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Court : Mumbai

Decided On : Apr-11-1970

Reported in : (1972)74BOMLR714

Judge : Nain and ;Gatne, JJ.

Appeal No. : First Appeal Nos. 422, 486 and 526 of 1962

Appellant : Vishwanath Revansiddappa Lingshetti

Respondent : Shivshankar Basappa Ningshetti

Advocate for Def. : Mr. Pendse

Advocate for Pet/Ap. : Mr. Albal

Judgement :

Nain, J.

1. In these three appeals the parties coming in appeal are claiming certain amounts of interest in the settlement of partnership accounts. The interest is either claimed on debit entries made in the personal accounts of the partners or on capital contribution in excess of the capital contribution of the other partners. The claim in First Appeal No. 422 of 1962 amounts to Rs. 15,425, in First Appeal No. 486 of 1962 it amounts to Rs. 14,278 and in First Appeal No. 526 of 1962 it amounts to Rs. 14,572. Mr. Pendse, appearing for defendant No. 11, who is a

respondent in these appeals, has objected to the notes as to Court-fees made on the memoranda of appeal by the respective advocates for the appellants and to the valuation made in respect of the Court-fees.

2. In substance the notes put by the advocates in these three appeals state that the claims in appeal were not capable of valuation as they were regarding the interest which was not charged against defendant No. 11 and hence Court-fee of Rs. 30 was paid. It appears that the office of the Taxing Master has accepted such notes and has proceeded to charge a fixed Court-fee of Rs. 30 in each of these appeals.

3. In our opinion, the averments in these notes as to valuation are not factually correct. The amounts on which interest is claimed are ascertainable. The period for which the claim is made is also ascertainable. The period is from the date of suit to the date of the decree. The rate claimed is 6 per cent. per annum. The amount of the claim in each of these appeals is capable of arithmetical calculation. The note that the claim is not capable of valuation is factually wrong. Under item 1 of Schedule I of the Bombay Court-fees Act, 1959, on a memorandum of appeal not otherwise provided for in the Act an ad valorem Court-fee is to be paid on the amount of the value of the subject-matter in dispute. This amount being ascertainable and being capable of arithmetical calculation, as we have indicated above, a proper Court-fee under item 1 of Schedule I ought to have been paid.

4. Mr. Albal, appearing for the appellants in Appeal No. 486 of 1962, gave us the analogy of future mesne profits and contended that on a claim for future mesne profits no ad valorem Court-fee was payable. Section 13 provides that in a suit for recovery of possession of immoveable property and mesne profit or for mesne profits or for an account or the amount being ascertained the Court-fee has to be paid on the difference between the amount on which it is paid and the amount which is found due. In an appeal this question would not arise. By the time an appeal is filed the mesne profits have already been ascertained and the amount of the subject-matter in dispute has been ascertained and an ad valorem Court-fee under Section 13 would have to be paid. There is, therefore, no substance in this argument of Mr. Albal.

5. In view of the fact that we have come to the conclusion that Court-fee is payable under item 1 of Schedule I of the Bombay Court-fees Act, 1959, we order that in First Appeal No. 422 of 1962 the appellants shall pay an ad valorem Court-fee under that item on an amount of Rs. 15,425 which the appellants claim in the appeal. Similarly, in First Appeal No. 486 of 1962 the appellants value their claim at Rs. 14,278 and they are ordered to pay an ad valorem Court-fee under item 1 of Schedule I on that amount. Similarly in First Appeal No. 526 of 1962 the appellants value their claim at Rs. 14,572 and they are ordered to pay an ad valorem Court-fee under item No. 1 of Schedule I on that amount. The amount of the Court-fee shall be paid within a fortnight, In the meanwhile, the appeals shall stand stayed. If the amount of the Court-fee 'is not paid within the stipulated period, the appeals shall be put up for further orders.

6. Before parting with these matters we deal with an additional point taken up by Mr. Lalit in First Appeal No. 526 of 1962.

7. In this matter, the advocate for the appellant had made a similar statement that the amount of the claim was not ascertainable and that he was liable to pay a Court-fee of Rs. 30. It appears that before making this statement lie had paid a Court-fee of Rs. 350.50. He later made a claim for refund of Rs. 320.50 on which the learned Deputy Registrar of this Court acting as the Taxing Officer accepted the note as to Court-fee made by the advocate and ordered that a sum of Rs. 320.50 be refunded to the appellant.

8. The contention taken before us by Mr. Lalit on behalf of the appellant was that in this appeal there had been an adjudication under Section 5 of the Bombay Court-fees Act, 1959, which was final and, therefore, we could not revise the amount of Court-fees and order the difference to be paid. Section 5(2) provides that when any difference arises between the officer whose duty is to see that any fee is paid under the Act and any suitor or his pleader, as to the necessity of paying a fee or the amount thereof, the question shall, when it arises in the High Court, be referred to the taxing officer whose decision thereon shall be final subject, of course, to a revision application made within 60 days from the date of the decision, by the suitor to the Court. Section 5 makes further provisions with

regard to such questions arising in the City Civil Court, Bombay, the Presidency Small Cause Court at Bombay and other Courts. Mr. Lalit contended that in his case the Deputy Registrar had already made an order adjudicating the amount and this had become final and could not be reopened by the Court. This contention, however, does not appear to be correct. Section 8 of the Bombay Court-fees Act, 1959 provides that if the Court is of the opinion that the subject-matter of any suit has been wrongly valued or if an application is made to the Court for the revision of any valuation made the Court may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose. Section 9 prescribes for investigation to ascertain proper valuation. Section 10 provides for powers of persons making inquiry under Sections 8 and 9. Section 11 provides for costs of inquiry as to valuation and refund of excess fee. Section 14 provides that every question relating to valuation for the purpose of determining the amount of any fee chargeable under Chapter III of the Bombay Court-fees Act, 1959 shall be decided by the Court in which such plaint or memorandum, as the case may be, was filed and such decision shall be final as between the parties to the suit. It is clear that while a decision under Section 5 was final as between the suitor and the taxing officer, it was not made final between the parties to the litigation; whereas a decision under Sections 8 and 14 alone was made final as between the parties to the suit. This clearly indicated that the provisions of Section 5 were subject to the provisions of Sections 8 and 14. Mr. Lalit, however, contended that Section 8 was not applicable to the High Court as express provision had been made in Section 5 with regard to the High Court. There is some support for this view in the judgment of Sir John Beaumont, C.J., sitting as a single Judge in the case of *Mohanlal Narottamdas v. Keshavlal Narottamdas* : AIR1943 Bom441 , where the learned Chief Justice appears to have taken the view that Section 12 of the Indian Court-fees Act, 1870 applied to Courts other than the High Court. We might here point out that Section 5 of the Indian Court-fees Act, 1870 corresponds to Section 5 of the Bombay Court-fees Act, 1959, and Section 12 of the said Act corresponds to Sections 8 and 14 of the Bombay Court-fees Act, 1959. Section 12 provides that every question relating to valuation for the purpose of determining the amount of any fee chargeable under Chapter III on a plaint or memorandum of appeal, shall be decided by the Court in

which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit. It would, therefore, seem that the words of Section 14 of the Bombay Court-fees Act, 1959 and of Section 12 of the Indian Court-fees Act, 1870 make the decision of the Court under Section 14 of the Bombay Court-fees Act, 1959 and Section 12 of the Indian Court-fees Act, 1870 alone final between the parties, while a decision under Section 5 of both the Acts is made final only between the suitor and the taxing officer. With great respect to the learned Chief Justice, we do not subscribe to the view taken by him in the above judgment. There is nothing in Section 12 of the Indian Court-fees Act, 1870 to restrict its application to Courts other than the High Court. Similarly there is nothing in Sections 8 and 14 of the Bombay Court-fees Act, 1959 to restrict the application of these sections to Courts other than the High Court. Express reference to several Courts in Section 5 of both these Acts pertains only to the finality of the decision of the taxing officer between him and the party liable to pay Court-fees and not between the parties to the litigation. In our opinion, Section 5 of both the Acts serves a distinct purpose and an adjudication thereunder is liable to be revised under Sections 8 and 14 of the Bombay Act and Section 12 of the Indian Act.

9. Mr. Lalit also drew our attention to the judgment of this Court in the case of *Gangaram v. Chief Controlling Revenue Authority* : AIR1927 Bom643 . In that case the suitor had filed an appeal against a decision on the question of Court-fees made against him by a single Judge of this Court to whom the matter had been referred by the learned Chief Justice on a reference by the taxing officer. It was held that once a decision was taken under Section 5 it was not open to the suitor to file an appeal against the said decision. The appeal is after all a creature of the statute and no appeal was provided for in Section 5. We have no quarrel with this judgment to the extent to which it goes, but, in our opinion, that did not take away the right of the Court under Section 12 of the Indian Court-fees Act, 1870 to revise the Court-fees. Similarly, a decision under Section 5 of the Bombay Act does not take away the right of the Court to revise the Court-fees under Sections 8 and 14 of that Act. Section 5 of the Bombay Court-fees Act is, as Section 5 of the Indian Court-fees Act, 1870 also is, subject to an order of the Court, either under Section 12 of the Indian Court-fees Act, 1870, or under

Sections 8 and 14 of the Bombay Court-fees Act, 1959. We reject the contention that in cases where a decision has been arrived at under Section 5, it is not open to the Court to revise it under Sections 8 and 14 of the Bombay Court-fees Act at the instance of a party who was not before the taxing officer or the Court at the time the question was decided. That was an ex-parte decision so far as that party was concerned and an ex-parte decision of a Court is always liable to be vacated or revised.

10. In the result, we reject the contention of Mr. Lalit and hold that it is open to us to revise the amount of the Court-fee under Sections 8 and 14 of the Bombay Court-fees Act, 1959 and accordingly we have made the above order.

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