B. Nathoo Ram Khanna vs Shri Krishna Ji Maharaj And Ors. on 15 March, 1950

Equivalent citations: AIR1950ALL520, AIR 1950 ALLAHABAD 520

JUDGMENT

Sapru, J.

1. This is an appeal by the plaintiff against an order of the Civil Judge of Moradabad directing him to make good a deficiency in court-fee which was discovered after the institution of the suit.

2. The suit was instituted on 4th August 1946. On a question of the sufficiency of court-fee having been raised by the Inspector of Stamps, Mr. D. P. Mehrotra, who was then the Civil Judge, held that the court-fee paid was sufficient. At the time that order wag made, no appearance had been entered by the defendants. Subsequently, in the written statement filed by them, the question of court-fee was again raised. Thereafter an issue was framed by Mr. D. P. Kumar who , had succeeded Mr. Mehrotra as Civil Judge, and he, on 16th April 1948 held that the court-fee paid was insufficient and directed the plaintiff to make good the deficiency. The plaintiff has come in appeal to this Court against that order.

3. The point which the case raises is whether it was open to the learned Judge to consider the question relating to the sufficiency or otherwise of the court-fee paid by the appellant after the matter had been raised by the Chief Inspector of Stamps and an order had been passed on it by his predecessor in office. The question whether the order of Mr. Mehrotra in regard to the amount of the court-fee payable by the plaintiff was correct or not is immaterial. What is important to note about it is that it was passed after the point had been raise I by an officer competent to raise it under Section 24A, Court-fees Act. Against that order, it was open to the Chief Inspector of Stamps, under Section 6B (1), to file a revision in this Court within three months from the date of receipt of such order. This was not done, with the result that Mr. Mehrotra's order became final so far as the Chief Inspector of Stamps was concerned. Sub-section (4) of Section 6 of the Act, which is an amendment of the Court-fees Act made by the United Provinces Act, XIX [19] of 1988, lays down that:

> "Whenever a question of the proper amount of court-fee payable is raised otherwise than under Sub-section (3), the Court shall decide such question before proceeding with any other Issue."

4. By this amending Act, Sub-sections (2) to (6) were added to Section 6, Court-fees Act; and three new Sections 6A, 6B and 60, were inserted. These sub-sections have reference to the procedure which the Court must follow where an objection is raised regarding the sufficiency of a court-fee payable with respect to any plaint or memorandum of appeal in any Court. They make it obligatory

on the Court, whenever an issue with regard to the court-fee is raised either at the instance of the Inspector of Stamps or of the opposite party, to decide that issue as a preliminary issue and not leave it to be decided along with the remaining issues at the time of final hearing. This is clear from Sub-sections (3) and (4). Under Section 6A (1) a right of appeal has been given to a person called upon by the Court to make good a deficiency in court-fee. Section 6A (2) ' lays down that where an appeal is preferred by the plaintiff against an order demanding payment of an additional court-fee from him, and the deficiency has not been made good, the mere filing of an appeal will operate as a stay of all the proceedings in the suit, including the granting of an injunction or the appointment of a receiver. Section 6A (3) makes it obligatory for a copy of the memorandum of appeal, together with a copy of the plaint and of the order appealed against, to be sent forthwith by the appellate Court to the Chief Inspector of Stamps. Section 6B (1) authorises the Chief Inspector of Stamps to move the Court to which an appeal lies from a decree in the suit or appeal in which such order has been passed for revision of any order passed under Sub-section (3) of Section 6, if the order passed is at variance with the opinion of the officer by whom the question of deficiency has been raised. Section 6C (1) authorises the Chief Controlling Revenue Authority, if the conditions laid down in that section are satisfied, to refer the court-fee matter, with his own opinion thereon, to the High Court to which such civil Court is subordinate.

5. It will be seen that the question regarding the sufficiency or otherwise of the court-fee paid can be raised both under Sections 6(3) and 6(4). Can it be raised after the Court has recorded a decision, and the time for filing a revision by the Chief Inspector of Stamps under Section 6B (1) has expired, by the defendant, and must the Court go into that question again, notwithstanding the fact that it has already recorded a decision of the Inspector of Stamps ? This is the question which this case raises. It hag been contended before us that it was obligatory on the Court to go into that question over again and record a fresh finding on it before proceeding with the trial of other issues. Reliance has been placed upon S. 12 of the Court-fees Act for the proposition that in order that the decision may be final between the parties to the suit, it is essential that the decision be made only after the written statement has been filed, issues struck and the defendant heard. In order to make the point clear, I quote below Section 12:

> "Every question relating to valuation for the purpose of determining the amount of any he chargeable under this Chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit."

6. Reference was made on this part of the case to Mt. Gangoo v. Mt. Saloo, A. I. R. (28) 1941 Nag. 217 : (I. L. R (1942) Nag. 432). In that case, the view which appealed to Clarke J. was that a decision as to the court-fee payable was not final within the meaning of Section 12 unless it had been reached after both sides have had a chance to be heard. That learned Judge, on the authority of the Full Bench case, Amjad All v. Muhammad Israil, 20 ALL. 11: (1897 A. W. N. 167 F.B.) held that:

> "Where the Court after hearing the appellant decides ex parte that the memo is properly stamped but subsequently after hearing both the parties comes to the conclusion that the memo is insufficiently stamped, the latter decision must be taken

to be final between the parties within the meaning at Section 12."

7. The observations in Amjad All v. Muhammad Israil, 20 ALL. 11 : (1897 A. W. N. 137 F.B.) on the strength of which this view was taken are quoted below :

> "When the Legislature intends to confer the status of finality upon an ex parte decision, it does so in plain and explicit terms, as in Section 5 of the Court-fees Act. In absence of clear and unequivocal language to the contrary I must hold that a decision to be 'final as between the parties' must be a judicial decision upon a hearing in which the general judicial maxim of 'Audi alteram partem' has been observed. If then a plaint or memorandum of appeal has been so 'filed,' (and under the rules of this Court it cannot be so filed without a report by the Munsarim that the court fees paid on it are sufficient) it surely would be open to the defendant at the hearing to contend that the fees paid were insufficient, and that for that reason the plaint on the file of the Court was not a valid plaint. On deciding such a plea as is the ease here--the Court would, in my opinion, come to the decision, which, under the wording of Section 12 of the Court-fees Act, would be final as between the parties."

8. In that case when the order was passed neither the plaint had been admitted nor registered nor the defendant has been summoned. What had happened was that a ministerial officer of the Court, viz , the munsarim, had made a report which the-Court had adopted, apparently without even calling on the plaintiff. On the following day when the plaintiff contested the correctness of the order as to the insufficiency of-the court-fee it was too late, limitation having expired.

9. As regards the case Amjad Ali v. Muhammad Israil, 20 ALL. 11: (1897 A.W.N. 157 F.B.), suffice it to say that the Full Bench was dealing with a case in which all that had happened was that on the presentation of the plaint, the munsarim had made a report to the Court which the Court had adopted, apparently even without calling on the plaintiff or hearing any arguments at all. No reference was made in it to an earlier Full Bench case, Balkaran Rai v. Gobind Nath, 12 ALL. 129 : (1890 A. W. N. 39 F.B.). In that case it was held that the term "final" in Section 5 of the Court-fees Act had precisely the same meaning as the term "final" in Section 12 of that Act. In both sections it is used in its ordinary legal sense of unappealable. A decision under Section 5 and similarly one under Section 12 is not open to appeal, revision or review and is final for all purposes.

10. It is obvious that the basis underlying the argument which has been founded upon the cases of Mt. Gangoo v. Mt. Saloo, A. I. R. (28) 1941 Nag. 217: (I. L. R. (1942) Nag, 432) and Amjad Ali v. Muhammad Israil, 20 ALL 11: (1897 A. W. N. 157 F.B.) is the assumption that the defendant is a necessary party to a determination of an "issue" with regard to the court-fee. Whether the proper Revenue Authority can raise a question of the sufficiency of the court-fee after it has been decided by the Court at the instance of the defendant in the absence of the Revenue Authority, is a matter which we are not called upon to decide in this case. The fallacy underlying the contention that a defendant can raise the question of the sufficiency of the court-fee before a Court which already, even in his absence, decided the question at the instance of the Inspector of Stamps is the assumption that the opposite party is a necessary party to a decision relating to the sufficiency or otherwise of the

court-fee paid by the plaintiff. Apart from the fact that the Full Bench case, Amjad Ali v, Muhammad Israil, 20 ALL 11: (1897) A. W. N. 157 F B.) is on the fact distinguishable from the present case, a consideration which has to be kept in mind is that it was decided before the pronouncement of their Lordships of the Judicial Committee of the Privy Council on this point in Rachappa Subrao v. Shidappa Venkatrao, 43 Bom. 507 at p. 518: (A.I.R. (5) 1918 P.C. 188) In that case their Lordships observed as follows :

> "The Court-fees Act was passed not to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the State. This is evident from the character of the Act, and is brought out by Section 12, which makes the decision of the First Court as to value final as between the parties, and enables a Court of appeal to correct any error as to this, only where the First Court decided to the detriment of the revenue."

These observations o£ their Lordships are binding on us and the case before us, therefore, has to be viewed in the light of the law laid down by the Privy Council.

11. I may be permitted on this point to refer to the Full Bench case of Ram Khelawan Sahu v. Bir Surendra Sahi, 16 Pat. 766 : (A.I.R. (25) 1938 Pat.' 22 (F.B.)), In that case it was observed as follows :

> "Now, the question of res judicata is one of fact and is an issue between the parties to the suit, and it was held by the Privy Council that a superior Court could not revise the decision; whereas in the case before Wort J. as in the ease before u", the matter was one of the court-fee payable and this is the question not between the parties but between the crown and the plaintiff, see Baijnath v. Umeshwar Singh, 16 Pat. 600 : (A.I.R. (24) 1937 Pat. 550 (S.B.)) It is true that in the trial of a suit the Munsif commonly 'frames an issue' as to whether the court-fee paid is sufficient, but the issue so framed is not one between the parties and has nothing whatever to do with the merits of the suits., The defendant may contend that the court-fee paid is insufficient with a view to preventing the suit from being tried, but in arguing his contentions the defendant is really acting as a common informer. The Crown may be grateful for his assistance, but it is not a matter which really concerns the defendant, The Court is doing nothing wrong in hearing the contentions of the common informer, but in deciding the question of court-fee he is deciding an issue not as between the plaintiff and the defendant wherein his decision both on law and fact is not subject to revision, but is deciding an issue as between the Crown and the plaintiff;..."

12. I may, before parting with this part of the case, refer to another decision, Official Receiver v. Makund Das, A.I.R. (36) 1949 ALL. 324 : (I. L. R. 1949 ALL. 710). It would appear that what happened in that case was that on the question of a deficiency in the court-fee haying been raised by the Chief Inspector of Stamps the trial Court found that the court-fee paid was sufficient and the Chief Inspector of Stamps did not file a revision against the decision of the trial Court under Section

6B (1). There-after when the matter came up in appeal before this Court, the question that the court-fee paid was not sufficient was raised once again by the Stamp Reporter of this Court. On these facts, it was held that it was competent for this Court to entertain the objection of the Stamp Reporter and require additional court-fee to be paid by the plaintiff. I do not take this case to lay down that, once the question of court-fee has been decided on its being raised by the proper revenue authority and has become final by reason of the fact that no revision has been filed against it within the time allowed by law, it can be re-agitated again before the same-Court at the instance of the defendant. To do so would be, to use the language of their Lordships of the Privy Council, to enable the defendant "to utilise the provisions of the Act, not to safeguard the interests of the State, but to obstruct the plaintiff." Had the revenue authority come up in revision to this Court, had this Court upheld the order of the learned predecessor of the learned Judge and had the defendant thereafter moved the trial Court and asked it to consider the issue again, it is obvious that the Court would have been in an embarrassing position as it could not go against the decision of this Court.

13. It strikes me that had the Legislature intended that no final decision on a question of court-fee shall be given until the defendant had filed his written statement and the issues have been struck, it would have teen quite easy for it to do so by laying down as a substantive provision of the law that on a question of court-fee no final decision shall be given unless both parties are heard or, in any case, the written statement has lean filed and the issues struck. As was pointed out by King J. in Mahalakshmamma v. Venkatanarayanamurthi, A.I.R. (28) 1941 Mad. 626: (198 I.C.597), the word "decided" and the word "decision" are given in that section without any qualifications at all, and they must clearly apply to any adjudication by the Court upon the initiative of the proper revenue authority at a stage when the opposite party has not put in its appearance. For, as remarked by Rajagopalan J. in Shankaranarayana v. Vasudeva Achuta, A. I. B. (36) 1949 Mad. 395 at p. 396 : (1918-2 M.L J. 553) :

> "The defendant's interest is not so much in the quantum of the court-fee paid, though his help might certainly be valuable to the Court in deciding the issue where the issue is left open for decision. To reiterate, in this case by the order dated 4th March 1946 that question was concluded by the District Munsif, and he did not intend to leave it open for decision afresh in his own Court."

14. The law, as I understand it, therefore, is that the defendant is not a necessary party to a determination of the question of the sufficiency of a court-fee. No doubt, he has been given by Section 6(4) a right to raise the issue, but he can exercise that right so far as the Court trying the issue is concerned only until such time as any decision on it has not been recorded. If after hearing the proper revenue authority, the Court adjudicates upon that question and records a finding, and its finding is not challenged by the revenue authority as provided in Section 6B (1) within the period of limitation allowed by law, that finding is conclusive so far as that Court is concerned and the matter cannot be re-agitated by the defendant before that Court. In further support of this view, reference may be made to the cases of Lakshmana Ayyar v. Palaniappa Chettiar, A. I. R. (22) 1935 Mad 927:(158 I. C. 588) and Mahalakshmamma v. Wenkatanarayana, A.I.R. (28) 1941 Mad. 626 : (198 I. C. 597).

15. I, therefore, agree with the view expressed in Shankaranarayana v. Vasudeva Achuta, A.I.R. (36) 1949 Mad. 395 : (1948-2 M. L. J. 553) that the order of Mr. D. P. Mehrotra was a judicial order which concluded the question as to the sufficiency of court fee in that Court and it was not open to his successor to re open the question. Any error committed by Mr. Mehrotra in deciding the adequacy of the court-fee at that stage could only be corrected by an appellate Court under Section 12(2).

16. For the reasons given above, I would allow the appeal with costs.

Mootham, J.

I agree.