

Karbhari Vithoba Vs. Anusuya Karbhari

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Court : Mumbai

Decided On : Sep-28-1956

Reported in : AIR1958Bom425; (1957)59BOMLR116; ILR1957Bom353

Judge : Chainani and ;Shah, JJ.

Acts : Court-fees Act, 1870 - Schedule - Articles 1, 17 and 21; [Hindu Marriage Act, 1955](#) - Sections 13; Hindu Divorce Act, 1947; [Parsi Marriage and Divorce Act, 1936](#)

Appeal No. : Civil Revn. Appln. No. 335 of 1956

Appellant : Karbhari Vithoba

Respondent : Anusuya Karbhari

Advocate for Pet/Ap. : Y.V. Chandrachud, Adv. Amicus Curiae;V.S. Desai, Asst. Govt. Pleader

Judgement :

Shah, J.

1. This revision application raises a question about the court-fee payable on a petition filed under section 13 of the Hindu Marriage Act, XXV of 1955.

2. The Court-fees Act as amended by Bombay Act XII of 1054 prescribes by Section 7 read with Schedule I, Article 1 that on complaints, written-statements, pleadings, or set-off or counter-claims or memoranda of appeals or of cross-objections presented to any Civil or Revenue Court, court-fee ad valorem depending upon the value of the subject-matter of the suit shall be paid. Schedule II Article 1 prescribes court-fee payable on applications or petitions of different categories. Clause (b) prescribes a fixed court-fee of ten annas on an application or petition when presented to a Civil Court, Schedule II, Article 17 prescribes a fixed court-fee for complaints in certain suits described therein. Clause (vii) of Article 17 prescribes a fixed court-fee for 'other suit where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for 'by the Act'. Under Article 21 'on all complaints under the [Parsi Marriage and Divorce Act, 1936](#), or the Bombay Hindu Divorce Act, 1947 a fixed court-fee of Rs. 37-8-0 shall be paid'.

3. The question which arises in this Revision application is whether on a petition for divorce under Section 13 of the Hindu Marriage Act of 1955 court-fee is payable under Schedule II Article 1(b) or under Schedule II Article 17 (vii) or under Schedule II Article 21 of the Act. Evidently on a petition for divorce court-fee is not payable under Schedule I Article 1, because it is not a pleading of the nature described therein on which court-fee ad valorem is payable. Again there is no clause in the Court-fees Act which expressly applies to petitions under Section 13 of the Hindu Marriage Act. Article 21 applies to 'complaints' under the Bombay Hindu Divorce Act, 1947, but a petition under Section 13 of the Hindu Marriage Act of 1955 is not a complaint. That article can, therefore, have no application. Mr. Desai contends on behalf of the State that the use of the expression 'petition' in the Hindu Marriage Act, is not decisive of the court-fee exigible, inasmuch as a petition for relief under the Hindu Marriage Act is in substance a complaint and court-fee is payable thereon as on a complaint under Schedule II Article 17 (vii). We are unable to accept that contention. The Legislature has called the pleading which may be filed for obtaining relief under the Hindu Marriage Act a petition and we will not be justified in substituting the word 'complaint' for a 'petition' and to make it chargeable under the Court-fees Act accordingly. Article 17 of Schedule II prescribes court-fee chargeable on complaints in suits where it is not possible to estimate at a money value

the subject-matter in dispute, and which are not otherwise provided for by the Act. A petition not being a plaint, the court-fee is not payable thereon under Article 17 Clause (vii). It was also urged by Mr. Desai that the Hindu Marriage Act repeals and re-enacts the Bombay Hindu Divorce Act, and court-fee on petitions for divorce under the former Act is payable under Schedule II Article 21. But the Bombay Hindu Divorce Act, 1947 though repealed is not re-enacted by the Hindu Marriage Act. We are therefore unable to hold that court-fee is chargeable under Article 21 on petitions under the Hindu Marriage Act. A petition under the Hindu Marriage Act must therefore be regarded as a petition of the nature described in Article 1(b) of Schedule II of the Court-fees Act and is liable to court-fee accordingly.

4. We are, therefore, of the view that the learned District Judge is right in holding that the Court-fee payable on a petition filed in the District Court under the Hindu Marriage Act, is annas ten only.

5. The Court is indebted to Mr. Chandrachud for the assistance rendered by him as *amicus curiae*.

6. Order accordingly.