MANU/BH/0193/1958

**Equivalent Citation:** AIR1958Pat587

**IN THE HIGH COURT OF PATNA**
**FULL BENCH**

A.F.O.D. No. 303 of 1950

Decided On: 28.02.1958

Appellants: **Narayan Tiwari and Ors.**
**Vs.**
Respondent: **Vasudeo Narayan Missir and Ors.**

**Hon'ble Judges/Coram:**
*B.N. Rai , Khaleel Ahmed and K. Dayal , JJ.*

**Counsels:**
*For Appellant/Petitioner/Plaintiff: R.S. Chatterji and Srideo Misra, Advs.*

*For Respondents/Defendant: Shyamnandan Singh, Adv.*

**JUDGMENT**

**Khaleel Ahmed, J.**

**1.** The only point that arises for determination before us is whether the court-fee payable on the application for review in this case is one-half of the fee leviable on the plaint filed in the Court below or on the valuation of the reliefs sought in the application for review.

**2.** It is the admitted case of the parties that the judgment giving rise to the first appeal in this Court was delivered on 25th January, 1950, and as against that there was a review application filed in the same Court by the plaintiffs on 1st February, 1950, which was within ninety days from the date of the judgment. The subject-matter of the review was confined to two items, first, the mesne profit which was valued at Rs. 2,000/- and, secondly, the value of dalan and cattle shed which was assessed at Rs. 500/-, and accordingly on that valuation a sum of Rs. 144/6/- only was paid as court-fee on the application for review.

The Court on hearing the parties allowed the application for review on 25th May, 1950. Thereafter there were two first appeals filed in this Court against the judgment of the trial Court. The one was by the defendants and that has been numbered as First Appeal No. 303 of 1950. That is still pending for disposal and it is that appeal which has given rise to the question of court-fee on the application for review. The other appeal which was numbered First Appeal No. 317 of 1950 was filed by the plaintiffs. That at present stands dismissed for default.

**3.** It may be stated here that on the valuation as mentioned in the plaint a court-fee of Rs. 684/8/-only had been paid thereon. In appeal, however, it transpired that the valuation given in the plaint was not correct. Accordingly this matter was sent down for further enquiry in the Court below. On enquiry it was found that the suit should have been correctly valued at Rs. 26,923/-and not at what was originally mentioned in the plaint.

Further, what happened was that in the meantime before the filing of the application for review and after the institution of the suit, the Surcharge Amendment Act, 1948 came into force whereunder the surcharge on the fee payable had been increased at the rate of six annas per rupee. The Stamp Reporter accordingly in calculating the court-fee payable on the application for review has assessed the court-fee leviable on the plaint, firstly, on the increased valuation of the properties in suit and secondly at the rate which became leviable on the date when the application for review was filed and not at the rate which was enforceable on the day when the suit was instituted.

And this when worked out comes to Rs. 1887/3/- as the sum leviable on the plaint for the purpose of assessing court-fee on the application for review. That means, according to him, a sum of Rs. 943/9/6 (i.e. half of Rs. 1887/3/-) should have been paid as court fee on the application for review. But as out of it a sum of Rs. 144/6/- only was paid in the Court below, he has reported that the court-fee paid on the application for review is short by Rs. 799/3/6 and this deficit is payable in law by the plaintiffs.

This report of the Stamp Reporter has been strongly challenged by the plaintiffs. Their contention is that the court-fee leviable on the application for review should be assessed on the valuation of the reliefs sought therein. In my opinion, so far as the contention advanced by the plaintiffs is concerned, that does not get any support from the language of Article 5 of Schedule 1 of the Court-fees Act, which, as admitted by both the parties, is applicable to the facts of this case. That Article reads as follows :

| "Number | | Proper fee |
|---|---|---|
| 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". |

A bare reading of this Article shows that the words "the plaint or memorandum of appeal" used in column 3 are inter-connected with the word "judgment" used in column 1. In other words, the plaint or memorandum of appeal as used in column 3 is that plaint or memorandum of appeal which has given rise to the judgment under review as referred to in column 1 and not a plaint or memorandum of appeal or any plaint or memorandum of appeal which may be construed or constructed on the basis of the allegations made in the application for review.

After all, the words "the plaint or memorandum of appeal" in every litigation or a legal proceeding in a Court of law have got definite connotations and implications. In law there cannot be two plaints or two memoranda of appeals in any suit giving rise to one judgment. It is, however, true that decisions on this point are not uniform and there are clearly two lines of thoughts which have been adopted in interpreting this Article. The one is represented by the view followed in the High Courts of Madras, Bombay and Rangoon.

They are to be found in Punya Nahako v. Emperor MANU/TN/0046/1926 : AIR 1927

Mad 360: ILR Mad 488 (A); In re Manohar G. Tambekar ILR 4 Bom 26 (B) and A.A.R. Chettyar Firm v. Daw Htoo ILR Rang 120 : AIR 1933 Rang 203 (C). As against this there is the contrary view taken by other Courts in India, as is evident from the decisions in Nandi Ram v. Jogendra Chandra Dutta, MANU/WB/0202/1923 : AIR 1924 Cal 881 (D); Deokinandan v. Jhotha Lal MANU/UP/0088/1952 : AIR 1952 All 224 (FB) (E); Ibrahim Ali v. Ahsan Hussain, MANU/NA/0081/1932 : AIR 1933 Nag 207 (F); Ram Gopal v. Gauri Shankar AIR 1937 Lah 439 (G); Chandanmal v. Roopnarain, MANU/RH/0034/1954 : AIR 1954 Raj 84 (H) and Janki Kuar v. Mt. Babni, AIR 1948 Oudh 225 (I).

So far as this Court is concerned, only two decisions have been brought to our notice. The one is of a Division Bench in Rameshwar Mahton v. Dwarka Prasad, MANU/BH/0174/1924 : AIR 1925 Pat 36 (J) and the other is an unreported decision given in Civil Review No. 21 of 1953, D/- 16-2-1954 (K), by Ramaswami, J., as he then was. The view taken in the Bench decision of this Court is the one followed by Calcutta and other High Courts in India while that followed in the Civil Review is on the line taken by the Madras, Bombay and Rangoon High Courts.

It was in these circumstances that this Court by its order dated 15th July, 1957, thought it advisable to refer the matter to a larger Bench to have an authoritative decision on the matter.

**4.** I have carefully gone through the decisions of the Madras High Court in ILR Mad 488: MANU/TN/0046/1926 : AIR 1927 Mad 360 (A), of the Bombay High Court in ILR 4 Bom 26 (B) and of the Rangoon High Court in ILR Rang 120: AIR 1933 Rang 203 (C), and, if I may say so, it appears to me that they are eminently based on the principle of hardship and injustice.

For example, Wallace, J. in the case reported in ILR Mad 488: MANU/TN/0046/1926 : AIR 1927 Mad 360 (A), holds that the phrase "the fee leviable on the plaint or memorandum of appeal" should be construed as the proper fee to be levied if the applicant for review were then putting in a plaint or memorandum of appeal for same relief and in supporting this view the learned Judge has observed that it.

> "implies that the applicant pays not for the relief sought for by any one else over which he has no control but on the relief sought by himself, and he thus pays naturally and equitably on that relief as if it were a plaint or memorandum of appeal by himself, for that relief. This appears to be the most reasonable interpretation of the phrase and it is the interpretation put upon the phrase by this Court so long ago as 1872: See Proceedings, 16-1-1872, 7 Mad HCR App 1 (L), and this interpretation has been practically followed ever since by this Court.
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> The Bombay High Court has taken a similar view in ILR 4 Bom 26 (B). It follows therefore that the court-fees will be the court-fee payable as if, on the date when the review application was put in, the applicant was filing a plaint or memorandum of appeal for the same relief, i.e., in the present case the court-fee leviable will be the court-fee which falls to be levied under the amended Court-fees Act calculated as if the application for review were a plaint or memorandum of appeal for the relief sought for".

It is obvious that this interpretation of the relevant article of the Court-fees Act is based on the fiction that the application for review is to be treated as a plaint or a memorandum of appeal. In my opinion, if I may say so with all respect to the learned

Judge, there does not seem to be any reasonable ground on the language of the relevant article of the Court-fees Act to consider any imaginary plaint or any imaginary memorandum of appeal, especially when there is already one on the record which is well understood as the plaint or memorandum of appeal. This aspect of the case, if I may say so, has been fully discussed by Mookerjee, J. in MANU/WB/0202/1923 : AIR 1924 Cal 881 (D) and I respectfully endorse the same.

**5.** In ILR 4 Bom 26 (B), M. Melvill, J. while accepting the similar view observed:

> "But it would be manifestly unjust that when a plaint or memorandum of appeal comprises a number of claims, and a portion only of such claims has been allowed by the judgment, the party seeking a review in regard to those claims which have been allowed should be required to stamp his application with a fee sufficient to cover the amount of the claims which have been disallowed in his favour, as well as the amount of the claims in regard to which he wishes the Court to review its judgment."

But then he did so not without hesitation as he himself observed therein.

**6.** Similarly in AIR 1933 Rang 203: ILR Rang 120 (C), Sen. J. observed :

> "It seems to me that if the view of the Calcutta, Allahabad and the Punjab High Courts is to prevail than a glaring piece of injustice is done to an applicant seeking a review only on the question of costs awarded against him and where the original plaint and memorandum of appeal bear an ad valorem court-fee on the amount of the claim in suit out of all proportion to the value of the relief sought in review. It could never have been the intention of the legislature to penalise a litigant, when it granted him the right to a review of a judgment of the trial or appellate Court to practically debar him in many cases from taking advantage of such a right, as the court-fees payable on his application for review in such cases may be even greater in amount than the value of relief which he seeks to obtain in review."

In my opinion, the simple answer to the question of hardship and injustice is that if the court-fee payable on an application for review comes to an enormous amount, it is open to the aggrieved party to file an appeal against that decision and to pay proportionate court-fee on it and not to file any review application. Further the question of hardship is not likely to arise in a case where the application for review is a bona fide one and based on grounds well-established in law for in such a case the court-fee paid is always permissible in law to he refunded and as for the case where the application for review is frivolous and not bona fide, I think there is no reason why there should be any consideration shown to its applicant on the ground of hardship.

In any case, there is nothing for the present plaintiffs to say that they have suffered hardship for their application for review has already been allowed with costs. That means, the court-fee assessable on the application for review and paid by them will have to be ultimately borne by their adversary. Then though it is true that in the case of a fiscal statute if any provision of law is susceptible to two interpretations, the One which is just and in favour of the subject should be uniformly accepted but that cannot be a ground for so construing it even when there is no scope for any equivocation in the section or any doubt as to its implication.

In the case of Article 5 of the Court-fees Act, I think, there is no scope for saying that

the words "the plaint or memorandum of appeal", as used in column 3, mean anything else than the plaint or memorandum of appeal which has given rise to the judgment under review. Therefore, the question of hardship or injustice cannot be allowed to have any sway on the decision taken in the matter of its interpretation. In my opinion, the reasons given in support of the view taken by the Courts of Calcutta, Allahabad, Nagpur, Lahore, Rajasthan and Oudh, if I may say so with all respect to the learned Judges of those Courts, are much more sound, convincing and consistent with the terms of the statute.

I, therefore, hold that the words "the plaint or memorandum of appeal", as used in column 3 of Article 5, mean the plaint or memorandum of appeal which has given rise to the judgment under review and not any other plaint or memorandum of appeal. In other words, the plaint or memorandum of appeal as used in column 3 of Article 5 relates back to the plaint or memorandum of appeal giving rise to the judgment under review. If that is so then the fee which is leviable in this case on the application for review should be half of the fee which was leviable on the plaint of the suit.

I have already stated above that the valuation of the suit as given originally in the plaint was wrong and its correct valuation as now found is Rs. 26,923/-. Therefore, it is on that valuation that the court-fee on the plaint has to be assessed and that obviously at the rate which was then chargeable under the Court-fees Act, that is on the day when the suit was instituted. On that day the Surcharge Amendment Act, 1943 had not coma into force and, therefore, there is no reason why that should be taken into consideration in assessing the court-fee leviable on the plaint and to this extent the learned Standing Counsel appearing for the State has also conceded.

**7.** Therefore, it is directed that the court-fee on the application for review should be assessed. On the principles sated above and the deficit, if any, should be calculated on that basis after giving a set off of Rs. 144-6-0, which has already been paid on the application for review. There will be no order as, to costs.

**B.N. Rai, J.**

**8.** I agree.

**K. Dayal, J.**

**9.** I agree.