

**Reference Under Section 28 of Act No. Vii of 1870**

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**Court : Allahabad**

**Decided On : Dec-31-1969**

**Reported in : (1895)ILR17All238**

**Judge : Burkitt, J.**

**Appellant : Reference Under Section 28 of Act No. Vii of 1870**

**Judgement :**

**Burkitt, J.**

1. This is a reference from the taxing officer to me as taxing Judge under the provisions of Section 5 of the Court-fees Act. In considering it I have had the great advantage of the assistance of my brothers KNOX and BLAIR, who at my request sat with me to hear it argued. They authorise me to say that they concur in the order I am about to pass and in the reasons for it.

2. The matter has arisen in the following manner: During the winding up of the Himalaya Bank, Limited, the Judge of Saharanpur, acting under Sections 162, 163 and 214 of the Companies Acts of 1882 and 1887, directed certain Directors and Officers of the Bank to repay large sums of money to the Bank. Memoranda of appeal to this Court were admitted on a Court-fee stamp of Rs. 2 under Article 11 of the second schedule to the Court-fees Act. Subsequently however the officer whose duty it is to see that fees are paid under the second chapter of the Court-fees Act reported to the Registrar that in his opinion those memoranda of appeal

should have borne 'ad valorem stamps,' as he considered they had been presented against orders 'having the force of a decree' and therefore were chargeable with Court-fees under Article I of the first schedule of the Court-fees Act. The registrar has referred the question to me for decision.

3. The question then is, have those memoranda of appeal been presented against orders which have the 'force of a decree?' It is contended in the office report that the orders must have the force of a decree, because it is said they, under Section 166 of the Companies Act, can be enforced in the same manner as a decree of a Court made in a suit.

4. A similar question was raised before the Bombay High Court, and it was then held that a Court-fee of Rs. 2 under Article 11 of the second schedule of the Court-Fees Act was sufficient; vide the judgment of Mr. Justice Nanabhai Haridas on a reference from the taxing officer, dated the 28th of November 1885.

5. I have come to the same conclusion.

6. It may be doubtful whether any 'order' in the strict sense of that word as defined in the Code of Civil Procedure, is passed by the winding up Court under Section 214 of the Companies Act. That section seems to be the complement of Section 162 et seqq of the Act which give to the winding up Court large inquisitorial powers in order to enable it to get in the assets of the Company under liquidation. When by virtue of those powers the Court has satisfied itself that any director, manager, officer, &c;, has been guilty of malpractices, the Court may then take action under Section 214, and on the application of a liquidator, creditor, or contributory, after examining into the conduct of the director,, manager, etc, may compel the latter to repay money or to contribute to the assets of the Company. The power so given to the Court is clearly a summary power to compel defaulting directors and other officials to repay money misappropriated or contribute money to the assets of the Company by way of compensation.

7. It is at least doubtful whether the result of proceedings under Section 214 can be considered to be an 'order.' The proceedings leading up to such an order, if it be an order, are not in the strict and technical sense judicial proceedings at all. No

procedure is imposed at any stage, no person need be formally cited, no plaint need be filed no party has a right to prove his case in such way as he chooses. The whole power is in the Court which may examine into the conduct of the person complained of, and after such examination may 'compel' repayment or contribution by way of compensation. The word 'compel' seems to contemplate an order entirely distinct from an order adjudicating upon the rights of parties. It presupposes, not a formal adjudication, but simply a conviction in the mind of the Court that such order as it is going to make is just. The Act contemplates no order by way of formal adjudication upon the matter of right. That which it authorises is a compulsory, that is to say an executive, order. But it by no means follows that it is an order having the force of a decree. It certainly is not a decree. It differs from a decree in many essentials and attributes. Section 166 certainly allows it to be enforced in the manner in which decrees of the winding up Court made in any suit pending therein may be enforced. But this is merely a provision as to the procedure which may be observed in enforcing the order. The mode in which an order may be enforced is not necessarily an indication or a criterion of the nature of the order. There is a great difference and no inter-connection between the force of a decree and the method of enforcing it. I have been unable to find any authority as to the meaning of the words 'force of a decree' used in Article 11 of the 2nd schedule of the Court-fees Act. In the case of *Jamsang Devabhai v. Goyabhai Kikabhai* I.L.R. 16 Bom. 408, which was a case of a second appeal to the High Court in a question involving a right to partition, it was held, at page 412, that as the appeal was a 'miscellaneous appeal' arising from an order and not from a decree a Court-fee of Rs. 2 was sufficient. The same principle would prime facie apply to the present case. Further, as the Court-fees Act is a fiscal enactment, it is one whose provisions are to be construed strictly, and, whenever there is any ambiguity or doubt, in favor of the subject.

8. Now the words 'having the force of a decree' are not very intelligible. Their meaning has not been interpreted by any authority, and in the present cases I am not prepared to say that the orders in question have such force. I am therefore of opinion that the Rs. 2 Court-fee is sufficient.

