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Court : Himachal Pradesh

Decided On : Sep-11-1953

Reported in : AIR1954HP41

Judge : Chowdhry, J.C.

Acts : Court-fees Act, 1870 - Schedule - Articles 11 and 13; ;Himachal Pradesh (Courts) Order, 1948; ;Court-fees (Himachal Pradesh Amendment) Act, 1953

Appeal No. : Civil Revn. No. 15 of 1953

Appellant : Devi Singh

Respondent : Bhagat and ors.

Advocate for Def. : D.N. Vaidya, Govt. Adv.

Advocate for Pet/Ap. : D.R. Chaudhari, Adv.

Judgement :

ORDER

Chowdhry, J.C.

1. This was a suit by three persons, Bhagat, Suresh and Boota for recovery of Rs. 4761/- on a bond against Devi Singh, Sant and Puran Chand. The trial Court decreed the suit against Devi Singh alone and dismissed it against the other two defendants. Devi Singh appealed to the District Judge and impleaded as

respondents the other two defendants and two others, named Ramsaran and Jiwanu but none of the three plaintiffs. Later, an application was filed on behalf of the defendant appellant Devi Singh before the District Judge under Order 41, Rule 20, C. P. C., for impleading the three plaintiffs.

This application was rejected by the District Judge. By the same judgment he dismissed the appeal holding that as a result of the dismissal of the application under Order 41, Rule 20 the appeal was not properly constituted and therefore not entertainable. The present revision has been filed by the defendant Devi Singh only against the order of the District Judge rejecting the said application under Order 41, Rule 20 and court-fee of Rs. 2/- has been paid. I have heard the learned Counsel for the petitioner and the learned Government Advocate on the office report that the court-fee paid is deficient.

2. Under paragraph 36 of the Himachal Pradesh (Courts) Order 1948, court-fees on revision petitions filed in this Court are to be the same as those payable on like applications filed in the High Court of Judicature for the East Punjab. In the High Court of Judicature for the East Punjab court-fees on revision petitions are governed by a special article, i.e. Schedule I Article 13, Court-Pees Act. Under this provision when the amount or value of the subject matter in dispute does not exceed Rs. 25/- the court-fee payable is Rs. 2/-, but when such amount or value exceeds Rs. 25/- the fee leviable is the same as on a memorandum of appeal.

In the present case, the petitioner has not put any value on the subject matter in dispute. In other words, he has put no value on the subject matter of the liability or otherwise of his application under Order 41, Rule 20 to be dismissed. But the learned Counsel for the petitioner says that this omission is immaterial. If the order of the lower appellate Court rejecting the petitioner's application is alone considered, it would no doubt be an order which was not appealable. In order to see as to what the fee leviable on a memorandum of appeal would be in such a case under Schedule I Article 13, the proper provision to be referred to would be Schedule II Article 11 and not Schedule I Article 1, Court-Pees Act. Under the former provision, as amended by the Court-Pees (Himachal Pradesh Amendment) Act IV of 1953, the proper court-fee payable is Rs. 4/-. It follows

therefore that the court-fee paid by the petitioner is deficient by Rs. 2/-.

3. It was, however, contended by the learned Government Advocate that it is not open to the petitioner to treat the lower appellate Court's order rejecting the application under Order 41, Rule 20 as a separate order. According to him the subject matter in dispute in the present revision is the final order of dismissal of appeal passed by the lower appellate Court, and therefore court fee is payable on Rs. 4761/-.

In support of this argument the learned Government Advocate cited the following AIR cases--'Nand Kumar v. Pashupati Ghosh', AIR 1941 Pat 385 (A); --'Sherali v. Jagmohan Ram', AIR 1931 All 333 (2) (B) and -- 'Ramji Pandey v. Alaf Khan', AIR 1925 Pat 121 (C). All these were cases in which the orders passed were in substance decrees as defined in Section 2(2) of the Code although ostensibly the Court purported merely to strike off the name of a party as if under Order 1 Rule 10 of the Code. That is, however, not the case' here. The lower appellate Court first rejected the petitioner's application under Order 41 Rule 20 and then, no doubt as a result of that rejection, dismissed the appeal.

In the cases cited by the learned Government Advocate no such two orders were passed, but only one order which had the effect of conclusively determining the rights of the parties with regard to the matters in controversy in suit and therefore amounted to a decree. In the present case, the order dismissing the appeal did no doubt amount to such a decree, but the order rejecting the application under Order 41 Rule 20 did not amount to such a decree but only to a non-appealable and therefore a revisable order. The cases cited by the learned Government Advocate have therefore no application for purposes of interpretation of the order of the lower appellate Court rejecting the application under Order 41, Rule 20.

The only question that remains to be considered is whether it was incumbent upon the petitioner to file an appeal against the order of dismissal of his appeal by the learned District Judge, or was it open to him to come in revision only against the order passed by that Court rejecting his application under Order 41, Rule 20. On this point the learned Government Advocate cited no authority. To me it appears that it was open to the petitioner to come up in revision against the said order

alone. Suppose the learned District Judge had heard the parties on the application alone on a preliminary date and dismissed the application. Suppose also he fixed a subsequent date on which he heard the parties again on the merits of the appeal and dismissed it on the ground that the appeal was not properly constituted. In such a case, it would have been open to the defendant Devi Singh to file a revision in between the passing the said two orders against the rejection of his application. Does it make any difference that the two orders were passed by the District Judge by one and the same judgment? I personally can find none.

On the other hand, if the present revision is allowed and the order of the lower appellate Court dismissing the petitioner's application under Order 41, Rule 20 is set aside, the very substratum for the dismissal of his appeal would vanish. The result in that case would be that the allowing of the present revision would 'ipso facto' result in the setting aside and dismissal of the appeal by the District Judge.

4. I therefore hold that it was open to the defendant to file the present revision against the order of dismissal of his application alone. In this view of the matter, for reasons already recorded I hold that the court-fee paid by the petitioner is deficient by Rs. 2/-. He is hereby ordered to make good the deficiency within a month. He will also file within the same period a copy of the memorandum of appeal filed by him in the lower appellate Court which he has so far not done.