

Bombay High Court

Shree Bajwa Ganesh Oil And Rice ... vs Parikh Occhavlal Amratlal on 30 September, 1955

Equivalent citations: AIR 1956 Bom 253

Bench: Gajendragadkar

JUDGMENT

1. The only point which is raised by Mr. Oza in the present revisional application is that the learned trial Judge was in error in calling upon his clients to pay court fees on an amount of Rs. 15,625/-. This order came to be passed in a suit against the petitioners. The opponents had made a claim for Rs. 27,965-3-0 against the petitioners.

The petitioners contended that this amount was not due from them and that in fact there were other transactions between them and the opponents and it had been agreed between the parties that the amount due to the petitioners from the opponents in respect of those transactions should be taken into account and credit should be given to the petitioners in respect thereof before the opponents made their claim on the Khata.

According to the petitioners, the amount which they are entitled to recover from the plaintiffs in respect of this other transaction is Rs. 15,625/-. After this plea was made by the defendants an issue was raised as to whether it was necessary that the defendants should pay court-fees on the said amount.

The plaintiffs urged that, however the pleadings may have been drafted in the written statement, in substance it was a claim for set-off and a claim for set-off could not be made unless court-fees were paid on the amount claimed. This argument has been accepted by the learned Judge, with the result that he has directed the petitioners to pay court-fees on the amount in question.

2. Mr. Oza feels aggrieved by this order and he contends that the view taken by the learned Judge in respect of the character of the claim made by his clients in their written statement is erroneous. In support of his argument Mr. Oza wanted to reply upon a decision of this Court in -- 'Tayabali Ghulam Hussein v. Atmaram Sakharam', AIR 1914 Bom 299 (A). I do not propose to consider the merits of this objection at this stage.

The suit in which the present order has been passed is being tried by a Civil Judge. Senior division, and findings recorded by the learned trial Judge on any of the issues could be challenged by the party aggrieved by the said findings and decree before a Divisional Bench of this Court. If I were to decide the point of court-fees at this stage, it would not be fair to the party that may be aggrieved by this order, because a revisional application is heard by a single Judge of this Court.

That is one practical consideration which has weighed in my mind. Besides, the finding on the question of court fees does not affect the question of jurisdiction of the Court in the present case. It is not as if the suit would have to be tried by another Court if Mr. Oza were to succeed. Often enough, in revisional applications we come across points of court-fees which affect the question of jurisdiction of the trial Court.

If, for instance, as a result of the decision of the question of court fees the claim for jurisdiction is increased in a number of cases the civil Judge, Junior Division, before whom the suit is filed may not be competent to try that suit. In such a case, the point of court fees is allowed to be raised at an interlocutory stage by invoking the revisional jurisdiction of this Court under section 115.

The present case is not of that type. Therefore, I do not think it would be in the interest of the petitioners that I should consider the merits of the order and decide it finally in a revisional application. It is true that, as a result of my order dismissing the revisional application on the ground that it is made against an interlocutory order, Mr. Oza's clients may have to pay court-fees if they want a decision of the trial Judge on the merits of the claim.

But even if Mr. Oza's clients pay court fees under the compulsion of the order, it would be open to them to take the point in appeal trial the order was wrong and that the Court fees paid by them should be refunded to them. That being so, I do not think I should entertain this revision application at this stage.

3. The revision application accordingly fails and the rule is discharged with costs. The petitioners are given time for one month from the receipt of the record in the trial Court to pay court fees.

4. Rule discharged.