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Court : Gujarat

Decided On : Dec-06-1977

Reported in : (1978)19GLR892

Judge : M.P. Thakkar, J.

Appellant : Ashvinkumar Narmadashanker Dave

Respondent : Krishnachandra Narmadashanker Dave and ors.

Judgement :

M.P. Thakkar, J.

1. A startling and unjust result would follow, namely a litigant who is denied entry to the Court Room would yet have to pay the fees for trying to seek entry thereto in the sense that though his plaint may be rejected and he may be denied a decision on merits or in accordance with the procedure prescribed by the Civil Procedure Code on the ground of failure to comply with the Court order to revise upwards the valuation of the suit and to pay differential court-fees, he would yet be made to pay the same if the order of the learned trial Judge were in be sustained.

2. The petitioner instituted a suit, being Suit No. 339/72, in the Court of the Civil Judge (S.D) at Baroda. Upon an objection being raised with regard to the

adequacy of the court-fees, he was directed to revise the valuation upwards and make good the resultant deficit of Rs. 2260/-. Upon the failure of the plaintiff to revise the valuation upwards and to pay the deficit court-fees on the ground that he was unwilling and unable to do so, the learned trial Judge rejected the plaint by his order dated January 15, 1974. Some four months thereafter at the instance of the original defendants the Inspecting Officer made a prayer to the Court for issuing a certificate for the recovery of the deficit court-fees notwithstanding the fact that the plaint stood rejected by violate of the aforesaid order of the Court. Thereupon the plaintiff has invoked the jurisdiction of this Court by way of the present petition.

2.1. A reference to the provisions contained in Order 7 Rule 11 of the Code of Civil Procedure of 1908 will show that it is incumbent on the Court to reject a plaint under Clause (c) where the suit is properly valued but the plaint is insufficiently stamped In that case as even on the basis of the valuation made by the plaintiff himself, the plaint is not adequately stamped, the Court cannot proceed further with this suit till the plaint is properly stamped and the Court can take cognizance of the plaint. This must be so because under Section 4 of the Bombay Court-fees Act of 1959 no Court can take official cognizance of a document which is not properly stamped. Such a document cannot be filed, exhibited or recorded or received by any public officer till the document is properly stamped. When therefore, on the face of it the plaint is not properly stamped, the Court has no option but to reject the plaint. Under Rule 13 of Order 7 it provided that such a rejection will not preclude a litigant from presenting a fresh plaint in respect of the same cause of action. This stands to reason on principle for the plaint has been rejected not on account of want of merit in the suit but it has been rejected on the ground that it is not properly stamped and the officers of the Court cannot receive it or act off it till the document is properly stamped. The rejection of the plaint off this ground is not a determination on merits of the dispute and under the circumstances a plaintiff whose plaint has been rejected can file a fresh suit as and when he is in a position to pay the necessary court-fees. When a plaint is rejected on such a ground, there is no question of the plaintiff being required to make good the deficit or the plaintiff being compelled to make good the deficit by recovery proceedings under Sub-section (6) of Section 12 of the Court-fees Act.

When the Court refuses to act on the plaint and rejects it and denies the plaintiff an opportunity of availing of the forum of the Court for seeking redress on the ground that sufficient court-fees are not paid, he cannot be compelled to pay court-fees for otherwise the result would be that while his plaint has been rejected and he has been refused an adjudication on merits, he could yet be compelled to pay the court-fees. It must be realised that once a plaint is rejected, there is no jurisdiction in the Court to revive the proceeding having regard to the scheme of Order 7. The only course open is to file a fresh plaint. A grave injustice would result if the court-fees already paid are lost to the plaintiff. He is deprived of the right to seek adjudication from the court and yet he is compelled to pay the court-fees for if the court-fees are compulsorily collected he should be entitled to adjudication on merits. The Court cannot both reject his plaint and refuse to adjudicate and yet recover the court-fees from him after rejecting the plaint unless the Court is in a position to reverse this previous order of rejection of plaint for failure to pay deficit court-fees. The same would be the position when the plaint comes to be rejected under Clause (b) of Rule 11 for failure of the plaintiff to revise and correct the valuation upwards as per the direction of the court upon the Court coming to the conclusion that the relief is undervalued. There is no coercive power in the Court to oblige a litigant to correct the valuation and pay court-fees on the basis of the holding of the Court that the relief is undervalued. A plaintiff may not be in a position to revise the valuation as per the direction of the Court and then he would be visited with the consequence contemplated by Rule 11(b), namely, that his plaint would stand rejected. Since that is the only consequence provided; for failure to carry out the direction of the Court to correct the valuation and there is no provision in the Civil Procedure Code or the Court Fees Act under which a litigant can be compelled to revise the valuation, he cannot be made to pay the resultant court-fees by a coercive process. All that can happen to him would be that if he is unable to comply with the direction of the Court, he would be visited with the consequences contemplated by Clause (b) of Rule 11 of Order 7, namely, that his plaint would stand rejected. There can, therefore, be no question of making recovery of deficit court-fees by recourse to a coercive machinery. In fact there would be no deficit since the question of deficit can only arise after the valuation is corrected. It is, therefore, clear that a plaintiff cannot be obliged or compelled to

pay court-fees and forced to litigate if he is not willing to do so on the ground that he is not in a position or unwilling to pay the court-fees when his plaint comes to be rejected under Clause (b) or Clause (c) of Rule 11 of Order 7. A litigant cannot be expected to attempt to enter the portals of the Court only provided he is in a position to correctly anticipate the view of the Court at the cost of having to pay additional court fees which he may either be unable or unprepared to pay regardless of whether he is prepared to litigate in that event. He may well say 'I do not want to avail of the forum of Court and to litigate if my valuation is unacceptable to the Court and in that case I may be permitted to abandon the attempt'. One can enter a shop in the mistaken belief that the Article may be within his means and return empty-handed if he finds that the Article is in reality as valued by the shop-keeper beyond his means. He cannot be obliged to return empty-handed and yet to pay the price of the Article. It would be grossly unfair and unjust. So also it would be unjust and unfair to accept the view canvassed by the Revenue which is wholly untenable for the reasons discussed earlier. Of course the matter would stand on a different footing where he obtains a decision or consent decree from the Court for in that event there would be no question of returning from the threshold of the Court Room. So far as the present case is concerned, that question does not arise. The learned trial Judge was, therefore, in error in granting the request of the Inspecting Officer to issue a certificate of recovery.

3. The revision is, therefore, allowed. The impugned order is set aside. Rule is made absolute. Opponent No. 1 shall pay the costs of the petitioner for he has moved the Inspecting Officer and initiated the proceeding and has supported the order even in this Court. So far as opponent No. 3 is concerned, there will be no order regarding costs.