

Government Pleader Vs. the Groundnut Extraction Export Development Association

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Court : Mumbai

Decided On : Sep-24-1976

Reported in : (1977)79BOMLR226

Judge : Madon, J.

Appeal No. : O.C.J. Civil Revision Application No. 535 of 1973 and Short Cause Suit No. 41 of 1973

Appellant : Government Pleader

Respondent : The Groundnut Extraction Export Development Association

Advocate for Def. : Mr. Vahanvati

Advocate for Pet/Ap. : Mr. Sanghavi

Disposition : Appeal dismissed

Judgement :

Madon, J.

1. The petitioner has filed this application in revision purporting to do so under Section 5(2) of the Bombay Court-fees Act, 1959.

2. The facts which have given rise to this application are that on December 21, 1972, respondents No. 1, who are the plaintiffs, filed an Interpleader Suit on the Original Side of this High Court, being Short Cause Suit No. 41 of 1978, against respondent Nos. 2 to 4 in respect of a sum of Rs. 1,10,217.74 P. Respondents No. 1 paid ad valorem Court-fees on their plaint. When this suit reached hearing before Nain J., on June 12, 1973 as a Short Cause for directions, Nain J., directed the plaintiffs to bring into and deposit in Court a sum of Rs. 1,05,00 within seven days. He further granted an injunction restraining the respondents No. 3 from proceeding further with the garnishes proceedings adopted by them in the Court of the subordinate Judge, Vijayanagaram, in the State of Andhra Pradesh. He then adjourned the suit for four weeks and further directed that the exact amount which would have to be deposited by respondents No. 1 would be determined at the time of giving directions when the suit came up as a Short Cause and the question of the respondents No. 1 being dismissed from the suit would be considered at that time.

3. It appears that at that time the plaintiffs contended that they had paid Court-fees in excess of those payable in respect of this suit. Accordingly, Nain J., made the following order:

The Taxing Master is directed to determine the amount of Court-fees payable by that plaintiffs in the Suit and to report within four weeks; the Taxing Master will determine this question after giving notice to the parties.

Before the Taxing Master it was contended by respondents No. 1 that fixed Court-fees of Rs.30 were payable in respect of the said suit under the provisions of Article 23(f) of schedule II to the said Act, while on behalf of the State of Maharashtra it was contended that ad valorem Court-fees were payable under Article 7 of schedule I to the said Act. The Taxing Master in his report dated July 30, 1973, came to the conclusion that fixed Court-fees of Rs. 30 under Article 23(f) of the said Schedule II were payable by respondents No. 1. It may be mentioned that in his order the Taxing Master has stated that this was a reference made to him under Section 5 of the said Act for determining the proper Court-fees payable by the respondents No. 1 on their plaint.

4. At the hearing of this application a preliminary objection was raised to its maintainability on behalf of respondents No. 2 who are the first defendants to the suit. Mr. Vahanvati, learned Counsel for respondents No. 2, submitted that the order of Nain J., was not under Section 5 of the said Act but was made under Section 9(1) of the said Act and that a revision only lay when the Taxing Master's decision was given upon a reference made to him under Section 5(2) of the said Act. Mr. Sanghavi, learned Counsel for the petitioner, on the other hand submitted that on a correct reading of the order of Nain J., it could not be said that it was made under Section 9(1) of the said Act and that though, strictly speaking, the said order did not fall within the four corners of Section 5(2) of the said Act, the Court should so construe the said Section 5(2) as to hold that the said order was made under it.

5. It may be convenient at this stage to set out the relevant statutory provisions. Sub-sections (1) and (2) of Section 5 of the said Act provide as follows:

5. Fees on documents filed, etc., in Courts or in public offices,

(1) No document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there has been paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

(2) When any difference arises between the officer whose duty it is to see that any fee is paid under this Act and any suitor or his pleader, as to the necessity of paying a fee or the amount thereof, the question shall, when the question arises in the High Court, be referred to the taxing officer whose decision thereon shall be final subject to revision, on an application, made within thirty days from the date of the decision, by the suitor or his pleader or such officer as may be appointed in this behalf by the State Government, by the Chief Justice or by such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this, behalf.

Section 8 and Sub-section (1) of Section 9 of the said Act provide as follows:

8. Inquiry as to valuation of suits.

If the Court is of 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.⁹ Investigation to ascertain proper valuation.

(1) For the purpose of an inquiry under Section 8 the Court may depute, or issue a commission to, any suitable person to make such local or other investigation as may be necessary and to report thereon to the Court. Such report and any evidence recorded by such person shall be evidence in the enquiry.

6. It will be thus seen that there are two stages at which the question of the proper valuation of a suit for the purpose of payment of Court-fees fall to be decided. One is when a plaint is sought to be presented, and the other is at a subsequent stage of the suit after a plaint is admitted. When a plaint is sought to be presented and according to the officer whose duty it is to see that proper Court-fees are paid, it should be valued under a different article than the one under which the plaintiff has valued it, then the question is to be referred, when it arises in this High Court, to the taxing officer, that is, the Taxing Master. Against the decision of the Taxing Master, under Section 5(2) of the said Act an application in revision may be made within thirty days by the party aggrieved, that is, either the plaintiff or in the case of the State by such officer as the State Government may appoint. The State Government has appointed the Government pleader for filing such applications in revision. Under Rule 96 of the Bombay High Court Rules, Original Side, 1957, matters relating to admission of plaints are to be disposed of by the Prothonotary and Senior Master. Under Rule 104 of the said Rules all plaints, except in cases of special urgency, are to be lodged with the Assistant Master or Associate in attendance of the Judge in Chambers for examination, and under Rule 105 the plaint, when so lodged, is to be properly stamped with un-cancelled stamps ready for filing. The provision for fixing un-cancelled stamps is for the purpose of ensuring that used stamps are not availed of again. When the plaint is admitted, the stamps are cancelled. It is when a difference arises at this stage that under

Section 5(2) of the said Act the question is to be referred to the Taxing Master, and it is the decision of the Taxing Master on such reference that is made the subject-matter of revision under Section 5(2). Section 5(2) does not contemplate any order made by a Judge of this High Court. Where any such dispute or difference about the amount of Court-fees to be payable arises subsequent to the admission of the plaint, either by a contention in this behalf raised by the defendant or by the Court suo motu, or in this case by the plaintiff, on the ground that he had paid excess Court-fees, the Court is to determine the question and revise the valuation. Under Section 8 the Court is empowered to hold such inquiry as it thinks fit for that purpose. For the purposes of holding such inquiry Section 9(1) empowers the Court to depute or issue a commission to any suitable person to make such local or other investigation as may be necessary and to report thereon to the Court. The said Section 9(1) further provides that such report and any evidence recorded by such person shall be evidence in the inquiry. After such a report is made to the Court in cases where a Court has directed an inquiry, the Court, after considering the report and the evidence adduced before the officer, will itself determine the question of the correct amount of Court-fees to be payable. Thus, when a question arises about the correct amount of Court-fees to be payable after a plaint is admitted, that question falls to be decided by the Judge himself. If the Court deposes for the purposes of an inquiry the Taxing Master and the Taxing Master makes his report, the report of the Taxing Master does not, merely by reason of the fact that the officer making the report is the Taxing Master, become a decision of the Taxing Master under Section 5(2) of the said Act and thus subject to revision by the Judge appointed for this purpose by the learned Chief Justice.

7. Mr. Sanghavi, learned Counsel for the petitioner, however, submitted that the power of directing an inquiry under Section 9(1) could only be for the purpose of making a local or other investigation as may be necessary, that is, for the purpose of ascertaining facts, and this can only be done by the Court by issuing a commission to a suitable person. Mr. Sanghavi further submitted that in this particular case no facts were required to be ascertained. Mr. Sanghavi further laid emphasis upon the use of the word 'determined' in the relevant portion of the order of Nain J., which I have quoted above. Mr. Sanghavi's contention was that in view of this position the order of Nain J., could not have been made under Section 9(1)

read with Section 8 of the said Act. I am unable to accept these submissions. To say that the only mode in which an inquiry is to be held under Section 9(1) is by issuing a Commission is to ignore the word 'depute' in Section 9(1). Under that section the Court has two courses open. It may either depute a suitable person to make a local or other investigation a., may be necessary or it may issue a Commission to a suitable person for this purpose. What Nain J., has done is to depute the Taxing Master. It is not necessary that the inquiry which should be directed to be made should relate to pure questions of fact. As I have mentioned above, the Court does not come into the picture in Section 5(2) of the said Act, except as a revisional authority. The position that the order of Nain J., was made under Section 9(1) read with Section 8 is made abundantly clear by the fact that what Nain J., has done is to direct the Taxing Master to report within four weeks the amount of Court-fees which should be payable in respect of the plaint. To my mind, the use of the word 'determined' by Nain J., in his order makes no difference, because the report must be on the conclusion arrived at by the officer as a result of his inquiry, and in arriving at a conclusion a person must determine certain facts or other questions.

8. So far as the submission of Mr. Sanghavi, learned Counsel for the petitioner, that though, strictly speaking, the order of Nain J., does not fall within the four corners of Section 5(2) of the said Act none the less Section 5(2) must be so construed as to hold that the said order was made under it, is concerned, it merely requires to be stated in order to be rejected, for it amounts to saying that though Section 5(2) does not bear the construction canvassed for by the petitioner, none the less the Court must so misconstrue it for the benefit of the petitioner as to make a hopelessly misconceived application maintainable.

9. Mr. Sanghavi next relied upon the fact that in his judgment the Taxing Master has referred to the matter as a reference made to him by Nain J., under Section 5. To my mind, the wrong mention of a section by the Taxing Master cannot in this particular case make any difference. The order of Nain J., was made under Section 9(1), and the Taxing Master saying that it was made under Section 5 does not and cannot make it an order under Section 5(2).

10. For the reasons stated above, I hold that this application in revision, purporting to be made under Section 5(2) of the Bombay Court-fees Act, 1959, is not maintainable, and I dismiss it and discharge the rule.

11. The petitioner will pay to each of the respondents appearing before me the costs of the petition fixed at Rs. 150 in separate sets.

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