

Kamal Sukla Vs. Krishna Roy

Kamal Sukla Vs. Krishna Roy

SooperKanoon Citation : sooperkanoon.com/880697

Court : Kolkata

Decided On : Nov-17-2003

Reported in : 2004(1)CHN359

Judge : Dilip Kumar Seth and ;Rajendra Nath Sinha, JJ.

Acts : West Bengal Court-Fees Act, 1970; ;West Bengal Court-Fees (Amendment) Act, 2002

Appeal No. : F.A.T. No. 979 of 2003

Appellant : Kamal Sukla

Respondent : Krishna Roy

Advocate for Pet/Ap. : P.B. Sahoo and ;Gopal Chandra Mukherjee, Advs.

Judgement :

Dilip Kumar Seth, J.

1. The Stamp Reporter in his report has pointed out that there is deficit of Rs. 12,454/- in the payment of Court-fees on the Memo, of Appeal. It appears that this calculation has been made on the basis of the amendment brought about in the West Bengal Court-Fees Act, 1970 through the West Bengal Court-Fees (Amendment) Act, 2002 increasing ad valorem court-fees. It seems that this view was adopted by the Stamp Reporter on the basis of the decision of this Court in

Narayan Chandra Ghosh v. Probhamoyee Roy Chowdhury and Ors., 73 CWN 799, by the learned Single Judge relying on the decision of this Court and some other Courts referred to the said decision as pointed out by Mr. Sahoo, learned Counsel, who was requested to assist the Court.

2. The learned Counsel for the appellant, on the other hand, pointed out that the right of appeal is a substantive right, which is determined on the date the proceeding is instituted. The appeal is a continuation of a proceeding and as such, except in respect of matters of procedure, the substantive law as prevailing on the date of the institution of the suit would govern the proceedings even in appeal. According to him, though the payment of court-fees is a matter of procedure but when such matter of procedure impairs the right of appeal, it affects the substantive right and, therefore, the court-fees as applicable on the date of institution of the suit would govern the court-fees on the memorandum of appeal despite amendment of the Court-Fees Act, since appeal is the continuation of the same proceedings. In order to support his contention, he relied on the decision in Garikapati Veeraya v. N. Subbiah Choudhury and Ors., : [1957]1SCR488 .

3. Mr. Sahoo had contended that the decision in Narayan Chandra Ghosh (supra) was rendered without having notice to the decisions in re: Reference under Section 5 of the Court-Fees Act, : AIR1955 Bom287 , by a Id. Single Judge and Sawaldas Madhavdas v. Arati Cotton Mills Ltd., : AIR1955 Bom332 by a Division Bench, since affirmed by the Apex Court in State of Bombay v. Supreme General Films Exchange Ltd., : [1960]3SCR640 , affirming the view taken by the Bombay High Court. Therefore, according to him, the court-fees payable on the Memo, of Appeal would be governed by the law relating to payment of court-fees prevailing on the date of institution of the suit.

4. Admittedly, the right of appeal is a statutory right and a substantive one as contended by Mr. Sahoo. This right is determined as soon the proceeding is instituted. This right cannot be impaired by imposing onerous condition by subsequent amendment, though such condition imposed through law, which are procedural in nature. A substantive right cannot be affected by procedural amendment. If such right is impaired and if any onerous condition is imposed

making the right of appeal, onerous than that which was available under the law as prevailing on the date of institution of the suit, then it will affect the substantive right of the party. Therefore, the amendment of the Court-Fees Act increasing fees would amount to a condition though procedural onerous one impairing the substantive right of appeal. Therefore, it would amount to taking away or affecting the right of appeal through retrospectively, travelling to the date of the institution of the suit or the proceeding, given to the amendment. Therefore, the amendment brought about after the institution of the suit cannot be treated to be retrospective to the extent to affect the substantive right as available on the date of the institution of the suit. Therefore, it would be the Court-Fees Act as prevailing on the date of institution of the suit would govern' the payment of court-fees on the memorandum of appeal.

5. The decision in Narayan Chandra Ghosh (supra) by the learned Single Judge had dealt with the questions without having notice of the two Bombay cases and the Supreme Court Case, which were not considered in the said decision. This decision was rendered on 10th July, 1968 whereas the Bombay decision was rendered in 1955 and the Supreme Court decision was given in 1960. The learned Single Judge in Re: Reference : AIR1955 Bom287 (supra) had taken the view that the appeal is a substantive right and such right can neither be taken away nor be so onerous as to make it difficult for the party to exercise it under certain circumstances. An Act imposing a burden has always been construed strictly and a fair construction of the language used in the Act is to be given unless the amendment was retrospective. In the present case, the West Bengal Court-Fees (Amendment) Act, 2002 had never been expressed to be retrospective. It was given effect to on and from 28th October, 2002 long before which the suit was instituted. The Division Bench in Sawaldas Madhavdas v. Arati Cotton Mills, : AIR1955 Bom332 , had also taken the same view in respect of payment of court-fees on the memorandum of appeal holding that the amended Act continued to exist for the purpose of supporting the right of appeal which existed prior to the coming into force of the new law. The right of appeal vests both in the plaintiff and in the defendant at the date when the proceedings are initiated or the suit is filed. Even though the decree was passed after the amendment of the Court-Fees Act, the relevant date to consider is when the suit was filed, out of which the appeal

arises. The Bombay High Court speaking through Chagla, CJ. followed the decision in Hossain Kasem Dada(India) Ltd. v. State of Madhya Pradesh, : 1983(13)ELT1277(SC) approving Nagendra Nath Bose v. Mon Mohan Singh : AIR1931 Cal100 .

6. This view found favour by the Apex Court in the State of Bombay v. Supreme General Films Exchange Ltd. & Arati Cotton Mills Ltd., : [1960]3SCR640 . Affirming the view of the Bombay High Court [Arati Cotton Mills, : AIR1955 Bom332 (supra)], the Apex Court had held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment. In the process of this conclusion the Apex Court had further held that the court-fees payable on the memorandum of appeal filed after the amendment are payable according to the law in force at . the date of filing of the suit and not according to the law in force on the date of filing of the memorandum of appeal, approving the decision in the case of Nagendra Nath Bose (supra) quoting the observation of Mitter, J.:

'We think the contention of the petitioner is well-founded and must prevail. That a right of appeal is a substantive right cannot now be seriously disputed. It is not a mere matter of procedure. Prior to the amendment of 1928 there was an appeal against an order refusing to set aside a sale (for that is the effect also where the application to set aside the sale is dismissed for default) under the provisions of Order 43, Rule 1 of the Code of Civil Procedure. That right was unhampered by any restriction of the kind now imposed by Section 174(5), proviso. The Court was bound to admit the appeal whether the appellant deposited the amount recoverable in execution of the decree or not. By requiring such deposit as a condition precedent to the admission of the appeal, a new restriction has been put on the right of appeal, the admission of which is now hedged in with a condition. There can be no doubt that the right of appeal has been affected by the new provision and in the absence of an express enactment this amendment cannot apply to proceedings pending at the date when the new amendment came into force. It is true that the appeal was filed after the Act came into force, but that

circumstance is immaterial--for the date to be looked into for this purpose is the date of the original proceeding which eventually culminated in the appeal.'

7. In the circumstances, in our view, the report of the Stamp Reporter is misconceived. The court-fees paid on the memorandum of appeal which is identical with that of the court-fees paid on the plaint is the appropriate court-fees payable on the memorandum of appeal. Therefore, the court-fees paid are sufficient.

8. Let the Stamp Reporter be informed.

9. Let the appeal be registered.

10. Let the application be listed under the heading 'application'.

11. Let xerox certified copy of this order, if applied for, be supplied to the appellant as early as possible on compliance with requisite formalities.

Rajendra Nath Sinha, J.

12. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com