Deokinandan And Ors. vs Jhotha Lal And Anr. on 10 November, 1951

Equivalent citations: AIR1952ALL224

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. The plaintiffs filed a suit in the Court of the Civil Judge, Kanpur, for recovery of a sum of RS. 7,645.43. The plaintiffs' case was that the defendants were plaintiffs' Commission Agents working at Collectorganj, Kanpur, and the plaintiffs had sent to the defendants mustard seed for sale, but as the price was rising they had instructed the defendants not to sell the goods till farther instructions, and contrary to the directions given by the plaintiffs the defendants sold the goods which caused a loss of Rs. 7,345-4-3 to the plaintiffs which the plaintiffs were entitled to recover. The suit was decreed in part on 17 11-1945, and a decree for Rs. 3,039 9-0 was passed in plaintiffs' favour. The defendants thereafter filed an application for review under Order 47, Rule 1, Civil P. C., on 27-8-1946, and claimed that the decretal amount should be reduced by a sum of Rs. 426-15-0. Court fee of only Rs. 0.15 0 was paid on the application as the defendants' Contention was that there were clerical errors in the judgment which could be corrected under Section 152, Civil P. C. and that it was not necessary for them to make an application for review under Order 47, Rule 1 of the Code. The Court was, however, of the opinion that there were no accidental errors and Section 152, therefore, did not apply. The defendants were required to pay proper court, fees on the application for review and the question that has been referred to us for answer is what was the proper court-fee payable on the application.

2. The learned civil Judge was of the opinion that in view of the language of Article 5 of Schedule 1, Court-fees Act (VII [7] of 1870) the defendants must pay the court-fees payable on the original plaint. On behalf of the defendants, however, a contention was raised that they wanted the amendment of the decree only to the extent of Rs. 426 15-0 and they should be asked to pay court-fee on that sum and no more. The lower Court decided against the defendants relying on certain decisions of this Court, to which reference will be made later, and the defendants filed an appeal to this Court under Section 6A, Court fees Act. The case came up before a bench of learned Judges, who, in view of certain decisions of the Madras and Rangoon High Courts, thought it desirable that the question should be decided by a larger bench.

3. Article 5 of Schedule 1, Court-fees Act, is as follows:

"5.

Application for review of judgment, if presented before the ninetieth day from the date of the decree.

One half of the fee leviable on the plaint or memorandum of appeal."

Learned counsel for the defendants appellants has relied on the word 'leviable' and has urged that the words 'the plaint or memorandum of appeal' should be construed as if they meant plaint or memorandum of appeal asking for the same relief as that asked for in the application for review. In 'In the Matter of Sheikh Maqbul Ahmad,' 31 ALL. 294 the same argument was advanced before a learned single Judge who held that the word 'leviable' was used "in order to provide for an application for review by a defendant or respondent in the case of a suit or appeal in forma pauperis." The word 'leviable' appears to have been used instead of the word 'levied' as the legislature intended that the applicant for review should pay the same court-fee that should have been paid on the plaint or on the memorandum of appeal as the case may be, that is to say, if by reason of the fact that a party was pauper no court-fee had been levied, that would not mean that on a review application by a person who was not a pauper no court fee would be charged; or if on the plaint or the memorandum of appeal incorrect amount had been charged as court-fees, which were not really payable in accordance with the provisions of the Court fees Act, the applicant for review could claim that he should be asked to pay proper court-fees and not the court-fees that had been wrongly levied. We do not think that the use of the word 'leviable' instead of the word 'levied' helps the appellants and makes it necessary for us to hold that the Legislature intended to introduce a fiction and wanted an application for review to be treated as a plaint or a memorandum of appeal. On the language of the Article that suggestion is completely ruled out by reason of the use of definite article 'the' and not 'a' as is used in Article 2A of the same Schedule. Article 2A is as follows:

"2A. Application or written statement by a defendant in a suit for partition praying for partition of his share in the property sought to be partitioned.

The same fee which would bave been payable on a plaint if such defendant a suit for partition."

The Legislature obviously intended that in a case where a defendant claimed partition of his share he would have to pay the same court fee as would have been payable by him if he did file a suit, while in Articles 4 and 5 there is nothing to indicate that the application for review of judgment was to be treated as a plaint or memorandum of appeal. What the third column of these Articles provides is that the fee leviable on such application for review would be the same as "on the plaint or memorandum of appeal."

4. In In re A. A. R. Chettyar Firm v. Daw Htoo, 11 Rang. 120 reliance was placed on the fact that a review application was not included in Article 1 of Schedule 1. With great respect to the learned Judge we fail to see how that helps the appellants. If the intention of the Legislature was that court fees payable on an application for review should be ad valorem on the amount given in the

application, it could easily have been included in Article 1 of Schedule 1 instead of being placed separately in Article 4. Article 1 provides for payment of ad valorem fees on a sliding scale on certain documents mentioned in the first column at rates mentioned in the third column. If the intention of the Legislature was that an application for review should be similarly treated as a plaint or memorandum of appeal, we see no reason why it was not included in Article 1 and it was necessary to have a separate article for such an application.

5. In our view, Articles 4 and 5 of Schedule 1 can only mean that the court-fees payable on a review application are the same as the court-fees payable on the plaint or the memorandum of appeal, as the case may be, in which the judgment, a review of which is asked for, was passed. Except the Madras and Rangoon High Courts, other High Courts seem to have taken the same view. The matter came up before the Taxing Officer of this Court in 1698 and the decision of the Taxing Officer is Imdad Husan Khan v. Badri Prasad, 1898 ALL. W. N. 212. That view was accepted by the Taxing Judge, Alkman J., in In the matter of Sheikh Maqbul Ahmad, 31 ALL. 294. See also Abdul Gani v. Sito Singh, A. I. R. (12) 1925 Pat. 368.

6. In Pameshar Kurmi v. Bakhtawar Pande, 1932 ALL. L. J. 908 the position was not challenged though the point raised in that case was slightly different and the question which came up for decision was whether court-fees should be paid as on the date when the memorandum of appeal was filed or as on the date when the review application was made; in that case as amendment having come into force in between the two dates which had made substantial changes in the amount of court-fees payable.

7. The Judicial Commissioner's Court at Oudh and the Chief Court of Oudh have taken the same view in Nageshwar Sahai v. Shiam Bahadur, A. I. R. (11) 1924 Oudh 108 and in Bam Asrey v. Rameshwar Prasad, A. I. R. (30) 1943 Oudh 225.

8. The latest decision of the Calcutta High Court on the point is in Satyakripal Benerjee v. Satyabikash Banerji, 57 Cal. 679.

9. In Ram Gopal v. Gauri Shankar, I. L. R. (1937) Lah. 238 the Lahore High Court has also taken the same view. See also Monmohan Lal v. Raj Kumar Lal, 1946 ALL. L. J. 3 at p. 20 (F. B.), Behari Lal v. Gobardhan Lal, I. L. R. (1948) ALL. 532 (F. B.) and Nayudamma v. Sivaraju Dharmachand, A. I. R. (30) 1943 Mad. 515.

10. In proceedings, 16 Jan. 1872, 7 Mad. H. C. R. App. 1, the Madras High Court took a contrary view and that view was followed in In re P. Nahako, 50 Mad. 488. As has been said by us the reasons which weighed with the learned Judges, with great respect to them, do not appeal to us and we think that the consistent view of this Court is right.

11. The Rangoon High Court in In re A. A. R. Chettyar Firm v. Daw Htoo, 11 Rang. 120 has followed the Madras view. The point that we are considering today did not directly arise in In re Manohar G. Tambekar, 4 Bom. 26 and we do not think that the view expressed in that case is really against the view which we have expressed. In that case the plaintiff had claimed a sum of Rs. 2 lacs under

various heads which gave rise to distinct and separate causes of action. The suit was decreed for Rs. 40,000 only under one such cause of action and all other claims under other causes of action were dismissed. A review application in which part of the decree which related to the Bum of Rs. 40,000 was filed on behalf of the defendant and the learned Judge, Melvill J., held that court-fees were payable only on the sum of Rs. 40,000 and not on the sum of Rs. 2 lacs. He expressed that view with certain amount of hesitation and based it on Section 17, Court-fees Act and held that where a composite suit was filed on different causes of action it was possible to hold that there was a separate plaints with respect to each cause of action. That point has not arisen before us and we need not, therefore, express any opinion.

12. The result, therefore, is that this appeal fails and is dismissed with costs.