APPELLATE CIVIL

Before S. B. Capoor and R. S. Narula, JJ.

ROOP KISHORE,—*Appellants.*

versus

FIRM RAGHBIR SINGH BABOO RAM AND OTHERS,—*Respondents.*

Regular First Appeal 21 of 1959

December 2, 1968.

Code of Civil Procedure (Act V of 1908)—Order 7 Rule 10—Plaint returned by a Court in one State—Such plaint re-presented in the Court of another State—Court-fee already paid—Whether to be repaid in the other State—Section 11—Res-judicata—Principle of—Stated—Decision of a Court at an earlier stage of the same litigation—When can be reopened—Order 47 Rule 1—Court's decision in ignorance of law laid down by High Court—Whether can be reviewed.

Held, that the main effect of providing for return of plaint for presentation to a Court of competent jurisdiction is that no fresh court-fee will be payable in the Court of competent jurisdiction if the court-fee already paid on the plaint is not less than the court-fee payable in the new Court. If this was not the intention behind Order 7 Rule 10 of the Code of Civil Procedure, it could as well have been provided that the plaint shall be rejected by the Court if it is found that it should have been filed in some other Court. When sub-rule (1) of Rule 10 of Order 7 of the Code provides that the plaint shall at any stage of the suit be returned "to be presented to the Court in which the suit should have been instituted," the obvious intention is that the plaintiff will be entitled to take advantage of the amount already spent by him on paying court-fee in the wrong Court. Hence the amount of court-fee already paid on a plaint in one State within the Union of India is not required to be paid over again in a different State within the Union if a plaint is represented to a court in the other State after having been returned by the Court in the former State. (Para 27)

Held, that the principle of *res-judicata* is based on the need of giving a finality "to judicial decisions". Once a *res* is *judicata,* it shall not be adjudged again, i.e., when a matter—whether on a question of fact or on a question of law—has been decided between two parties in one suit or proceeding, and the decision is final, either because no appeal was taken to a higher Court or because an appeal was dismissed, or because no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. Although the principle is embodied in relation to suits under section 11 of the Code of Civil Procedure, but even in cases where that statuory provision does no apply the principle of *res judicata* has been applied by Courts for the purpose of achieving finality in litigation. The original Court as well as any higher Court must in any future litigation proceed on the basis that the previous decision was correct. The principle

applies also as between two stages in the same litigation to this extent that a Court whether the trial Court or a higher Court having at an earlier stage decided a matter in one way will not allow the parties to reagitate the matter again at a subsequent stage of the same proceedings. However, an interlocutory order which has not been appealed from, either because no appeal lies or even though it lies, it is not taken, can be challenged in an appeal from the final decree or order. (Para 6)

Held, that whenever a decision of a Court is claimed to bar the re-opening of the matter which was urged at the earlier stage, it is only if and when the earlier decision was given by a Court of competent jurisdiction on the merits of the controversy that the reopening of the controversy at a later stage is bared on general principles of *res-judicata*. If, however, the earlier decision is not given on the merit of the controversy, and if the Court merely declines to go into the merits at the earlier stage either because of an alternative remedy being available or because it is in the discretion of the Court to go the merits of the matter at the stage or not, the mere refusal by the Court to hear the matter or to entertain the petition or the mere declining of the Court to decide the matter at the earlier stage for any such reason will not bar the hearing of the matter in controversy at a later stage where it can otherwise be appropriately heard. (Para 11)

Held, that the non-availability of law laid down by High Court in respect of a point in issue is not an error apparent on the face of the record within the meaning of Order 47 Rule 1 of Code of Civil Procedure. The rules does not give any jurisdiction to a Court to review its earlier order on a point in issue merely because it has been passed in Oblivion of the law laid down by the High Court on the subject. (Para 14)

Regular First Appeal against the order of the Court of Shri F. S. Gill, Sub-Judge, 1st Class, Sangrur, dated the 12th November, 1958, rejecting the plaint under Order 7 Rule 11, Civil Procedure Code.

J. N. KAUSHAL, SENIOR ADVOCATE WITH ASHOKE BHAN, ADVOCATE, for the Appellant.

G. C. MITTAL, ADVOCATE WITH PARKASH CHAND AND N. K. SODHI, ADVOCATES, for the Respondents.

ORDER

NARULA, J.—The ultimate question which has to be decided in this regular first appeal of Roop Kishore of Moradabad (hereinafter referred to as the plaintiff) against the order of the Court of Shri Fauja Singh Gill, Subordinate Judge, 1st Class, Sangrur, dated November 12, 1958, rejecting his plaint under Order 7 Rule 11 of the Code

of Civil Procedure, is whether the plaintiff was entitled to claim credit in a PEPSU Court for court-fees of the State of Uttar Pradesh paid by him on the plaint of his suit which was originally filed at Moradabad and which suit had subsequently to be filed in PEPSU consequent on the return of the plaint by the Moradabad Court. The facts relevant for the decision of the case are extremely brief and may first be touched upon.

(2) In January, 1949, the plaintiff filed a suit for the recovery of Rs. 10,000 against the respondents in the Court of the Civil Judge, Moradabad. By order of the said Moradabad Court, dated May 14, 1955, the plaint of the suit was returned to the plaintiff for presentation to a Court of competent jurisdiction. The plaint was then presented in the Court of Subordinate Judge, 1st Class, Sangrur, on May 27, 1955. The suit was contested by the respondents who filed a detailed written statement. As many as nine issues were framed by the trial Court from the pleadings of the parties. Some of the preliminary issues were disposed of by the order of the trial Court, dated June 13, 1956. Though there was no specific issue about the question of court-fee, it appears to have been argued before the learned Subordinate Judge by the counsel for the respondents, that the court-fee paid at Moradabad could not be used by the plaintiff in the Sangrur Court. The objection was repelled in the abovesaid order of the learned Subordinate Judge, dated June 13, 1956, in the following words.—

> "This objection is not very material, because the suit was presented in a competent Court after the formation of the dominion of India. Now it is presented in another State forming part of the same dominion. The Court Fees Act is a Central Act. It is applied with slight variation under rules framed by the High Court of the said State. It applies to the whole of India. After the passing of the Indian Independence Act, all laws applicable to British India became applicable to the dominion of India, after the 15th of August, 1947, the appointed day under the Indian Indepenednce Act. The distinction between British and foreign States is also ceased. The same laws became applicable to part B States by adaptation. All laws applicable to India became applicable to the Indian States. The same court-fee stamp is used in each and every State now. The stamps which was used at Moradabad is the same stamp which is being used now

here. In case this suit had to be instituted in the erstwhile Patiala State then the position would have been different because the stamp of the State was different but that is not the position now because the suit previously was instituted in Indian State and is now again presented to the proper Court in an Indian State. This objection has no force and is hereby dismissed."

Thereafter the parties led some evidence. During the course of the trial of the suit, the respondents filed an application for review of the order of the trial Court, dated June 13, 1956, in so far as it related to the question of court-fee. By his order, dated September 27, 1966, Shri Shamsher Singh Attri, Subordinate Judge, 1st Class, Sangrur, who had himself decided the matter earlier, accepted the review petition and held that there was an error apparent on the face of his earlier order relating to the question of court-fee, and following two unreported judgments of a learned Single Judge of the PEPSU High Court held that the plaintiff could not claim credit for the court-fee paid by him at Moradabad. Consequently, the plaintiff was directed by the said order of the trial Court to make good the court-fee on the plaint, i.e., to pay the entire court-fee payable thereon by October 15, 1956. This time was subsequently extended till November 7, 1956. The plaintiff did not pay the court-fee ordered by the trial Court. Before, however, his plaint could be rejected, he filed a petition under section 115 of the Code of Civil Procedure in the High Court (which was registered as Civil Revision 162-P of 1956), for setting aside and reversing the order passed by the trial Court in the review proceedings on September 27, 1956. Before the decision of the revision petition, the States Reorganisation Act, 1956, had come into force with effect from November 1, 1956, and the PEPSU High Court was merged with the Punjab High Court. The revision petition was heard by Bhandari, C.J., as he then was, and was dismissed by his order, dated May 20, 1958, after hearing counsel for both sides. The order of the learned Chief Justice was to the following effect :—

"I decline to interfere in this case. Dismissed. No order as to costs."

When the case went back to the trial Court, the plaintiff did not comply with order for paying fresh court-fee. The defendent-respondents then submitted an application for dismissing the suit of the plaintiff to which the plaintiff filed a detailed reply. Thereupon the trial Court passed the order under appeal, dated November 12, 1958,

rejecting the plaint under order 7 Rule 11 of the Code, on the ground that the question as to the validity of the court-fee paid in Moradabad could not be re-opened in view of the earlier decision of Shri Attri which had been upheld in revision by the High Court. Not satisfied with the said order of the trial Court which amounts to a decree, the plaintiff has come up in appeal to this Court.

(3) The amount of court-fee payable on the plaint of this suit in Sangrur at the relevant time was Rs. 1,125. This happened to be the exact amount of court-fee paid by the plaintiff in the Moradabad Court. If the plaintiff was, therefore, to succeed in his contention, he would not have been liable to pay any additional amount of court-fee, but if he were to fail in his submission, he would have been bound to pay the entire sum of Rs. 1,125 in court-fee over again. While preferring this appeal, the plaintiff did not pay *ad valorem* court-fee on the subject-matter of the claim in suit, but paid a sum of Rs. 174.40 P., only as *ad valorem* fee payable on the sum of Rs. 1,125, which according to the plaintiff is the subject-matter of the present dispute involved in this appeal.

(4) When this appeal came up for hearing before us on October 22, 1968, Mr. Gokal Chand Mittal, learned counsel for respondent No. 1, raised the following two preliminary objections to the maintainability hereof:—

(1) that inasmuch as the decree is one of dismissal, the court-fee paid should have been at the entire subject-matter of the claim which was Rs. 10,000 which would come to Rs. 1,125, while the court-fee actually paid is Rs. 174.40.

(2) that the dismissal of the Civil Revision of the appellant on the 20th May, 1958, by order of the Chief Justice acts as *res judicata* so far as the point raised in this appeal is concerned.

The request of Mr. Jagan Nath Kaushal, the learned counsel for the plaintiff, for granting him a short adjournment to reply to the above-said preliminary objections was granted, and the case was then heard on November 6, 1968.

(5) The first preliminary objection of Mr. Mittal appears to be concluded by two earlier Division Bench judgments of this Court in (i) *Uday Chand* v. *Mohanlal and others* (1) and (ii) *Atma Singh and*

(1) I.L.R. 1957 Pb. 814=A.I.R. 1957 Pb. 315.

others v. *Mohan Lal and others* (2). In both these cases it was held that the court-fee payable on the appeal against an order rejecting a plaint under Order 7 Rule 11 of the Code of Civil Procedure is *ad valorem* on the difference between the court-fee paid by the plaintiff and the court-fee held by the trial Court to be due from him. No argument has been advanced before us which could possibly persuade us to take a different view than the one taken by the earlier Division Benches of this Court on the abovesaid question. In fact the abovesaid two judgments of this Court are in turn based on the earlier decision of the Madras High Court in *Kalliappa Goundan* v. *Kandaswami Goundan* (3), and on the Full Bench judgment of the Nagpur High Court in *Apparao Sheshrao Deshmukh* v. *Mt. Bhagubai w/o Yeshwantrao Deshmukh and others* (4). In this situation we find no force whatever in the first preliminary objection of Mr. Gokal Chand Mittal, and we do not have the slightest reluctance in repelling the same.

(6) In support of his second objection Mr. Mittal relied on the general principles of *res judicata* and referred to the judgment of the Supreme Court in *Satyadhyan Ghosal and others* v. *Smt. Deorajin Devi and another* (5), and to the two judgments of this Court in *Balkishan Dass* v. *Parmeshri Dass deceased substituted by Madhuri Sharan Sharma and others* (6), and *Chanan Dass* v. *Union of India and others* (7). He also referred to the judgment of the Hyderabad High Court. *Laximinarayan* v. *Sultan Jehan Begum* (8), which has been approved by a Division Bench of this Court in *Balkishan Dass's case* (supra) (6) and to the judgment of the Madhya Pradesh High Court in *Shyamacharan Raghubar Prasad* v. *Sheojee Bhai Jairam Chatiri and another* (9), In *Satyadhyan Ghosal and others* v. *Smt. Deorajin Devi and another* (5), it was held by their Lordships of the Supreme Court that the principle of *res judicata* is based on the need of giving a finality "to judicial decision." What the said principle says is that once a *res* is *judicata*, it

(2) A.I.R. 1959 Pb. 387.
(3) A.I.R. 1938 Mad. 498.
(4) A.I.R. 1949 Nagpur 1.
(5) A.I.R. 1960 S.C. 941.
(6) I.L.R. (1963) 1 Pb. 320 A.I.R. 1963 Pb. 187.
(7) 1968 P.L.R. 769=I.L.R. 1967 1 Pb, 41(F.B.).
(8) A.I.R. 1951 Hyd. 132.
(9) A.I.R. 1964 M.P. 288.

shall not be adjudged against, i.e., when a matter—whether on a question of fact or on a question of law—has been decided between two parties in one suit or proceeding, and the decision is final, either because no appeal was taken to a higher Court or because an appeal was dismissed, or because no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. It has further held that though the abovesaid principle is embodied in relation to suits under section 11 of the Code of Civil Procedure, but even in cases where that statutory provision does not apply the principle of *res judicata* has been applied by Courts for the purpose of achieving finality in litigation. The result of this said the Supreme Court, is that the original Court as well as any higher Court must in any future litigation proceed on the basis that the previous decision was correct. Their Lordships proceeded to hold that the principle of *res judicata* applies also as between two stages in the same litigation to this extent that a Court whether the trial Court or a higher Court having at an earlier stage decided a matter in one way will not allow the parties to reagitate the matter again at a subsequent stage of the same proceedings. At the same time the Supreme Court made it clear that an interlocutory order which had not been appealed from, either because no appeal lay or even though an appeal lay an appeal was not taken can be challenged in an appeal from the final decree or order. In *Balkishan Dass's case* (supra) (6), a Division Bench of this Court was hearing an appeal against a final decree in a suit for accounts relating to a trust. The appellant sought to urge a ground of appeal to the effect that the suit was not maintainable otherwise than under section 92 of the Code. An objection was taken to permission being granted to urge that ground as the defendant-appellant had on an earlier occasion filed a revision petition against the decision of the trial Court on a preliminary issue covering the abovesaid objection and the said revision petition had been dismissed on merits by a Single Judge of this Court, and the decision of the trial Court about the suit being maintainable otherwise than under the provisions of Section 92 of the Code of Civil Procedure had been upheld, after hearing both sides. Relying on the judgment of the Supreme Court in the case of *Satyadhyan Ghosal and others* (supra) (5), and approving of the dictum of the Hyderabad High Court in *Laxminarayan* v. *Sultan Jehan Begum* (8), the Division Bench (Mehar Singh and Shamsher Bahadur JJ.,), held that where an interlocutory order is heard on merits either in appeal or in revision, the matter becomes *res judicata*, and that, therefore, the same question (that the suit was not maintainable

because it was not brought under section 92) could not be agitated again in appeal against the decree in the suit. Shamsher Bahadur, J., who prepared the judgment of the Bench, while holding as stated above, emphasised the fact that in the earlier civil revision, the learned Single Judge of this Court had decided the question after consideration of the various authorities including the earlier Supreme Court decision on the relevant point, and that what was sought to be urged once again at the stage of the appeal against the decree was precisely the same argument which had been repelled in the revision petition.

(7) In *Chanan Dass* v. *Union of India and others* (7), a Full Bench of this Court cited with approval not only the judgment of the Hyderabad High Court in *Laxminarayan* v. *Sultan Jehan Begum* (supra), (8), but also the earlier Division Bench judgment of this Court in *Balkishan Dass* v. *Parmeshri Dass* (supra) (6). It may, however, be mentioned that even in that case the earlier decision of the Division Bench on a reference by a learned Single Judge during the hearing of a writ petition which was held to bar the reconsideration of the same question in an appeal under clause 10 of the Letters Patent against the final order in the writ petition had been given by the earlier Division Bench on merits after a full and detailed consideration of the question involved in that litigation.

(8) In the Hyderabad case also (*Laxminarayan's case*) (8), the Division Bench of that Court had made it clear that there are two conditions precedent to attach finality to an order passed in a revision petition against an interlocutory order of the lower Court, and to bar the reopening of the same matter in a subsequent appeal against the decree, viz., (i) that the earlier adjudication should be within the competence of the Court which made it, and that (ii) the said earlier adjudication must have the character of being final and conclusive. In the *case of Shyamacharan Raghubar Prasad* (9), (Madhya Pradesh High Court case), the interlocutory order nad been reversed by the High Court in revision and thus the earlier decision of the High Court on the merits of the controversy was held to bar a fresh decision on the point by the High Court itself at the stage of appeal against the decree of the trial Court.

(9) Mr. Mittal then referred to the Full Bench judgment of this Court in *Bansi and another* v. *Additional Director Consolidation of Holdings, and others* (10), where it was held that even a dismissal

(10) I.L.R. (1966) 2 Pb. 824=1966 P.L.R. 652.

in limine of a writ petition under Article 226 of the Constitution by a Bench of the High Court bars a second petition by the same petitioner to the same High Court which may be based on similar facts. So far as the finality attached to an order dismissed a writ petition *in limine* is concerned, the matter has been settled by their Lordships of the Supreme Court in *Ramesh and another* v. *Seth Gendalal Motilal Patni and others* (11). It was held that the order of the High Court dismissing a writ petition *in limine* is a final order because it terminates finally the special proceedings before it. But if the High Court declines to interfere because all the remedies open under the law are not exhausted, the order of the High Court may not possess the finality which Article 226 contemplates. Their Lordships held that the answer to the question whether the order is final or not will depend on whether the controversy raised before the High Court is finally over or not.

(10) The last case to which reference was made by Mr. Mittal is the Division Bench judgment of this Court in *Employees' State Insurance Corporation* v. *M/s. Spangles and Glue Manufacturers and another* (12). It was the view of the Division Bench in that case approving the Hyderabad and Madhya Pradesh views referred to above to the effect that a final decision by a Division Bench of the High Court against an interlocutory order of the lower Court passed in a revision could not be agitated in an appeal against the decree in the case suit to another Division Bench of the High Court which was ultimately approved by the Full Bench of this Court in the *case of Chanan Dass* (supra) (7).

(11) An analytical study of all the above said cases reveals that whenever a decision of a Court is claimed to bar the reopening of the matter which was urged at the earlier stage, it is only if and when the earlier decision was given by a Court of competent jurisdiction on the merits of the controversy that the reopening of the controversy at a later stage is barred on general principles of *res judicata*. If, however the earlier decision is not given on the merits of the controversy, and if the Court merely declines to go into the merits at the earlier stage either because of an alternative remedy being available or because it is in the discretion of the Court to go into the merits of the matter at that stage or not, the mere refusal by the

(11) 1966 Cur. L.J. (Pb.) 152.

(12) I.L.R. (1967) 2 Pb. & Hry. 694=1967 Cur. L.J. Pb. & Hry: 329:

Court to hear the matter or to entertain the petition or the mere declining of the Court to decide the matter at the earlier stage for any such reason would not bar the hearing of the matter in controversy at a later stage where it can otherwise be appropriately heard. Applying this test to the present controversy, it is clear that Bhandari, C.J., declined to interfere in the matter not because he upheld the decision of the trial Court on the question of court-fee being correct on merits, but merely because it was within his discretion under section 115 of the Code of Civil Procedure to decide the disputed question of court-fee at that stage or to decline to go into the matter. Since he adopted the latter course and did not decide the disputed question on merits, the earlier decision of Bhandari, C.J., does not in our opinion debar the appellant from asking this Court to adjudicate upon the principal question sought to be raised in the present appeal on merits. We do not, therefore, find any force even in the second objection of Mr. Mittal, and consequently reject the same.

(12) This takes me to the two contentions on merits urged by Mr. Jagan Nath Kaushal, learned counsel for the appellant, in this appeal. Counsel first submitted that even if it could be assumed that the order of the trial Court, dated June, 13, 1956, was erroneous in law, the Court below had no jurisdiction whatever to review the same merely because some judgment of the High Court laying down law to the contrary had not been brought to the notice of the learned Subordinate Judge on the earlier occasion. As soon as this submission was made, Mr. Gokal Chand Mittal again intervened to raise the objection that this matter does not relate to the question of court-fee only, and if Mr. Kaushal wants to pursue this point, he has to pay *ad valorem* court-fee on the amount of the subject-matter of the suit in the Court below. We find no force whatever in this objection of Mr. Mittal. The entire dispute which forms the subject-matter of this appeal including the first submission of Mr. Kaushal to which reference has already been made relates solely and execusively to the question of court-fee payable on the plaint of the suit, and to no other point. The only point on which review was allowed by the trial Court related to the dispute about the necessity to pay Rs. 1,125 as court-fee. When it is sought to be argued that the trial Court had no jurisdiction to entertain and grant the review petition, the sole purpose of so submitting is to have the order for payment of fresh court-fee at Sangrur set aside. In submitting that the trial Court had no jurisdiction to pass the order under appeal, Mr. Kaushal

is not transgressing the circumscribed limits of the subject-matter of the appeal, i.e., the question of the liability to pay Rs. 1,125 in court-fee. This ancillary objection of Mr. Mittal is also, therefore, found to be without force and is rejected.

(13) As regards the merits of Mr. Kaushal's first ground of attack against the order of the trial Court, reference may first be made to the provisions of Order 47 Rule 1 of the Code which gives jurisdiction to a Civil Court to review its earlier order:—

> "(1) Any person considering himself aggrieved—
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> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred;
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> (b) by a decree or order from which no apeal is allowed; or
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> (c) by a decision on a reference from a Court of Small Causes;
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> and who, from the discovery of new and important matter or evidence which, after the exercises of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.
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> (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review."

Counsel submitted that the discovering of a judgment of a higher Court revealing an error of law in the earlier order does not amount to "the discovery of new and important matter" within the meaning of sub-rule (1) of rule 1 of Order 47 of the Code. He further submitted that a mistake of law on which an order of a Court may be based has never been held to amount to "some mistake or error apparent on the face of the record" within the meaning of the above-said rule. Nor can review, submitted Mr. Kaushal, be held to be

justified "for any other sufficient reason" merely because the earlier order is found to be contrary to law. Reference was first made to the judgment in *Juli Meah* v. *Atar Din* (13), wherein it was held that the meaning of the expression "an error apparent on the face of the record" used in Order 47 Rule 1 of the Code is an error which can be seen by a mere perusal of the record without reference to any other matter. It was expressly held in that case that a failure to consider precedent bearing upon the case is not a mistake or an error apparent on the face of the record, but is really a new matter which ought to have been brought to the notice of the Court, and, therefore, the party who discovers such a new ruling cannot apply for review of the judgment already made in ignorance of the same unless he can show that his failure to bring it to the notice of the Court was excusable. There is nothing on the record of this case which could justify a conclusion to the effect that not bringing to the notice of the trial Court the decision of the High Court to the contrary on the question of court-fee, was in any manner excusable. Reliance was then placed on the judgment of a learned Single Judge of the Lahore High Court in *Maula Bakhsh and others* v. *Sajawal Shah and others* (14). The learned Judge held in that case that a finding on a wrong authority is not a mistake or error apparent on the face of the record, but only an error in law and such an error would afford no ground for review. A Division Bench of the Madhva Bharat High Court held in *Sukchandsa* v. *Ramsingh* (15), that the omission of the Divsion Bench to notice the opinion of the referring Judge and the view of a Single Judge in a previous case is not a "sufficient reason" for reviewing the decision of the Division Bench. Mr. Kaushal then referred to the observations of Sinha, J., in *Dalip Nath Sen* v. *Certificate Officer and others* (16), to the effect that "any other sufficient reason" for obtaining a review must be on ground analogous to those specified in the earlier part of Rule 1 of Order 47. The learned Judge held that the production of an authority or ruling which was not brought to the notice of the Judge at the first hearing, and which lays down a view of the law contrary to that taken by the Judge, is not a sufficient ground for granting a review. The Calcutta High Court also held that if the proposition of law is not manifestly clear, it cannot be said that there is any error on the face of the proceedings.

(13) A.I.R. 1935 Rangoon 32.
(14) A.I.R. 1933 Lah. 223.
(15) A.I.R. 1955 M.B. 97.
(16) A.I.R. 1962 Cal. 346.

(14) In the instant case, the learned Subordinate Judge reviewed his earlier order, dated June 13, 1956, on the ground that it appeared to him "that there had been some mistake and the point (that the Court Fees Act, 1870, had not been extended to Patiala and East Punjab States Union under the Part 'B' States Laws Act III of 1951) has been probably overlooked." After referring to the decision of the PEPSU High Court, dated May 14, 1956, in Civil Revision No. 200 of 1955, and the same High Court, dated January 27, 1956, in Civi Revision No. 148 of 1965, the learned Subordinate Judge proceeded to state as follows:—

> "These authorities were not available earlier to the counsel for either side and the correct position of the law is that the plaintiff must pay the court-fee under the Patiala Act. This is, therefore, a point on which there cannot be two opinions and even after a perusal of the previous order the point is clear that the error is apparent on the face of the record."

It is, therefore, obvious from the above-quoted passage in the trial Court's order, dated September 27, 1956, that the learned Subordinate Judge chose to review his earlier order on the solitary ground that there was an error apparent on the face of the record of the case. This error was held by him to consist of the non-availability of the law laid down by the High Court in respect of the point in issue to the counsel for either side on the earlier occasion. The trend of judicial authority is that such an error as the one which is referred to above cannot be described to be an error apparent on the face of the record within the meaning of Order 47 Rule 1 of the Code. We, therefore, agree with Mr. Kaushal and hold that Order 47 Rule 1 of the Code did not give any jurisdiction to the trial Court to review its earlier order on the question of court-fee merely because it had been passed in oblivion of the law laid down by the High Court on the subject.

(15) We also find great force in the second submission of Mr. Kaushal which is to the effect that the law laid down by Mehar Singh, J., (as my Lord, the Chief Justice of this Court then was), in the two revision petitions on the judgments on which the order, dated September 27, 1956, was based, does not apply to the facts and circumstances of this case, and that the correct legal position is that the plaintiff is entitled to take credit for the amount of court-fee paid by

him in the Moradabad Court, and he can be ordered to pay only such amount of additional court-fee as may possibly be due on account of some difference in the scale of court-fee payable in Sangrur as compared with the scale prevalent in Moradabad. As already stated, the scale of court-fee at both the places at the relevant time was the same, and, therefore, there is no question of paying any difference, if the plaintiff is found to be entitled to take credit for the court-fee paid by him in Moradabad. The question with which we are called upon to deal in this respect is fortunately not *res integra*. A similar question came up for decision before my Lord Capoor, J., in *The State of Punjab* v. *R. B. Madho Parshad and others* (17). What happened in that case was this. The plaint of a suit for the recovery of Rs. 3,83,396/2/2 instituted by the State of Punjab in the Court of the Senior Subordinate Judge, Gurgaon, was returned for presentation to the proper Court after cancelling the court-fee stamps which had been affixed on the plaint by the State. The proper Court in that case was the Civil Court at Delhi, and the plaint of the suit was accordingly presented to the Delhi Court and the matter came up for disposal before the Commercial Subordinate Judge, Delhi. Without even issuing summons to the defendant, the Commercial Subordinate Judge directed the State of Punjab to pay the court-fee of Delhi State on the plaint in view of the requirements of a notification of the Delhi Government, dated March 29, 1954, requiring the court-fee stamps usable in the Courts of Delhi State to be over-printed with the word "Delhi", and in view of the further fact that the court-fee stamps already affixed on the plaint did not bear the said over-printing. In the revision petition filed by the State against the order of the trial Court, my learned Brother held that normally when a Court, after receiving a plaint and cancelling the stamps affixed thereto returns the plaint for presentation to the proper Court, the latter Court to which the plaint is re-presented is bound to give credit for the fee already levied by the former Court. Reliance was placed in this connection on the Full Bench judgment of the Madras High Court in *S. Visweswara Sarma* v. *T. M. Nair and another* (18), and on the judgment of the Bombay High Court in *Ganesh Tavanappa Burde* v. *Tatya Bharamappi Mirji* (19). A distinction was then sought to be drawn by the respondents in that case on the ground that the requirement of the stamps being over-printed with the word

(17) C.R. 482-D of 1956 decided on 5th January, 1959.

(18) (1912) I.L.R. 35 Mad. 567.

(19) A.I.R. 1927 Bom.. 257.

"Delhi" or with any other word was not presented either in the Madras case or in the Bombay case. The said objection was repelled by the learned Judge on the ground that sections 26 and 27(b) of the Court Fees Act, 1870, under which the notification requiring the said over-printing purported to have been issued did not authorise the Government to prescribe any such requirement. After referring to the judgment of the Patna High Court in *Naresh Chandra Sinha* v. *Charles Joseph Smith* (20), (wherein it had been held that the words "for use in the High Court only" impressed on the back of the court-fee stamps affixed on the plaint in a certain suit might have some significance for administrative purposes, but were not capable of invalidating the stamps themselves), and to the judgment of the Bombay High Court in *Annapurnabai* v. *Lakshman Bhikaji Vakharkar* (21), Capoor, J., held that the directions contained in the notification of the Chief Commissioner, Delhi, as to the stamps being required to be over-printed with the word "Delhi" would only be administrative directions and were ***ultra vires*** sections 26 and 27(b) of the Court Fees Act. As a result, the revision petition was accepted, the order of the Court of the Commercial Subordinate Judge, Delhi, was set aside, and it was held that the Delhi Court as bound to give credit to the plaintiff for the court-fee already paid by him in the Gurgaon Court (at that time in the State of Punjab). It may be remembered that at the relevant time Delhi was a separate Part 'C' State, and was not a part of the State of Punjab.

(16) In the case of *S. Visweswara Sarma* v. *T. M. Nair and another* (supra) (18), decided by a Full Bench of the Madras High Court, the plaint presented in the City Civil Court had been returned after cancelling the court-fee stamps, and had been re-presented in the Court of Small Causes, after paying the additional court-fee. The only ground on which fresh court-fee was being demanded in that case was that the stamps originally affixed on the plaint had been cancelled by the City Civil Court, and that nobody could claim credit for cancelled stamps. The question which had, therefore, been referred to the Full Bench for decision was whether the cancelled stamp had lost its force in the circumstances of the case already alluded to, and whether the plaint had again to be stamped with a court-fee of equal value. Munro, J., who agreed with the order proposed by White, C.J., observed that if a plaint as returned is not a document

(20) A.I.R. 1926 Patna 408.
(21) (1895) I.L.R. 19 Bom. 145.

which the court to which it is to be presented, is bound to receive as it stands—assuming the same scale of court-fee is in vogue in both Courts—he was unable to find any sufficient reason for the enactment of Rule 10 of Order 7 of the Code of Civil Procedure. He further observed:—

> "It is conceivable that the fact that the Court had no jurisdiction to entertain the plaint might be noticed before anything was done to the stamps. In such a case the plaint could, and should, be returned without cancelling the stamps. A plaintiff who had acted *bona fide* should not be in a worse position because the court did not find out its want of jurisdiction before the stamps were cancelled, and, as the rule for the return of plaints makes no distinction between cases where the plaintiff has acted *bona fide* and cases where he has acted otherwise, the same principle is clearly meant to apply in all cases."

It is, however, significant that the consideration of court-fee being payable to two separate State Governments as a consequence of the return and representation of the plaint did not arise in the Madras case.

(17) In *Ganesh Tavanappa Burde's case* (supra) (19), decided by a Division Bench of the Bombay High Court, it was held that where plaint is returned for presentation to the proper Court, the plaintiff can take advantage of the court-fee that had been paid on the previously filed plaint, and he is bound to pay only the deficient court-fee in the Court having jurisdiction to hear the case. The suit had in that case been filed originally in the Court of the Subordinate Judge of Hukeri. The plaint of the suit was directed to be returned as the value of the subject-matter of the suit was found to be beyond the pecuniary jurisdiction of the Subordinate Judge of Hukeri. On appeal, the District Judge ordered the plaintiff to make up the deficiency in court-fee and further held that on such deficiency being made up, the plaint would be returned to him for presentation to the proper Court, and on the same not being made up, the suit would be deemed to have been dismissed. In the revision petition filed against the above mentioned order of the District Court, the Divison Bench of the Bombay High Court held:—

> "But I think that the Court which can dismiss the suit for non-payment of the court fees within time is a Court which

has jurisdiction to dismiss the suit. If the plaint was returned for presentation to the proper Court the plaintiff could take advantage of the Court fees that had been paid on the previously filed plaint and he could pay the deficient court-fees in the Court having jurisdiction to hear the case."

Once again no dispute of different States was involved in the matter of court-fee in the Bombay case.

(18) A Full Bench of the Bombay High Court in *Prabhakarbhat* v. *Vishwambhar Pandit* (22), held that where, after a trial has begun, or even after it has concluded, it appears that the Court has no jurisdiction to hear the case, the plaint should be returned in order that it may be presented to the proper Court, and no additional court-fees are payable.

(19) As already indicated, the case decided by my Lord Capoor, J., involved two different States. Similarly in *Bhura Mall Dan Dayal* v. *Imperial Flour Mills Ltd., and others* (23), two different States were involved. The position in this case was reverse to the position in the *State of Punjab* v. *R. B. Madho Parshad and others* (17). Bhura Mal plaintiff had originally instituted the suit in a Civil Court at Delhi, but had on the plaint of the suit being returned to him for presentation to a Court of competent jurisdiction refiled it at Ambala. The plaint naturally bore the Delhi court-fee stamp. In the Ambala Court, an objection was raised by the defendant about the court-fee stamp of Delhi State being not proper court-fee in the State of Punjab. The trial Court gave way to the objection and ordered the plaintiff to make up the deficiency in court-fee. Bhura Mal plaintiff then came up to this Court in revision. Considering the importance of the point, the High Court gave notice to the Deputy Advocate-General and heard him as *amicus curiae*. Dua, J., who decided the case, referred to the judgment of my Lord Capoor, J., in the *State of Punjab* v. *R. B. Madho Parshad and others* (supra) (17), in substantial detail, and after referring to the provisions of sections 25 to 29 of the Court Fees Act and after a reference to the relevant rule for cancellation of court-fee stamps, observed that if a Court is not competent to receive the plaint, then

(22) (1884) I.L.R. 8 Bom. 313.

(23) I.L.R. 1959 Pb. 1770=A.I.R. 1959 Pb. 629.

cancellation of the court-fee stamps affixed thereon would be unauthorised. The learned Judge added that a suitor whose court-fee stamp has thus been cancelled by an unauthorised Court official might legitimately complaint of the prejudice caused to him and in equity he might well claim a right to be recompensed. It was then held:—

> "But this consideration apart, the scheme of the Court Fees Act, to the extent to which it can be discerned, shows that a litigant is, normally speaking, not made liable to pay court-fee twice over for the same adjudication by the same Court or by its successor Court or on account of the mistakes of Courts. I have deliberately used the expression 'to the extent to which the scheme can be discerned' because it has repeatedly been observed and rightly so, that the Court Fees Act is notorious for bad drafting; it is an artificial statute and there is hardly any principle involved in its scheme."

Dua, J., then relied on the general principle relating to the liberal construction of fiscal statutes and allowed the revision petition of the plaintiff, set aside the order of the Subordinate Judge, Ambala, and directed the disposal of the suit on merits.

(20) Another case in which two different States came into the picture on a question of this type is that of *Hira* v. *B. D. Kashyap and another* (24). The plaint in that case was first filed in the Court of Small Causes at Simla, at that time in the State of Punjab, and on being returned for presentation to the proper Court, it was represented to the Court of the Subordinate Judge at Theog in Himachal Pradesh. After the case had been disposed of by the trial Court and its decision upheld by the District Judge, it was urged by the defendant in his revision petition filed before the Judicial Commissioner, Himachal Pradesh, that the Theog Court could not have proceeded with the trial of the suit because the plaint of the suit bore the court-fee stamps of Punjab, and not of Himachal Pradesh. Ramabhadran, J.C., held that so far as the case was concerned, having regard to its peculiar circumstances and the practice which was in vogue in the Himachal State prior to July, 1953, of using stamps of other States, the objection as to court-fee should be overruled and credit should be given to the plaintiff for the court-fee paid in the Simla Court.

(24) A.I.R. 1956 H.P. 38.

(21) On the other hand, the learned counsel for the respondents, relied on the Single Bench judgment of Mody, J. in *M/s Brindalal and another* v. *M/s. Gonal and Haffman Ltd.*, (25), and on the two unreported judgments of Mehar Singh, J., (as Judge of the PEPSU High Court) on which the trial Court itself has relied in its order dated September 27, 1956. In the Bombay case, Mody, J., held that the Court-fee is payable to the State in whose territory the Court where the Court-fee is payable is situated. The reason ascribed for the necessity to adopt this course was that Court Fees Act is a legislation of the State concerned, and the revenue derived thereunder is to form part of the Consolidated Fund of that State. In the case of *M/s. Brindalal and another* (supra) (25), the suit had originally been instituted in Delhi, and court-fee stamps with the imprint "Delhi" had been affixed on the plaint of the suit. When the plaint was returned for presentation to the Court of competent jurisdiction, and was represented in the office of the Prothonotary at Bombay, an objection was raised against the acceptance of the Delhi court-fee, and it was directed that the plaint could not be accepted till court-fee of Bombay State was paid. The objection was upheld by Mody, J.

(22) The reasoning on which the order of the Bombay High Court was based has been succinctly summarised in head-note (b) of the A.I.R., report of the abovementioned case:—

> "The effect of reading together sections 292 and 100(3) along with Item 1 of List 2 in Schedule VII of the Government of India Act, 1935, is that although originally the Court-fees Act, 1870, was a Central Act, since the coming into operation (1937) of the Government of India Act, 1935, it ceased to have the essential characteristics of a central legislation and complete plenary powers of legislation, including the power to legislate retrospectively, with regard to Court-fees vested in the Provincial Legislature. Therefore, since the date of the coming into operation of the Government of India Act, 1935, the Court-fees Act must be deemed to have continued to be in operation in the various Provinces of India as a Provincial Act passed by the appropriate Provincial Legislature and not as a Central Act because the Provincial Legislature alone had the power to legislate in respect of Court-fees (I.R. 1941 F.C. 16 relied on).

(25) A.I.R. 1960 Bom. 96.

As the court-fees Act cannot be deemed to have been continued as a Central Act, when the Constitution came into operation, (1950) it cannot after the coming into operation of the constitution be considered to be an Act of the Union of India. This is so by virtue of Article 372(1) of the Constitution. What is more, under Article 246(3) the Legislature of a State has exclusive power to make laws for such State or any part there of with respect to any of the matters enumerated in List II in the Seventh Schedule to the Constitution, and Entry 3 of the said List II includes fees taken in all Courts except the Supreme Court. The position, therefore, is the same as that under the Government of India Act, 1935, and it is the State Legislature alone which has the exclusive power to legislate in respect of Court-fees payable in that particular State.

By virtue of Article 266, the Court-fee in respect of which the State Government has the exclusive power to legislate under the Constitution forms part of the Consolidated Fund of the State which is to be deemed to have passed the Court Fees Act for that particular State and which levies and recovers the Court-fees. It is, therefore, clear that the provision in section 6 of the Court-fees Act about the payment of Court-fees must mean payment to the Government of the State within which State the particular Court in which the Court-fee is payable is situated.

Since the coming into operation of the Government of India Act, the Provincial Legislatures, and since the coming into operation of the Constitution, the State Legislatures have the power to alter and amend the Court Fees Act, 1870. The various Provinces or States may, in exercise of that power, increase or decrease the rate of Court-fees as leviable within that Province or State and the Court-fee payable in respect of the same item may vary from Province to Province and State to State. In such a state of affairs, the adequacy of the amount of Court-fee payable in a particular State must be judged in accordance with the Court-fees Act as amended and applicable in the particular State."

It was then observed (in paragraph 7 of the judgment) as below :—

"The words 'but not including fees taken in any Court" occurring in Entry 66 of List II cannot be correlated to

Entry 3. In order to avoid confusion and in order to avoid provision being made for fees taken in Courts at two places-one specifically under Entry 3 and the other generally under Entry 66—fees taken in Courts are specifically excepted from the general entry being Entry 66 because the same had already been provided for specifically under Entry 3."

(23) I may now refer to the two judgments of a learned Single Judge of the PEPSU High Court. In *Coal Marketing Company of India Ltd., Calcutta* v. *Messrs D.R.T. Metal Works, Kapurthala, and another* (26), the suit had originally been instituted in the Court of Subordinate Judge, First Class, Jullundur, and on being returned for presentation to the competent Court, it was represented in the Court of the Subordinate Judge First Class at Kapurthala, without paying any fresh court-fee on it. The objection of the defendant as to liability of the plaintiff to pay fresh court-fee was upheld by the Subordinate Judge, Kapurthala, on June 21, 1955. The plaintiff complied with the order of the trial Court, but subsequently applied for refund of the court-fee which application was rejected on July 6, 1955. In the revision petition filed by the plaintiff against the order refusing to refund the court-fee paid in Kapurthala, it was held that the plaintiff must fail on the ground that he had not questioned the earlier order of the trial Court, dated June 21, 1955, but had only gone up in revision against the order, dated July 6, 1955, and the latter order could not be incorrect if the first order was correct. It was then observed:—

"Lastly, I see no substance in this case in so far as the first order of June 21, 1955, of the learned Subordinate Judge is concerned. The only argument urged against that order by the learned counsel for the petitioner-company is that it is the Indian court-fee stamps that are used both at Jullundur and Kapurthala, and, therefore, the Court-fee purchased at Jullundur should be available to the petitioner-company in the Court at Kapurthala, but he does not seem to appreciate that court-fee paid in a Court at Jullundur is paid under the Indian Court Fees Act, which admittedly has not been applied to PEPSU and the court-fee paid in PEPSU is paid under the local Court Fees Act. It makes no difference that same stamps are used in both places. The payment of the court-fee at either place is according to the statute applicable to that place, and it is

(26) C.R. 148 of 1955 decided by Pepsu Hrya. Court.

clear to me that court-fee paid in the circumstances at Jullundur cannot be of any avail to the petitioner-company in the Court in this State. The order of the learned Subordinate Judge, 1st Class of Kapurthala of June 21, 1955, is correct and this part of the revision petition also fails."

(24) The second judgment was given by the same learned Judge in *Lal Chand and others* v. *The Union of India and others* (27). The plaint of the suit originally filed in the Court of the Senior Subordinate Judge, Hissar, and returned from there, was represented to the Court of the District Judge, Bhatinda, without paying fresh court-fee. The District Judge, Bhatinda, declined to accept the claim of the plaintiff to take credit for the court-fee already paid in the Hissar Court in Punjab. Against the order of the District Judge, dated October 18, 1955, directing payment of fresh court-fee, the plaintiff went up in revision to the PEPSU High Court. The decision of the District Judge was upheld and the revision petition was dismissed by the High Court with the following observations:—

"The Court Fees Act of 1870, which is the Central Act, does not apply to PEPSU. The subject of court-fee falls under Item 3 of List II, i.e., the State List, and it is the State alone which can legislate on the subject. That is why the Central Court Fees Act of 1870 has not been extended to Part B States including PEPSU. The court-fee stamp purchased by the petitioner at Hissar was purchased under the Central Court Fees Act of 1870, and that Act, as pointed out, has no application in this State. Therefore, obviously that stamp cannot be available to the plaintiffs in this State unless the law of this State permits the use of stamp purchased in Punjab or in another State to be used in this State in the circumstances of cases as the present. In the former Patiala State the Indian Court Fees Act of 1870 was applied *mutatis mutandis*, but that means that it was applied as the statute of former Patiala State and not as the statute of Central Government of India. On the formation of PEPSU, the Patiala Court Fees Act has

(27) C.R. 200 of 1955 decided on 14th May, 1956.

been applied to PEPSU. It is under the Patiala Court Fees Act that the plaintiffs must pay the court-fee on their plaint or must refer to some provision of that Act which permits them the use of court-fee stamp purchased by them at Hissar in Punjab to be used in this State. No such provision has been referred to by the learned counsel for the petitioners from the Patiala Court Fees Act that supports his case. Obviously the court-fee stamp purchased by the plaintiffs at Hissar in the Punjab is not the court-fee stamp under the Patiala Court-Fees Act and cannot be available to the plaintiffs in this State. In another case Civil Revision No. 148 of 1955, I have already taken the same view in my judgment of January 27, 1956."

(25) It would be noticed from the above-quoted extracts from the two judgments of the PEPSU High Court relied upon by the Court below that the particular view was taken by Mehar Singh, J., in those cases principally on the ground that the Central Court Fees Act of 1870 had not been extended to Part 'B' States including PEPSU and the Court-fee stamps purchased by the plaintiff in the Punjab were not the court-fees stamps under the Patiala Court Fees Act, and could not, therefore, be available to the plaintiff in that State. In the instant case, the plaint of the suit from which the present appeal has arisen was presented in the Sangrur Court on May 27, 1955. The situation at the relevant time was, therefore, this. The Constitution had already been enforced with effect from January 26, 1950. On the formation of the Patiala and East Punjab States Union on and with effect from August 26, 1948, the said Union had become a class 'B' State within the Union of India, and was no more a separate and independent Sovereign State. For purposes of deciding the question before us, it was as good a State as any other State in the Indian Union. The present case has, therefore, to be decided on the same basis on which the cases relating to two different States like Punjab and Delhi had been decided. The Court Fees Act which applied to PEPSU was the Indian Court Fees Act, 1870, which had originally been applied to Patiala since January 17, 1910, by the *Ijlas-i-Khas* order No. 204 of that date (corresponding to Sambat 2nd October, 1966).

(26) After a careful consideration of the entire law on the subject referred to above, I am of the opinion that the law laid down by

Capoor, J., in the Delhi case, and by Dua, J., in the Ambala case is correct. With the greatest respect to Mody, J., of the Bombay High Court and Mehar Singh, J., of the PEPSU High Court, I am of the opinion that the view taken in the *case of Messrs Brindalal and another* (25), by the Bombay High Court, and the view taken by the learned Single Judge of the PEPSU High Court in the *case of Coal Marketing Company of India, Ltd., Calcutta*, and in the *case of Lal Chand and others* (26), does not appear to be correct. The argument on which the said view of the Bombay and PEPSU High Courts is based is two-fold, viz., (i) that the Central Court Fees Act, had not been enforced in those States and (ii) that Entry 3 in List II of the seventh Schedule to the Constitution vests the power of legislation in respect of "fees taken in all Courts except the Supreme Court" exclusively in the State Legislature. So far as the first point is concerned, the learned Single Judge of the PEPSU High Court himself took notice in his judgment in the *case of Lal Chand and others* (26) of the fact that the Indian Court Fees Act had been enforced in the State of Patiala and had thereafter become the law for the whole of the Patiala and East Punjab States Union on the coming into existence of that Part 'B' State. The learned Judge, however, drew a further distinction in the matter by observing that when so applied to Patiala and then to PEPSU, the Indian Court Fees Act did not apply to those territories as an Indian Law, but as a law deemed to have been passed by the Ruler of Patiala and then by the PEPSU Legislature. Since PEPSU was at the relevant time as much a State in the Indian Union as Punjab or Uttar Pradesh or Union Territory of Delhi, it becomes apparent that there is no material distinction between this case and those decided by Capoor, J., and Dua, J. Entry 63 in List II authorises a State exclusively to legislate on the subject of "rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty." If the argument which appealed to the learned Judge of the Bombay High Court, which was also accepted in the earlier judgment of the learned Judge of the PEPSU High Court about the effect of power to legislate on the question of court-fee being vested exclusively in the State Legislature were to be correct, stamped documents in respect of which the stamp duty has been paid in Punjab would be deemed to be unstamped which presented to a Court or public office in Haryana or Uttar Pradesh or any other State in the Union. Such a thing is inconceivable. Another illustration which appears to be apt in this connection is of Entry

35 in List III of the seventh Schedule which authorises the parliament as well as the State Legislatures to enact laws in respect of the "mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied." Taxes on motor vehicles have been levied by different States at different rates under separate State legislation enacted under Entry 35 of the Concurrent List. If the argument which appealed to the Bombay High Court were to be correct, a private motor vehicle in respect of which motor tax has been paid in Chandigarh, will have to pay fresh tax on entering Haryana and again another amount of tax on entering Punjab, and still another on reaching Delhi. An argument which creates this kind of situation has, in my opinion, to be rejected. The basic thing is that the several States in India including the erstwhile Part 'B' States had been formed as mere administrative units with separate legislatures for purposes of proper governance of the country and none of those States was or is in the position of an independent sovereign State. The only difference that might possibly arise out of different rates of court-fee being prescribed by different States would be that if the amount of court-fee payable in a Court to which a plaint is re-presented is higher than the amount already paid on the plaint in a different State within the Union, the plaintiff would have to make up the difference. On the other hand, if the amount of court-fee levied in the subsequent Court is the same as tion of demanding any fresh court-fee. Deciding this question against in the previous Court, or lesser than that, there would be no ques- the interest of the plaintiff would, in my opinion, defeat the very object of Order 7, Rule 10 of the Code of Civil Procedure. The main effect of providing for return of plaint for presentation to a Court of competent jurisdiction is that no fresh court-fee would be payable in the Court of competent jurisdiction if the court-fee already paid on the plaint is not less than the court-fee payable in the new Court. If this was not the intention behind Order 7 Rule 10, it could as well have been provided that the plaint shall be rejected by the Court if it is found that it should have been filed in some other Court. When sub-rule (1) of Rule 10 of Order 7 provides that the plaint shall at any stage of the suit be returned "to be presented to the Court in which the suit should have been instituted," the obvious intention is that the plaintiff would be entitled to take advantage of the amount already spent by him on paying court-fee in the wrong court. For purposes of limitation, a suit is deemed to have

been filed only when it is instituted in the Court of competent jurisdiction. Documents attached to a plaint can always be taken back unless those are admitted into evidence. The only object of making a provision for returning a plaint in Order 7 Rule 10 in contra-distinction to the provision for rejecting the plaint in the eventualities enumerated in Rule 11 of Order 7 of the Code appears to be that in cases covered by rule 10, the plaintiff would be entitled to adjust or take credit for the amount of court-fee paid by him in the wrong Court, provided the Court of competent jurisdiction in which the suit has to be instituted after the return of the plaint is within the Union of India. For all these reasons, I am definitely of the opinion that the amount of court-fee already paid on a plaint in one State within the Union of India is not required to be paid over again in a different State within the Union if a plaint is re-presented to a Court in the other State after having been returned by the Court in the former State. Even if there could be some doubt in this proposition, I would have followed the settled principle of interpretation of fiscal statutes about leaning in favour of the subject in case of ambiguity or doubt. I would, therefore, hold that even on the merits of the controversy, the trial Court was in error in reversing its earlier order, and that the plaintiff is entitled to have credit for the court-fee paid by him originally on his plaint at Moradabad. Since the amount of court-fee which was payable on the plaint of the suit in Sangrur was the same as the amount paid in Moradabad, the plaintiff is not liable to pay anything more on his plaint.

(27) For the foregoing reasons this appeal is allowed with costs. The order of the trial Court, dated September 27, 1956, allowing the review petition and directing payment of fresh court-fee as well as the order, dated November 12, 1958, rejecting the plaint are set aside, and the original order of the trial Court, dated June 13, 1956, on the question of court-fees payable on the plaint is restored. The suit is sent back to the Court of the first instance at Sangrur, for hearing and disposal on merits in accordance with law. The parties are directed to appear in the Court of the Senior Subordinate Judge, Sangrur, on December 20, 1968.

S. B. CAPOOR, J.—I agree.

K.S.K.