

Bombay High Court Mahendra Chunilal Mehta And Anr. vs Rajendra Chunilal Mehta And Anr. on 22 April, 2003 Equivalent citations: AIR 2003 Bom 350, 2003 (3) BomCR 849, 2003 (3) MhLj 895 Author: A Khanwilkar Bench: A Khanwilkar ORDER A.M. Khanwilkar, J. 1. By this Chamber Summons the applicants are seeking to challenge the order dated 2.12.2002 passed by the Taxing Master. There is delay of only one day. Affidavit in support of this Chamber Summons has set out sufficient cause for one day's delay. That averment has gone uncontroverted. In the circumstances, delay of one day is condoned. 2. The applicants and opponents were party to Suit No. 2502 of 1988 in which consent terms came to be filed on behalf of the plaintiffs and defendant Nos. 4 and 5. Learned Single Judge of this Court on 4.3.2002 took the consent terms on record and decreed the suit in terms of the consent terms against defendant Nos. 4 and 5 without prejudice to the rights of other defendants. It is relevant to note that the applicants in this Chamber Summons are defendant Nos. 2 and 3 in that suit. The applicants carried the matter in Appeal against the Order dated 4.3.2002 being Appeal No. 678 of 2002. In the appeal it is clearly mentioned that the applicants were aggrieved by the order dated 4.3.2002 passed by the learned Single Judge in the said suit taking on record consent terms executed between the plaintiffs and defendant Nos. 4 and 5. To put it differently, they have prayed for setting aside only that part of the order dated 4.3.2002. When the said Appeal came up for hearing before the Division Bench of this Court on 30.9.2002, objection regarding court fees was raised as the applicants had affixed Court fees of Rs. 200/- whereas according to the registry of this Court the applicants were liable to pay ad-valorem court fees in terms of Article 7 of Schedule I of the Bombay Court Fees Act, 1959. Whereas the applicants paid court fees on the premise that the Appeal was not from a decree or an order having a force of the decree in terms of Article 13 of Schedule II of Bombay Court Fees Act, 1959. The Division Bench of this Court by order dated 30.9.2002 thought it appropriate to refer the matter to the Taxing Officer. Pursuant to the said reference, enquiry has been held and the Taxing Officer has rejected the stand taken by the applicants and held that the applicants are liable to pay court fees on ad-valorem basis in terms of Article 7 of Schedule I of the Bombay Court Fees Act, 1959. 3. Accordingly, the question that arises for consideration the present case is whether the applicants were liable to pay court fees as per Article 7 of Schedule I or Article 13 of Schedule II of the Bombay Court Fees Act, 1959. 4. According to the applicant since they were challenging only the order taking the consent terms filed by the plaintiff and defendant No. 4 and 5 on record, they were neither challenging the decree of the order having the force of the decree. Besides, according to the applicants, the Appeal preferred before the Division Bench of this Court was under Clause 15 of the Letters Patent Appeal. The learned Counsel for the applicants submits that there is perceptible difference between the order passed by the court taking on record the consent terms filed by the parties and the decree founded on those consent terms. He. Therefore, submits that it is open for the applicant to challenge only the order passed by the learned single Judge taking on record the consent terms filed by the plaintiffs and defendant No. 4 and 5 on record. 5. On the other hand Mr. K.R. Belosey,

A.G.P. appearing for the State supports the order passed by the Taxing Officer and contends that the Taxing Officer has rightly applied Article 7 of Schedule I of Bombay Court Fees Act, 1959 and in which case the applicants would be liable to pay the deficit court fees. 6. Having considered the rival submissions, I have no manner of doubt that the applicants have merely challenged that part of the order passed by the learned Single Judge on 4.3.2002 whereby the learned Single Judge has taken on record the consent terms on behalf of the plaintiff and defendant Nos. 4 and 5 whereas the later part of that order proceeds to decree the suit in terms of the consent terms against defendant Nos. 4 and 5 without prejudice to the rights of the other defendants. To my mind, such an appeal would be available to the applicants in terms of Clause 15 of the Letters Patent Appeal. In that case, the applicants are justified in contending that they would be liable to pay court fees as provided under Article 13 of Schedule II of the Bombay Court Fees Act, 1959. The learned Counsel for the applicants has rightly placed reliance on the decision of the Division Bench of this Court reported in XLVI (1943) Bombay Law Reporter 424 in the case of Umiashankar Naranji Pandia versus Shivshankar Praphashankar Bhatt. In this decision it has been held that the Appeal against Order recording compromise is available. No doubt this decision proceeds on the basis of legal position as it obtained then by virtue of provisions contained in Order XLIII Rule 1 (m). However, deletion of Clause (m) of Rule 1 of Order XLIII C.P.C., would make no difference to the legal position that the order taking on record consent terms filed by the parties could be challenged if permissible in law. Clause 15 of the Letter's Patent Appeal in no way would preclude the applicants from filing Appeal challenging such an order and the Appeal having been filed by the applicant under that provision would therefore be available. A priori the applicant would be liable to pay court fees in terms of Article 13 of Schedule II of the Bombay Court Fees Act, 1959. 7. Therefore the order passed by the Taxing Officer which is impugned in this Chamber Summons dated 2nd December, 2002 is set aside. No order as to costs. Order accordingly.