

ALLAHABAD HIGH COURT

Mithoo Lal

Vs.

Chameli

(Niamatullah, J.)

23.02.1934

JUDGMENT

Niamatullah, J.

1. This is an office report which deals with a question of court-fee. It is said that the appellant, who was the defendant in the original suit and the appellant in the lower appellate Court paid less court-fee on his memorandum of appeal to the lower appellate Court than the amount which ought to have been paid and that the lower appellate Court heard the appeal taking it for granted that sufficient court-fee had been paid on the memo of appeal to it.

2. The stamp reporter was at first of opinion that the deficiency in the court-fee paid in the lower appellate Court amounted to ₹ 66. Mr. Baleshwari Prasad, who appeared for the appellant, filed objections to the report questioning, inter alia, the correctness, of the amount of the alleged deficiency. The registrar, before whom the objection had been taken, directed the stamp reporter to reconsider the matter. The latter then declared the deficiency to be ₹ 20 which the appellant failed to pay within the time fixed by the registrar who is the taxing officer. Another question appears to have arisen in the meantime, namely, whether the appellant was con eluded by the report on the stamp reporter, which had not been challenged within the period of limitation. The bar was considered to be one arising from the provisions of Ch. 3, Rule 11, of the Rules of this Court, which provides that the appellant's advocate, on being informed of the stamp reporter's finding regarding the deficiency in the court-fee, should intimate within three weeks, whether he accepts it or disputes the accuracy thereof, and that in default of such intimation within the aforesaid period the appellant shall be debarred from questioning the accuracy of the stamp reporter's report. Mr. Badeshwar Prasad took a further objection to the effect that Ch. 3, Rule 11, of the High Court Rules, had no application to the circumstances of this case and that the matter is one which must be decided judicially by a Bench of this Court. The registrar, who is also the taxing officer appointed by this Court under Section 5, Court-fees Act, directed the case to be laid before a Bench of this Court for orders in view of the appellant having failed to pay the

court-fee, which according to the stamp reporter's report, was payable by him in terms of his report.

3. Three questions have been argued before us. The first is whether, having regard to the facts of this case, Ch. 3, Rule 11, of the High Court Rules, or Section 5, Court-fees Act, debar the appellant from questioning before us the accuracy of the stamp reporter's report. If the appellant is not so' debarred the second question which arises is whether the full amount of court-fee, payable on the appellant's memorandum of appeal in the lower appellate Court, was paid, and if not, what amount should be paid by him to make good the deficiency.

4. As already stated, the appellant is said to have paid insufficient court-fee on his memo of appeal to the lower appellate Court. It is not disputed that he has paid full court-fee on his memo of appeal to this Court. We are of opinion that Rule 11, Ch. 3 of the Rules of this Court, is intended to apply to cases in which the stamp reporter finds that a document, which outfit to bear a stamp under the Court-fees Act, has been received, filed or used in this Court without being properly stamped. In such cases the consequences laid down in Rule 11 would follow the stamp reporter's finding. That rule has however no application where the alleged deficiency is in the court-fee payable on a document received, filed or used in the Court of first instance or in the lower appellate Court.

5. Similarly, Section 5, Court-fees 'Act, contemplates cases in which an insufficiently stamped document is filed in this Court. That section should be read with the preceding Section 4, which provides that:

No document of any of the kinds specified in Schedule 1 and 2 to this Ant annexed, as chargeable with fees, ah all be filed, exhibited or recorded, in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court..in the exercise of its jurisdiction as regards appeals unless..in respect of such document there be paid a fee of art en amount not less than that indicated by either of the said schedules as the proper foe for such document.

6. Then follows Section 5, which provides that:

when any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, sis to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing officer, whose decision thereon shall be final..

6. We think that the jurisdiction of the taxing officer is limited to cases in which, it is alleged that a document filed, exhibited or received in this Court is not sufficiently stamped and that it does not 'extend to cases in which it is alleged that a party paid insufficient court-fee on his plaint or memorandum of appeal in the lower appellate Court. To this class of cases Section 12(2), Court-fees Act, is clearly applicable. It is laid down in that section:

But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall, require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question

been rightly decided, and the provisions of Section 10, para, (ii), shall apply.

7. In this class of cases the question of deficiency in the court-fee paid on the memorandum of appeal in the lower appellate Court is a question arising in the appeal preferred in this Court and should be judicially determined. The stamp reporter or the taxing officer may raise the question; but their special jurisdiction arising from the provisions of Chap. 3 of Rule 11, of the Rules of the Court, or Section 5, Court-fees Act, does not exist. This view appears to be in conflict with the decision of a Single Judge reported in *Bahal Kuhar v. Naraiti Singh, AIR 1925 Allahabad 184 : 84 Ind. Cas. 822*, but finds support from the decision of a Bench of this Court in *Raghubir Prasad v. Shankar Baksh Singh A.I.R. 1914 All. 520*. The decision of the Full Bench, in *Mohan Lal v. Nand Kishors (1905) 28 All. 270* proceeds on the same ground, though, it was rather assumed than decided that Sections 10 and 12, Court-fees Act, are applicable to a case like, the one before us. Accordingly we hold that the appellant is not concluded either by the stamp reporter's finding or by his failure to pay the court-fee within the time granted by the taxing officer, and that it is open to him to show that the court-fee paid by him on his memo of appeal to the lower appellate Court was sufficient.

8. As regards the amount of court-fee, which, the appellant ought to have paid on his memo of appeal in the lower appellate Court, it appears that the suit out of which this appeal arose was one for profits. It was decreed by the trial Court for a certain sum of money with interest at the rate of 12 per cent, per annum up to the date of the suit and interest pendente lite was awarded at the same rate till the date of decree, and thereafter at 6 per cent. The defendant appealed to the Court of the District Judge impugning the correctness of the decree passed by the Court of first instance. In his memorandum, of appeal no ground was specifically directed against the award of interest before suit or pendente lite'. The appeal however sought the reversal of the decree in its entirety and the dismissal of the suit. The subject-matter of the appeal should, in the circumstances, be considered to be the principal amount of the suit and the interest up to the date of the suit. Ad valorem court-fee is payable under Article 1, Schedule 1, Court-fees Act, on the value of the subject-matter of the appeal. The stamp reporter thinks that the appellant ought to have paid court-fee on the amount of interest accruing at the rate awarded by the Court between the date of the suit and the date of the decree. This view might have been correct if the appellant had specifically challenged the decree of the trial Court on the ground that no pendente lite interest should have been awarded. This is however not the case. Interest pendente lite is awarded under Section 34, Civil Procedure Code The Court may award it whether the plaintiff claims it or not. In this respect the Court's power stands on the same footing as its power to award costs to a successful party. It is a well settled rule that no court-fee is payable on the amount of costs awarded by a decree appealed from, if no ground is specifically directed against the award of costs. This was held by their Lordships of the Privy Council in *Doorga Doss Chowdry v. Ramanauth Chowdry 1859 8 M.I.A. 262*. The present practice is in accordance with that rule. The same principle is applicable to interest pendente lite which the Court may award in the exercise of its power under Section 34, Civil P. C. On a proper reading of the defendant-appellant's grounds of appeal in the lower appellate Court we are satisfied that the subject-matter of this appeal in that Court was the principal amount and interest up to the date of the suit.

Calculating the court-fee payable on those amounts it has been found that the fee paid by him was sufficient. It is only if we hold that the court-fee was payable also on the amount of interest pendente lite that a question of deficiency can arise. In these circumstances we hold that the defendant-appellant paid full court-fee on his memorandum of appeal in the lower appellate Court and that no further payment need be made by him.

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