.No.277/2022, under Section 17 of the SARFAESI Act before the DRT, seeking quashing of the notices issued and proceedings initiated by the Bank. While the proceedings were pending, the writ petitioners preferred I.A.No.2280/2022 seeking disposal of the proceedings as having become infructuous upon the regularisation of the loans. They claim that in the aforesaid circumstances, the application preferred by the writ petitioners under Section 17 of the SARFAESI Act was rendered infructuous.

5. The writ petitioners settled the amounts due to the Bank and repaid the loans. The Bank also issued an intimation dated 08.07.2022 stating that the loans were regularised.

6. In the aforesaid facts, the writ petitioners filed an application under Section 22(2)(h) of the Recovery of Debts and Bankruptcy Act, 1993 [**RDB Act**], seeking refund of the court fee. The learned DRT rejected the said application on the ground that there was no provision under the SARFAESI Act for the refund of court fees and observed that in the absence of any enabling provision for the refund of court fee, the application for refund of court fee could not be entertained.

7. As noted above, the learned Single Judge allowed the writ petition by the impugned order wherein the court set aside the order dated 08.08.2022 and remanded the matter to the DRT to take necessary steps for refund of the court fee in accordance with law.

8. The learned Single Judge referred to Rule 4 of Debts Recovery Tribunals (Refund of Court Fee) Rules, 2013 [**DRT (ROCF) Rules**] for directing the refund of the court fee. The learned Single Judge reasoned that when the recovery proceedings initiated by the Bank are disposed of as infructuous in light of the settlement arrived at between the parties, it is an inherent right of the applicant for a refund of the court fee, so deposited at the time of filing the application. Further, the Court held that the mere unavailability of an express

provision for the return/refund of the court fee could not deprive a litigant of an inherently equitable right to the refund of the court fee.

II. SUBMISSIONS

9. The learned counsel appearing for the appellant argued that, in the absence of a statutory provision for the refund of the court fee, the learned DRT could not refund it. The learned counsel also challenged the reasoning that the applicant had an inherent right to a refund of the court fee, as the application had become infructuous due to a subsequent settlement between the parties.

10. The learned counsel appearing for respondent Nos.1 and 2 countered the aforesaid submissions. First, he submitted that the present appeal is not maintainable; according to him, the impugned order was passed in exercise of the jurisdiction conferred by Article 227 of the Constitution of India. He referred to the decision of a Larger Bench of this Court in **Tammanna and Others v. Miss. Renuka and Others**[1]**,** in support of his contention that the present appeal is not maintainable. He argued that the learned DRT's decision to reject the application for refund of court fee was a decision on the merits of the writ petitioners' application. The impugned order had also considered the merits of the said decision,

[1] ILR 2009 KAR 1207

therefore, it was required to construe as an order under Article 227 of the Constitution of India. He also referred to various decisions of this Court, including the decision in the case of **Gurushanth Pattedar v. Mahaboob Shahi Kulbarga Mills and another**[2]**,** as well as the decision in the case of **Sri Vishnu Ganapathi Naik v. The Management of NWKRTC**[3] in support of this contention. Additionally, he referred to several other decisions in which this Court had held that appeals against the orders passed by the learned Single Judge were not appealable.

11. The learned counsel had also referred to certain other decisions where such a plea had been rejected. He sought to distinguish those decisions on the ground that the merits of the disputes were considered in those cases. He contended that where decisions of the tribunals or courts that have trappings of finality on merits are challenged by way of writ petitions, and the same are examined, the orders passed by this Court would necessarily require to be considered as passed under Article 227 of the Constitution of India and not under Article 226 of the Constitution of India.

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[2] ILR 2005 KAR 2503
[3] ILR 2006 KAR 1863

12. He submitted that, in terms of the General Clauses Act, 1897, the power to receive court fee would equally contemplate the power to refund the same. He referred to the decision of this Court in **Syndicate Bank, Gandhinagar, Bangalore v. Cantreads Private Limited, Mangalore and others**[4]**,** in support of the said contention. He also contended that the court fee was a *quid pro quo*; therefore, in the absence of any service, it is liable to be refunded.

13. He also supported the decision of the learned Single Judge that court fee could be refunded notwithstanding that there was no provision in the statute for granting such a refund. He referred to the decisions in the case of **Sri R. Prakash v. Sri D.M.Ravikumar and another**[5]**; E.K.Jayachandran and another v. Registrar, Debt Recovery Appellate Tribunal and another**[6]**; Nagpur District Central Co-operative Bank Ltd. and another v. Union of India and others (W.P.No.4369/2009);** and **M/s.Progressive Aquatech Enterprises v. The Debts Recovery Tribunal-II and others (W.P.No.30437/2021)** decided on 23.12.2021.

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[4] (2007) 7 Kant LJ 636
[5] ILR 2010 KAR 2198
[6] (2019) 7 Mad LJ 641

III. REASONS AND CONCLUSIONS

(A) MAINTAINABILITY

14. The question to be considered at the threshold is whether the present appeal filed under Section 4 of the Karnataka High Court Act, 1961 is maintainable. According to the learned counsel for the respondent Nos.1 and 2, the appeal is not maintainable because the learned DRT had rejected respondent Nos.1 and 2's application for refund, and that decision was challenged on its merits.

15. At this stage, it is relevant to refer to Section 4 of the Karnataka High Court Act 1961 [**High Court Act**]. The said section is reproduced below:

> **"4. Appeals from decisions of a single Judge of the High Court.**- An appeal from a judgment, decree, order or sentence passed by a single Judge in the exercise of the original jurisdiction of the High Court under this Act or under any law for the time being in force, shall lie to and be heard by a Bench consisting of two other Judges of the High Court."

16. It is clear from the plain language of Section 4 of the High Court Act that an appeal would lie from a judgment or order passed by the learned Single Judge in exercise of the original jurisdiction of the High Court. The respondents argue that the impugned order was not passed in exercise of the original jurisdiction of this Court.

17. We find no merit in the aforesaid contention. Respondent Nos.1 and 2 had filed the writ petition under Article 226 of the Constitution of India. A plain reading of the writ petition also does not indicate otherwise. Respondent Nos.1 and 2 had sought a writ in the nature of certiorari, or any order or direction, to set aside the order dated 08.08.2022 passed by the learned DRT. It also expressly sought directions for the refund of the court fee. The order passed is clearly in exercise of the powers under Article 226 of the Constitution of India.

18. In **Umaji Keshao Meshram v. Radhikabai**[7]**,** the Supreme Court had observed

> **"101. Under Article 226 an order, direction or writ is to issue to a person, authority or the State. In a proceeding under that article the person, authority or State against whom the direction, order or writ is sought is a necessary party.** Under Article 227, however, what comes up before the High Court is the order or judgment of a subordinate court or tribunal for the purpose of ascertaining whether in giving such judgment or order that subordinate court or tribunal has acted within its authority and according to law. **Prior to the commencement of the Constitution, the Chartered High Courts as also the Judicial Committee had held that the power to issue prerogative writs possessed by the Chartered High Courts was an exercise of original jurisdiction** (see Mahomedalli Allabux v. Ismailji Abdulali [AIR 1926 Bom 332 : (1926) 28 Bom LR 471], Raghunath Keshav Khadilkar v. Poona Municipality, Ryots of Garabandho v. Zemindar of Parlakimedi [AIR 1942 PC

[7] 1986 SCC OnLine SC 378

164 : (1942-43) 70 IA 129] and Moulvi Hamid Hasan Nomani v. Banwarilal Roy [AIR 1947 PC 90 : (1946-47) 74 IA 120, 130-31]). In the last mentioned case which dealt with the nature of a writ of *quo warranto*, the Judicial Committee held:

"In Their Lordships' opinion any original civil jurisdiction possessed by the High Court and not in express terms conferred by the Letters Patent or later enactments falls within the description of ordinary original civil jurisdiction."

By Article 226 the power of issuing prerogative writs possessed by the Chartered High Courts prior to the commencement of the Constitution has been made wider and more extensive and conferred upon every High Court. The nature of the exercise of the power under Article 226, however, remains the same as in the case of the power of issuing prerogative writs possessed by the Chartered High Courts." A series of decisions of this Court has firmly established that a proceeding under Article 226 is an original proceeding and when it concerns civil rights, it is an original civil proceeding (see, for instance, State of U.P. v. Vijay Anand Maharaj [AIR 1963 SC 946 : (1963) 1 SCR 1, 16] , CIT v. IshwarlalBhagwandas [AIR 1965 SC 1818 : (1966) 1 SCR 190, 197-8] , Ramesh v. Seth Gendalal Motilal Patni [AIR 1966 SC 1445 : (1966) 3 SCR 198, 203] , Arbind Kumar Singh v. Nand Kishore Prasad [AIR 1968 SC 1227 : (1968) 3 SCR 322, 324] and Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram TahelRamnand [(1972) 1 SCC 898 : AIR 1972 SC 1598 : (1973) 1 SCR 185]).

102. Consequently, where a petition filed under Article 226 of the Constitution is, according to the Rules of a particular High Court, heard by a Single Judge, an intra-court appeal will lie from that judgment if such a right of appeal is provided in the Charter of that High Court, whether such Charter be Letters Patent or a statute. Clause 15 of the Letters Patent of the Bombay High Court gives in such a case a right of intra-court appeal and, therefore, the decision of a Single Judge of that High Court given in a petition under Article 226 would be appealable to a Division Bench of that High Court."

(emphasis added)

19. In the present case, respondent Nos.1 and 2 had made the learned DRT a party to the writ petition and had sought directions for the learned DRT to refund the fee paid. As noted above, the respondent Nos.1 and 2 had, apart from clearly stating in the writ petition that it was filed under Article 226 of the Constitution of India, also sought a writ in the nature of a certiorari, a prerogative writ. The order passed by the learned Single Judge is also clearly in exercise of the original jurisdiction of this Court.

(B) THE ENTITLEMENT TO REFUND OF FEE

20. The principal question to be addressed is whether the respondent Nos.1 and 2 were entitled to a refund of the fee paid by them along with the application filed under Section 17 of the SARFAESI Act. At this stage, it is relevant to refer to Section 17 of the SARFAESI Act. The same is set out below:

> "17. Application against measures to recover secured debts.-- (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:
>
> Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.--For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction--
(a) the cause of action, wholly or in part, arises;
(b) where the secured asset is located; or
(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,--

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the

recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(4A) Where--

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,--

(a) has expired or stood determined; or
(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or
(c) is contrary to terms of mortgage; or
(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be

> recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).
>
> (6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.
>
> (7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder."

21. As is apparent from the above, Section 17(1) of the SARFAESI Act mandates that every application is required to be accompanied with such fee as may be prescribed. The proviso to Section 17(1) SARFAESI Act also stipulates that different fees may be prescribed for applications made by the borrower or a person other than a borrower.

22. Rule 13 of the Security Interest (Enforcement) Rules, 2002, framed in exercise of the powers conferred under Section 38 of the SARFAESI Act, prescribes the fee payable on applications under Sections 17 and 18 of the Act. The said Rule is reproduced below:

"13. Fees for applications and appeals under section 17 and 18 of the Act.- (1) Every application under sub section (1) of section 17 or an appeal to the Appellate Tribunal under sub-section (1) of section 18 shall be accompanied by a fee provided in the sub-rule (2) and such fee may be remitted through a crossed demand draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal or the Court as the case may be, payable at the place where the Tribunal or the Court is situated.
(2) The amount of fee payable shall be as follows:

Sl. No.	**Nature of Application**	**Amount of Fee payable**
1.	Application to a Debt Recovery Tribunal under sub-section (1) of section 17 against any of the measures referred to in sub-section (4) of section 13	
	(a) Where the applicant is a borrower and the amount of debt due is less than Rs.10 lakhs	Rs. 500 for every Rs.1 lakh or part thereof
	(b) Where the applicant is a borrower and the amount of debt due is Rs. 10 lakhs and above	Rs. 5,000 + Rs. 250 for every Rs. 1 lakh or part thereof in excess of Rs. 10 lakhs subject to a maximum of Rs. 1,00,000
	(c) Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is less than Rs.10 lakhs	Rs. 125 for every Rupees One lakh or part thereof
	(d) Where the applicant is an aggrieved party other than the borrower and where the	Rs. 1,250 + Rs. 125 for every Rs. 1 lakh or part thereof in excess of Rs. 10 lakhs subject

	amount of debt due is Rs.10 lakhs and above	to a maximum of Rs. 50,000
	(e) Any other application by any person	Rs. 200
2.	Appeal to the Appellate Authority against any order passed by the Debt Recovery Tribunal under section 17	Same fees as provided at clauses (a) to (e) of serial number 1 of this rule]

> **13A. Application by lessee or tenant.**- (1) Every application under sub-section (1) of section 17 filed by lessee or tenant of the secured assets shall be accompanied by a fee specified in sub-clause (c) and sub-clause (d) of sub-rule (2) of rule 13, as the case may be.
> (2) The application to be made by the lessee or the tenant under sub-section (1) of section 17, shall be in the form specified in Appendix X annexed to these rules."

23. Concededly, there is no provision for a refund of the fee. Notwithstanding the same, respondent Nos.1 and 2 claim that they are entitled to a refund of the fees on essentially three grounds. First, they submit that the Court has the inherent power to grant a refund of the court fee. The exercise of this power is warranted in the facts of the present case, as there was no occasion for the respondent Nos.1 and 2 to pursue their application under Section 17. The fee was therefore liable to be refunded.

24. Second, respondent Nos.1 and 2's claim that the fee levied under Section 17 of the SARFAESI Act is not a tax but a fee. It is paid in consideration of the adjudication of the application. And, as respondent Nos.1 and 2 application was not considered, the fee is liable to be refunded.

25. Third, respondent Nos.1 and 2 submit that a recourse is available to the provisions of the Rules made for the refund of fees under the RDB Act. They submit that, under Rule 4 of the Debts Recovery Tribunals (Refund of Court Fee) Rules, 2013, the Debt Recovery Tribunal has the power to refund the fee, and recourse to the said Rule would be available in the present case as well.

(C) TRIBUNAL HAS NO INHERENT POWER TO REFUND THE FEE

26. The first question to be addressed is whether the Tribunal has the inherent power to refund the fee paid under Section 17 of the SARFAESI Act. Plainly, this question must be answered in the negative. The fee is a statutory prescription. In the absence of any statute authorising the refund of the fee, the Court would have no inherent power to order its refund.

27. The inherent powers of a court refers to the courts intrinsic authority — independent of any statute — to regulate its own

procedure and prevent abuse of its process. Inherent powers are not conferred by statute; they are preserved by it. Section 151 of the Code of Civil Procedure, 1908 [**CPC**] and Section 482 of the Code of Criminal Procedure, 1973 [**CrPC**]— now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [**BNSS**] — are saving clauses that recognise this inherent power.

28. It is relevant to refer to Section 151of the CPC which reads as under:

> "**151. Saving of inherent powers of Court.**—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.."

29. An important feature of Section 151 is its process-driven character. The inherent powers it preserves relate exclusively to regulating the court's procedure, preventing abuse of its process, and securing the ends of justice. They do not — and cannot — create new substantive rights, override express statutory provisions, or expand a court's subject-matter jurisdiction.

30. In **Padam Sen v. State of U.P.**[8], the Supreme Court had observed as under:

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[8] AIR 1961 SC 218

> "9. ...The inherent powers saved by Section 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses."

31. The aforesaid principle was reiterated by the Supreme Court in **Ram Prakash Agarwal v. Gopi Krishan**[9] wherein, the Court held that as under:

> " 13. Section 151 CPC is not a substantive provision that confers the right to get any relief of any kind. It is a mere procedural provision which enables a party to have the proceedings of a *pending suit* conducted in a manner that is consistent with justice and equity. The court can do justice between the *parties before it*. Similarly, inherent powers cannot be used to re-open settled matters. The inherent powers of the Court must, to that extent, be regarded as abrogated by the legislature. A provision barring the exercise of inherent power need not be express, it may even be implied. Inherent power cannot be used to restrain the execution of a decree at the instance of one who was not a party to suit. Such power is absolutely essential for securing the ends of justice, and to overcome the failure of justice. The Court under Section 151 CPC may adopt any procedure to do justice, unless the same is expressly prohibited."

32. In **K.K. Velusamy v. N. Palanisamy**[10], the Supreme Court, after referring to various decisions summarised the law on the inherent powers as recognised under Section 151 of the CPC as under:

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[9] (2013) 11 SCC 296
[10] (2011) 11 SCC 275

"12. ...(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognises the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is "right" and undo what is "wrong", that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, Section 151 recognises and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is coextensive with the need to exercise such power on the facts and circumstances.

(c) A court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or by necessary implication exhaust the scope of the power of the court or the jurisdiction that may be exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or in a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and

> the exercise of power depends upon the discretion and wisdom of the court, and in the facts and circumstances of the case. The absence of an express provision in the Code and the recognition and saving of the inherent power of a court, should not however be treated as a *carte blanche* to grant any relief.
>
> (f) The power under Section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court."

33. It is well settled that courts cannot use inherent powers to: (a) override express or implied statutory provisions[11]; (b) create new substantive rights[12]; (c) grant substantive relief not contemplated under any law[13]; (d) serve as a substitute for appeal, revision, or review where such remedies are available[14]; (e) re-open or unsettle concluded adjudications[15]; or (f) revive expired or time-barred statutory remedies[16].

34. Fee paid in accordance with the provisions of the statute ceases to be under the control of the court and belongs to the State. There is no inherent power to direct the State to make any payments

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[11] Arjun Singh v. Mohindra Kumar, 1963 SCC OnLine SC 43 at ¶20
[12] Padam Sen, *supra* 8 at ¶9
[13] Vinod Seth v. Devinder Bajaj, (2010) 8 SCC 1 at ¶28
[14] My Palace Mutually Aided Coop. Society v B Mahesh, (2022) 19 SCC 806 at ¶28
[15] *id*. at ¶27
[16] P.A. Ahammed Ibrahim v. Food Corporation of India (1999) 7 SCC 39 at ¶8

which have been collected in accordance with law. There may be cases where the fee has been erroneously assessed or cases where the collection is not in accordance with the statutory provisions. In such cases, the necessary sequitur of finding that the collection of the fee is erroneous would be to direct a refund of the court fee. However, this principle cannot be applied where the fee is collected in accordance with statutory provisions and there is no error in its collection.

35. The full Bench of the **Patna High Court in Dwarka Singh and another v. Nagdeo Singh and others**[17], *inter alia*, considered the question whether court fee could be refunded, even though statutory provisions did not provide for such a refund. In this context, the court observed as under:

> "15.Thus, if the three sections are out of the question, there is no power left in the Court to grant a certificate of refund where court fee has been paid in accordance with the provisions of the Court fees Acton the document filed in Court.
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> 16.Learned counsel has, however, contended, in any case, the petitioners are entitled to the order of refund under Sec. 151, Code of Civil Procedure. He has pressed into his argument the analogy of the exercise of the power under Sec. 151, Code of Civil Procedure, for refund of court fee when a higher amount of Court-fee has been realised than required in law to be paid. In my opinion, however, the analogy is wholly groundless. When the party

[17] 1960 SCC OnLine Pat 175

> by mistake has paid an excess amount oil court fee than is payable by him, and the court is satisfied about it, it is obvious that the excess amount was never paid under any provision of the Court Fees Act in any of the schedules and, as such, it was never the money of the Government.
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> ** ** ** **
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> 18. It is clear, therefore, on an examination of the inherent jurisdiction under the Code of Civil Procedure, that there can be no legal justification for the Court passing an order for refund of the amount of court fee paid on a review application when it allowed on aground other than that of a mistake in law or fact. Learned counsel has, however, drawn our attention to the following decisions which have no bearing on the point."

36. In **High Court of Judicature at Madras represented by its Registrar General v. M.C. Subramanian and others**[18], the Supreme Court considered the question whether the refund of Court fee could be directed even in cases where the parties have settled a dispute out of court, but not through the Mediation Centre or other centers of judicial settlement. The matter arose from the Madras High Court's decision. The court had interpreted the provisions of Section 89 of the CPC and 69A of the Tamil Nadu Court Fee and Suit Valuation Act, 1955 liberally. The Court directed the refund of court fees even though the parties had settled their disputes by a mode other than that specifically contemplated under Section 89 of the

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[18] (2021) 3 SCC 560

CPC. In an appeal from the said decision, the Supreme Court accepted that the provisions for refund of court fee are to be interpreted keeping view of the object. We consider it relevant to refer to the following extract from the said decision:

> "14. Before expounding further on our interpretation of the aforesaid provisions, regard must be had to the following postulation of this Court's interpretive role in Directorate of Enforcement v. Deepak Mahajan: (SCC pp. 453-54, paras 24-25)
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> "24. Though the function of the courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the Implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the court to mould or creatively Interpret the legislation by liberally interpreting the statute.
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> 25. In Maxwell on Interpretation of Statutes, Tenth Edn. at p. 229, the following passage is found:
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> 'Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some Inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.' (emphasis supplied)
>
> 15. Therefore, it is well settled that the courts may, in order to avoid any difficulty or injustice resulting from inadvertent ambiguity in the language of a statute, mould the interpretation of the same so as to achieve the true purpose of the enactment. This may include expanding the scope of the relevant

provisions to cover situations which are not strictly encapsulated in the language used therein.

16. This principle of statutory interpretation has been affirmed more recently in the decision in Shailesh Dhairyawan v. Mohan Balkrishna Lulla: (SCC p. 642, para 33)

"33.... Though the literal rule of interpretation, till some time ago, was treated as the "golden rule", it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced."

This was followed in the subsequent decision of this Court in Anurag Mittal v. Shaily Mishra Mittaf.

17. In light of these established principles of statutory interpretation, we shall now proceed to advert to the specific provisions that are the subject of the present controversy. The narrow Interpretation of Section 89 CPC and Section 69-A of the 1955 Act sought to be imposed by the petitioner would lead to an outcome wherein the parties who are referred to a mediation centre or other centres by the Court will be entitled to a full refund of their court fee; whilst the parties who similarly save the Court's time and resources by privately settling their dispute themselves will be deprived of the same benefit, simply because they did not require the Court's interference to seek a settlement. Such an interpretation, in our opinion, clearly leads to an absurd and unjust outcome, where two classes of parties who are equally facilitating the object and purpose of the aforesaid provisions are treated differentially, with one class being deprived of the benefit of Section 69-A of the 1955 Act. A literal or technical interpretation, in this background, would only lead to injustice and render the purpose of the provisions nugatory and thus, needs to be departed from, in favour of a purposive interpretation of the provisions.

** ** ** **

> 25. Thus, even though a strict construction of the terms of Section 89 CPC and Section 69-A of the 1955 Act may not encompass such private negotiations and settlements between the parties, we emphasise that the participants in such settlements will be entitled to the same benefits as those who have been referred to explore alternate dispute settlement methods under Section 89 CPC. Indeed, we find it puzzling that the petitioner should be so vehemently opposed to granting such benefit. Though the Registry/State Government will be losing a one-time court fee in the short term, they will be saved the expense and opportunity cost of managing an endless cycle of litigation in the long term. It is therefore in their own interest to allow Respondent 1's claim.
>
> 26. Thus, in our view, the High Court was correct in holding that Section 89 CPC and Section 69-A of the 1955 Act be interpreted liberally. In view of this broad, purposive construction, we affirm the High Court's conclusion, and hold that Section 89 CPC shall cover, and the benefit of Section 69-A of the 1955 Act shall also extend to all methods of out-of-court dispute settlement between parties that the Court subsequently finds to have been legally arrived at. This would, thus, cover the present controversy, wherein a private settlement was arrived at, and a memo to withdraw the appeal was filed before the High Court. In such a case as well, the appellant i.e. Respondent 1 herein would be entitled to refund of court fee."

37. The elaborate discussion on the expansive interpretation of the provisions governing the grant of a refund of Court fee also implicitly underscores that the Supreme Court did not consider that the court's inherent power encompassed the refund of court fees.

38. In a recent decision in the case of **Jage Ram v. Ved Kaur and others** in SLP (C) No.723/2023 by an order dated 28.01.2025, the

Supreme Court upheld the decision of the High Court to reject the request for a refund of court fee, where the parties arrived at a settlement, which was otherwise than by arbitration, conciliation, judicial settlement or mediation. The said order is set out below:

> "1. Heard learned counsel for the parties.
>
> 2. The second appeal was decided by the High Court in terms of the settlement, a signed copy of which was produced before it.
>
> 3. Since the appeal was decided in terms of the settlement and not on merits, the petitioner prayed to refund the court fees paid by him in the trial Court as well as in the First Appellate Court and Second Appellate Court.
>
> 4. In the second appeal, the petitioner had paidRs.29,053/- (Rupees Twenty-Nine Thousand Fifty-Three only).
>
> 5. The High Court by the impugned order has rejected the prayer so made by the petitioner by holding that no ground for refund has been made out.
>
> 6. The refund of court fees is permissible only if the matter is referred to Arbitration, Conciliation, judicial settlement, including through Lok Adalat or mediation for settlement and the case is decided in terms of such a settlement and not otherwise.
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> 7. In the case at hand, the settlement in terms of which the second appeal was decided by the High Court is not on reference to any of the above authorities/for a rather it was an amicable settlement out of the court.
>
> 8. Accordingly, we are of the opinion that the petitioner is not entitled to refund of the court fees and the High Court has not committed any error or illegality in refusing such a prayer.

> 9. Accordingly, the Special Leave Petition lacks merits and is dismissed. Pending application(s), if any, shall stand disposed of.

39. We may also refer to the decision of the full Bench of the Punjab and Haryana High Court in **Jawahar Singh and Others v. Union of India and others**[19]. In the said case, the Court considered the reference, *inter alia*, on the question whether the petitioner was entitled to a refund of the court fee paid on his plaint. In that case, the petitioner had instituted a civil suit in the court of the Subordinate Judge at Amritsar. However, the plaint was returned as the court found it lacked jurisdiction to entertain the suit. Therefore, the Court returned the plaint for presentation before a court of competent jurisdiction. The said order was affirmed by the learned Single Judge and thereafter by a Division Bench of the Punjab and Haryana High Court. The petitioner thereafter filed an application for a refund of the court fee.

40. There was a conflict of opinions between the division benches of the Punjab and Haryana High Courts. In one case, (**Discount Bank of India v. A.N. Mishra**[20]), the division bench held that refund of court fee is only limited to three cases, namely, (i), when the refund is authorised by the Court-Fees Act itself, (ii), when excess court-fee

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[19] 1957 SCC OnLinePunj 113
[20] AIR1955 Punjab 165

is being paid as a result of a mistake and (iii) when the excess payment is being made as a result of an erroneous demand by the Court itself. However, another Division Bench of the Punjab and Hariyana High Court, in (**S.Sohan Singh v. The Oriental Bank of Commerce**[21]), accepted the view that the court had inherent power to refund court fees even if the fees had been collected in accordance with provisions of law. In the aforesaid context, the following question was referred for the decision of the Full Bench of the Punjab and Haryana High Court,

> "Is the power of a Court to remit or refund court-fees confined only to fees illegally or erroneously assessed or collected or does it extend also to fees which have been paid or collected in accordance with the provisions of the Court-fees Act?"[22]

41. The Full bench considered the scope of inherent jurisdiction of the court and observed as under:

> "But what about the inherent jurisdiction of the Court? The power and authority of a Court to hear and determine justiciable controversies and to deliver binding judgments thereon is derived from the Constitution and the laws; but quite apart from the power expressed by the constitutional and statutory provisions every Court has inherent power to do all things that are reasonably necessary for the administration of justice, for the maintenance of dignity and for the legitimate discharge of its functions. It does not spring from legislation but from the very nature and constitution

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[21] 1956 P.L.R. 355
[22] Jawahar Singh, *supra* 19, at p.109

of the tribunals themselves and is essential for the ordinary and efficient exercise of the jurisdiction conferred by the law of the land. This power is essentially a protective power and is as necessary for the preservation of the existence of the Courts as is the natural right of self-defence to the preservation of human life (Hulman v. State).

Now, that exactly is the meaning of the expression 'inherent powers of the Court' which have been preserved and safeguarded by the provisions of section 151 of the Code of Civil Procedure? The expression 'inherent powers of the Court' is not susceptible of a clear and precise definition and, so far as I am aware, no Court has endeavoured to give an all embracing statement of the essential nature of this extraordinary jurisdiction. The boundaries of inherent powers can best be determined by a process of inclusion and exclusion. Among the inherent powers of a Court of general jurisdiction most frequently expounded and exercised are—

(a) the power to preserve order, decency and silence in the Courtroom;
(b) the power to protect itself from contempt, the power to punish unseemingly behaviour and the power to punish those who assume to treat it with contempt;
(c) the powers to maintain dignity and independence;
(d) the power to correct their records so as to make them speak the truth; to pass upon the constitutionality of statutes, to prevent the abuse of their authority and to enforce obedience to their mandates;
(e) the power of enforcing and effectuating its own judgments and mandates;
(f) the power of holding its officers to a proper accountability for any default or misfeasance in the execution of its process; and
(g) the power of vacating judgments entered by mistake and of relieving against judgments procured by fraud; etc.
In addition to these powers, a Court of general jurisdiction has inherent power to correct that which has been wrongfully done by virtue of its process,

for it is one of the highest duties of all Courts to take care that the act of the Court does no injury to any of the suitors(Roger v. Comptoir d' Escompts de Paris), It has power to undo wha it had no authority to do originally, to restore the amounts which a person had been wrongfully compelled to pay under the orders of the Court, and to restore, as far as possible, the parties to their original position. Again a Court has power to act rightly and fairly towards all parties, to prevent abuse, oppression and injustice, and to order are fund of the money which ought in good conscience to be repaid to the person from whom it has been illegally or erroneously exacted. If therefore, a litigant pays a court-fee which has been unjustly assessed or is excessive in amount or has been wrongly collected, the Courts will give him relief ex debitojustitiae, for the State has impliedly agreed to pay back the money received by a Court but which the law had not authorised the Court to exact. Beyond this the inherent powers will not take us.

It will be seen from the above, that quite apart from authority and purely on the basis of legal principles, a Court of law has power to order a refund of court-fees (1) where the Court-fees Act applies (2), where there is an excess payment by mistake and (3) where on account of mistake of the Court a party has been compelled to pay court-fee either wholly or in part. This proposition is so well established that I consider it entirely unnecessary to again enter upon the field of argument and authority to maintain the power of this Court to pay back the court-fee where excess fee has been paid through oversight, mistake or inadvertence. I need cite only a few authorities which have been relied upon by the Courts which have entertained the view that a Court has inherent power to authorise refund of court-fee not only in the three types of cases mentioned above but also in cases where the law expressly declares that fees shall be charged, levied and collected."

42. The Full Bench undertook an extensive survey of the affirmative authorities — **Sadiq Ali Khan v. Ali Abbas[23], Mst. Gendo v. Radha Mohan[24], Galstaun v. Jankinath Rai[25], Jan Mohammad v. Amolak Ram[26] , Hari Ram and Sons v. H.O. Hay[27], Anglo French Drug Co. (Eastern) Ltd. v. State of Bombay[28] , Central Bank of India Ltd. v. Thakur Das-Tulsi Ram[29],** and the Division Bench of the Punjab and Haryana High Court in ***Sohan Singh*** **(supra)** — as well as the decisions where the courts had interpreted the power restrictively including in **Om Prakash Gupta v. State of U.P.[30], Jamah Prasad v. Askaran Prasad[31], Umar Din v. Umar Hayat[32] , V.K.P. Chockkalingam Aurbalam v. Maung Tin[33],** ***In re*** **Rachakonda Nagurathnam[34], Secretary of State v. A. Veerayya Vandayar[35], Karfule Ltd. v. Arical Daniel Varghese[36], Ranchhod Lal Maneklal v. Kanekhl[37], Prabhunath v. Mt.**

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[23] ILR 7 Luck 588
[24] AIR 1932 Lah 219
[25] AIR 1934 Cal 615
[26] AIR 1936 Lah 301
[27] AIR 1939 Lah 257
[28] AIR 1951 Bom 130
[29] AIR 1933 Lah 135
[30] (1955) 1 SCC 727
[31] AIR 1928 Pat 29
[32] AIR 1927 Lah 886
[33] AIR 1938 Rang 208
[34] AIR 1950 Mad 629
[35] AIR 1940 Mad 451
[36] AIR 1953 Bom 73
[37] AIR 1953 Bom 436

Khadijatul Kubra[38], Shri Om Parkash Gupta v. The United Provinces[39], Tara Chand-Ghansham Das v. State of West Bengal[40], and the Division Bench of the Punjab and Haryana High Court in **Discount Bank (*supra*) —** all declining refund where fees were lawfully paid.

43. The Court referred to the decisions where the refund of the court fee was granted even though respondent Nos.1 and 2 were not covered under statutory provisions and observed as follows:

> "But these decisions appear to have ignored certain fundamental legal principles. They have not taken account of the fact that all Governments in all countries, civilized or otherwise, have found it necessary to enact measures for the imposition, assessment and collection of taxes and to provide safeguards of their own against mistake, injustice and oppression in the administration of its revenue laws. The Legislature has power to prescribe the manner and the circumstances in which taxes should be refunded regardless of the legality or illegality of the assessment or collection or recovery thereof. If a statutory enactment provides a remedy for protection against administrative aggression in the form of the illegal or erroneus exaction of a tax, that remedy must be regarded as exclusive and the Courts have no power to intervene. If however, the statutory enactment is silent and the system of corrective justice is not complete the inherent power of a Court to grant equitable relief will step in to fill the gap, for the inherent power of the Court is limited to the power of the Court to regulate and deal with such matters in the absence of legislation. The Court has no power to refund taxes as a matter of gratuity when they have been collected in

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[38] AIR 1953 All 184
[39] AIR 1951 All 205
[40] AIR 1955 Cal 258

accordance with the provisions of law, S. Sohan Singh v. The Oriental Bank of Commerce.

Secondly it has failed to take into consideration the fact that it is the duty of the Court to ascertain the intention of the Legislature and to carry such intention into effect to the fullest degree even though such legislation appears to the Courts to be unfair, inequitable or unjust. If the statute is ambiguous in its terms and fairly succeptible of two or more constructions, the Court will avoid a construction which would render the statute productive of injustice, unfairness, inconvenience, hardship or oppression and will adopt a construction in favour of an equitable operation of law and which will best subserve the ends of justice. If, on the other hand, the language of the statute is plain and unambiguous and conveys a clear and definite meaning, the Courts have no power to give the statute a meaning to which its language is not susceptible merely to avoid that which the Court believes are objectionable, mischievous or injurious consequences. A Court has no power, inherent or otherwise, to nullify, destroy or defeat the intention of the legislature by adopting a wrong construction or to take shelter behind the comforting thought that Courts of law have been established and ordained for the purpose of promoting substantial justice between the parties and that a technicality should not be permitted to override justice. The Courts have no power to modify the provisions of law even if those provisions are not as convenient and reasonable as the Courts themselves could have devised. If there is a general hardship affecting a general class of cases, the hardship can be avoided by a change of the law itself and not by judicial action in the guise of interpretation. If there is a particular hardship from the particular circumstances of the case, it would be extremely dangerous to relieve it by departing from the provisions of the statute. In any case a Court has no power to circumvent the provisions of a statute, for whatever is prohibited by law to be done directly cannot legally be effected by an indirect and circuitous contrivance.

Thirdly, the Courts have failed to recognise the basic fact that although a Court possesses all the inherent or implied powers necessary to discharge the onerous duties imposed upon it by the Legislature, and although it is the duty of every Court to maintain its inherent

jurisdiction vigorously, a Court is not wholly independent of the Legislature and cannot disregard the mandate issued by it in the form of a statute. All inherent and implied powers must yield to the power of statutory enactments (Brydonjack v. State Bar (1), for no Court of Law possesses inherent power to dispense with the provisions of a statute (Maqbul Ahmad v.Onkar Partap (2). Jurisdiction is not, a matter of sympathy or favour (63Lawyers Edition 313, 315) and it is not open to a Court by the exercise of inherent power to exonerate a litigant from an obligation imposed upon him by law Alexander Branet v. Indrakishna Kaul (3), Karfule Ltd. v. Arical Daniel Varghese (4).

The legal principles set out in the preceding paragraphs have been adopted and applied in a very large number of cases and Judges have taken the view that the power of a Court to grant refunds must be confined within the limits of statutory provisions. Refunds may also be granted when court-fee has been paid in excess by inadvertence or by a mistake of the Court. Thus it has no power to order a refund of court fees when the suit or appeal has been dismissed on the ground that a deficit in the court-fee ordered to be paid has not been paid Jamah Prasad v. Askaran Prasad (5), or when remand order is passed on any ground other than a ground mentioned under order 41, rule 23 Umar Din and others v. Umar Hayat (6), V.K.P. Chockkalingam Aurbalam v.Maung Tin and others (7), memorandum of appeal not numbered as appeal owing to reluctance to pay court-fee is filed and is withdrawn by the party before numbering. In re Rachakonda Nagurathnam (8), or when an appeal which was preferred to the High Court was withdrawn as having been settled out of Court. In re. v. Arical Daniel Varghese (1), or when an appeal presented by a bank to one High Court could not be proceeded with as another High Court ordered the bank to be wound up Discount Bank of India v. A.N. Mishra(2), or when the petitioner sought a certain relief in the plaint or in the memorandum of appeal but later had it deleted, Om Prakash Gupta v.State of Uttar Pradesh (3), Shri Om Parkash Gupta v. The United Provinces (4), when an appeal which was competent when filed had tobe dismissed in view of the provisions of a new Act which came into force while the appeal was pending in Court Prabhunath v. Mt.Khadijatul Kubra and others (5), or

> when the plaintiff was entitled to file the suit in the District Munsiff's Court at the time the suit was filed but where this power was taken away during the pendency of the litigation, Secretary of State v. A. Veerayya Vandayar (6). The Courts have resolutely refused to depart from the provisions of the Statute even incases of manifest hardship and oppression for it is well-known that hard cases make bad law.
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> For these reasons I am of the opinion that the power of a Court to remit or refund court-fees is confined only to fees which have been illegally or erroneously assessed or collected, and does not extend to fees which have been paid or collected in accordance with the provisions of the Court-fees Act."

44. We respectfully concur with the view of the Full Bench that the power of a court to remit or refund court fees is confined only to fees which have been illegally or erroneously assessed or collected, and does not extend to fees paid or collected in accordance with the provisions of the enactment. As felicitously articulated by the learned CJ Bhandari, "no Court of Law possesses inherent power to dispense with the provisions of a statute". We may also note that in his concurring opinion, Tek Chand J. emphasized that inherent powers "cannot be stretched to cover a wider field", and that "in the disguise of exercising their inherent powers courts cannot proceed to arrogate the functions of Legislature" — holding that "vague and nebulous considerations of hardship or injustice are snares into which Courts should not permit themselves to be drawn". The Full Bench found that the authorities granting refund had ignored the fundamental

character of court fees as a statutory impost, had failed to recognize that all inherent and implied powers must yield to statutory enactments, and had erroneously assumed that courts possess "some mysterious or hidden power to modify the provisions of a statute of some strictness or vigour when it considers that some possible inconvenience may grow from a strict observance of it".

45. A six-judge bench of the Supreme Court in the case of **Om Prakash Gupta v. State of U.P.**[41]**,** made a significant observation on the aspect of “Inherent Powers of the Court” vis-à-vis Court Fees, by stating that,

> “10. ...In the High Court he did not ask for this relief on the basis of any statutory provision. He invoked the inherent powers of the High Court. The Court Fees Act contains certain provisions for refund of court fee paid by a party but admittedly the present case is not covered by any of those provisions. It seems, therefore, that the High Court in the circumstances of the present case rightly refused to order a refund of the excess court fee paid by the appellant. It also does not appear that the Civil Judge acted illegally in refusing to order a refund.”

46. We may also note that in a recent decision delivered by the Supreme Court in **Rajeev Nohwar v. Chief Controlling Revenue**

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[41] (1955) 1 SCC 727

Authority Maharashtra State and Others[42], the Supreme Court in the context of refund of stamp duty, had observed as under:

> "32. We are conscious of the fact that as a general rule of law, the right to refund is a statutory creation. A refund can be sought in terms envisaged by statute. As discussed above, the case of the appellant is not specifically barred by any substantive provision. It is an established principle that this Court while exercising its power under Article 142 of the Constitution must not ignore and override statutory provisions but must rather take note of the express statutory provisions and exercise its discretion with caution. Therefore, if a statute prescribes a limitation period, this Court must be slow to interfere with the delay under Article 142. However, in the case of an eventuality such as the instant case where the facts of the case are not covered by the statute, this Court under Article 142 will have the power to do complete justice by condoning the delay. We are of the view that since the delay in filing the application for refund in the instant case was due to the prolonged proceedings before NCDRC, the application cannot be rejected on the ground of delay. A litigant has no control over judicial delays. A rejection of the application for refund would violate equity, justice and fairness where the applicant is made to suffer the brunt of judicial delay. Therefore, this is a fit case for the exercise of the power under Article 142 of the Constitution."

47. As is apparent from the above, the Supreme Court acknowledged that there was no inherent right to a refund of the fee, as it was a matter of statutory prescription. However, the Supreme Court granted the refund in exercise of its powers under Article 142 of the Constitution of India.

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[42] 2021(13) SCC 754

48. It is also relevant to refer to the decision of the Supreme Court in **Union of India v. VKC Footsteps (India) (P) Ltd.,**[43] Although the said decision was rendered in the context of Section 54 of the Central Goods and Services Tax Act, 2017 – which provides for refund of goods and services tax – the following observations are instructive:

> "99. We must be cognizant of the fact that no constitutional right is being asserted to claim a refund, as there cannot be. Refund is a matter of a statutory prescription. Parliament was within its legislative authority in determining whether refunds should be allowed of unutilised ITC tracing its origin both to input goods and input services or, as it has legislated, input goods alone. By its clear stipulation that a refund would be admissible only where the unutilised ITC has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies, Parliament has confined the refund in the manner which we have described above. While recognising an entitlement to refund, it is open to the legislature to define the circumstances in which a refund can be claimed. The proviso to Section 54(3) is not a condition of eligibility (as the assessees' the counsel submitted) but a restriction which must govern the grant of refund under Section 54(3). We, therefore, accept the submission which has been urged by Mr N. Venkataraman, learned ASG".

49. The observations are equally relevant to fees collected under the statute. It would make little difference whether the refund sought is of a tax or a fee. Both are statutory exactions. The amounts collected under the provisions of a statute cannot be refunded in the absence of a statutory provision for contemplating such a refund.

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[43] (2022) 2 SCC 603

There is no inherent right for a party to seek a refund of an amount paid under the statute. Clearly, the court too has no such inherent power.

50. The fact that the SARFAESI Act or the Rules made therein do not specifically provide for refund of fees paid in respect of an application under Section 17 of the SARFAESI Act or an appeal under Section 18 of the Act, is indicative of the legislative intent not to permit refund of such fees. The refund of a statutory levy is a matter of statutory prescription; the courts do not have any inherent power to supplant the statutory scheme for providing such a refund.

(D) DRT REFUND RULES ARE NOT APPLICABLE TO FEES UNDER THE SARFAESI ACT

51. We are also unable to accept that recourse to Rule 4 of the Debts Recovery Tribunals (Refund of Court Fee) Rules, 2013, is available for refund of fee paid under Section 17 or 18 of the SARFAESI Act. The said rules have been made in exercise of powers conferred under clause (cc) of subsection (2) of Section 36 r/w subsection (3A) of Section 19 of the RDB Act. Section 36 of the RDB Act empowers the Central Government to make rules by notification to carry out the provisions of the RDB Act. Sub-section (3A) of Section 19 of the Act was re-numbered as sub-section (3B)

with effect from 04.11.2016, by virtue of Act No.44 of 2016. The said Sub-section reads as under:

> **"19. Application to the Tribunal**.—(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction—
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> ** ** ** **
>
> (3B) If any application filed before the Tribunal for recovery of any debt is settled prior to the commencement of the hearing before that Tribunal or at any stage of the proceedings before the final order is passed, the applicant may be granted refund to the fees paid by him at such rates as may be prescribed."

52. Section 19(3B) of the RDB Act expressly provides that if an application for recovery of debts, filed before the DRT under Section 19 of the RDB Act, is settled prior to the commencement of the hearing before the DRT or at any stage of the proceedings before the final order is passed, the applicant may be granted refund of the fee paid or at such rates as may be prescribed.

53. It is clear from the above that the provisions of Rule 4 of the Debts Recovery Tribunals (Refund of Court Fee) Rules, 2013 are applicable only in respect of court fees or fees paid in respect of applications filed under the RDB Act. The said rules have no application for fee collected under the SARFAESI Act or any other statute. Furthermore, Section 35 of the SARFAESI Act accords a overriding effect to its provisions over other enactments.

(E) NO ELEMENT OF DIRECT QUID PRO QUO

54. The learned counsel for respondent Nos.1 and 2 had also contended that the fee, by its very nature, is for services and since no services were rendered, the fee is liable to be refunded. The said contention is misconceived as it assumes that there must be a direct correlation between payment of fee and receipt of services. The said assumption is unfounded. There is a distinction between a tax and a fee inasmuch as it must be in connection with services or in the nature of a regulatory fee. However, it is not necessary that the service be rendered directly to the person remitting the fee. There is no element of a direct quid pro quo between the payor and the services received. The fee charged may be for the services in general. Thus, the assumption that the person paying the fee must receive services commensurate with the fee is erroneous.

55. In **State of Tamil Nadu and another v. TVL South India Sugar Mills Association and others**[44], the Supreme Court had observed that the element of quid pro quo, in the strict sense, is not always sine qua non for a fee, and all that is necessary is that there should be a reasonable relationship between the levy of fee and services.

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[44] 2015 13 SCC 748

56. The fee paid along with the application under Section 17 of the SARFAESI Act is payable for filing the application in the DRT. However, it would be erroneous to assume that there is a direct *quid pro quo* between the court fee paid and the service received by the payer.

(F) THE GENERAL CLAUSES ACT

57. We also find no merit in the contention that the power to receive a fee which is paid in conformity with statutory provisions would necessarily include the power to refund under the General Clauses Act, 1897. The learned counsel for respondent Nos.1 and 2 was unable to point out any statutory provisions in the said Act in support of his contention.

58. The appeal is accordingly allowed. The impugned order is set aside.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C.M. POONACHA)
JUDGE

KPS/SD/KVM