

CALCUTTA HIGH COURT

Ashutosh Bhattacharjee

Vs.

Satindra Kumar Choudhury

F.A.T. No. 1296 of 1949

(Roxburgh, J.)

09.02.1950

ORDER

Roxburgh, J.

1. This is a reference under Section 5, Court-fees Act. The appellant in this case obtained a decree for specific performance of a contract of sale of some immovable property, valuing the suit at Rs. 75,000. The lower Court directed that the parties would bear their own costs. The appeal to this Court relates only to the order which in effect deprives the appellant of the cost which he would ordinarily expect to receive. The memorandum of appeal was filed with a court-fee stamp of Rs. 2 only. The Stamp Reporter demanded an ad valorem court-fee on the amount of costs. The matter was placed before the Taxing Officer and has now been referred to me for decision.

2. Two decisions of this Court relating to the matter of court-fees chargeable in respect of costs are referred to in the reference by the Taxing Officer, viz., a decision of Nasim Ali, J. in the case of F.A.T. No. 2488 of 1937 [*Kshirode Chandra Sen v. Sm. Bhagbati Dasi*] and a decision of Chatterjea, J. in the case of *Kumari v. Rangpur North Bengal*¹

3. In the course of arguments my attention has also been drawn to a decision of Mitter, J. in the case of *Jyoti Prosad v. Jogendra Ram Roy*²,

4. The case of *Kamal Kumari Devi v. Rangpur North Bengal Bank*³, arose out of a cross-objection where costs had been disallowed in a suit on a mortgage. Chatterjea, J. first considered the general question as to the liability for court-fees in respect of a dispute in appeal relating to costs whether alone or whether also joined with an appeal as to the main subject-matter. He pointed out that it had been the regular practice of this Court that in no case were any court fees charged in respect of a dispute as to costs where there was also an appeal with regard to the main

subject-matter in dispute. He then discussed various cases of other Courts including in particular *In re Makki*⁴, and found that no distinction could be made between cases where the appeal related to the whole subject-matter of the original suit, or only to part thereof. In particular he cited as an example the case of a suit for Rs. 1,000 with a decree

¹25 CWN 934 : (AIR 1921 Cal 55)

³25 CWN 934 : (AIR 1921 Cal 55)

²32 CWN 1105 : (AIR 1928 Cal 878)

⁴19 Mad 350

for Rs. 990, no costs being allowed. He pointed out that if there was an appeal in respect of Rs. 10 not allowed, as well as in respect of the whole costs, court-fees would be charged on Rs. 10 only. He also relied on two cases of the Privy Council on the question of the meaning of the "subject-matter in dispute" viz., *Doorga Doss v. Ramanath*⁵ and *Nilmadhab Dass v. Bishumbhar Doss*⁶,

5. This decision was referred to by the Taxing Officer in the reference before Nasim Ali, J., in the case of *Kshirod Chandra Sen v. Sm. Bhagabati Dasi, in*⁷ but was not discussed by the latter. The case before Nasim Ali, J. related to an appeal against an award under the Land Acquisition Act, and was really disposed of as covered clearly by Section 8, Court-fees Act. Nasim Ali, J. observed :

"Where the relief as to costs is the only relief claimed in the appeal, the value of the subject-matter of the appeal is the amount of costs in dispute in the appeal. Further it is conceded by the learned Advocate for the appellant in this case that the subject-matter of the present appeal is really the difference between the amount awarded as compensation to the appellant and the amount claimed by the appellant in this appeal as the amount of costs is to be deducted from the amount of compensation claimed by the appellant."

6. It would seem, therefore, that although there was an observation by Nasim Ali, J. on the question which arises in the present case, the decision in the case was really based on Section 8, Court-fees Act.

7. The case of *Jyoti Prosad v. Jogendra Ram Roy*⁸, was a partition case in which on appeal the only question in dispute was as to costs. Hitter, J. held that the case was nevertheless one clearly governed by Article 17 of Schedule II and the fee payable was Rs. 15.

8. The cases cited have discussed the various cases of different Courts in which similar questions had arisen. The judgment of Chatterjee, J., has itself been the subject of later discussion in such cases as *Ma Skin v. Maung Shwa Unit*⁹, and *Ghiranji Lal v. Bool Chand*¹⁰, and the view there expressed has not been accepted. Some comment was also made in the Rangoon case on Chatterjee, J. reference to the decisions of the Privy Council.

9. There can be no doubt that ordinarily where there is an appeal against a decision where the

order that has been made as to costs is the normal order, the costs following the event, no one, I think, has ever suggested that although the costs are included in the decree, on appeal any court fee has to be paid in respect of the costs calculated separately. This practice, in my opinion, seems to be based on the view which was expressed in the Privy Council cases cited. Costs are not regarded as being any part of a subject matter in dispute either in the suit or in the appeal. In the appeal, the appellant does not in such an event really dispute the order as to costs for it is the natural order that is ordinarily made

⁵8 MIA 262 : (1 Sar 772)

⁷ F.A.T. No. 2488 of 1937

⁹2 Bang 637 : (AIR 1925 Bang 145)

⁶13 MIA 85 : (3 Beng LR 27 PC)

⁸32 CWN 1105 : (AIR 1928 Cal 873)

¹⁰52 All 1020 : (AIR 1930 All 832)

following the decision as to the main subject-matter in dispute, and if he himself succeeds in the appeal in regard to the main subject-matter, automatically he will expect to succeed with regard to the costs.

10. The question then arises whether any difference is created where costs do not follow the event and the party affected by the order appeals against the order as to costs either alone or along with an appeal as to the main subject, matter. The same problem also arises in a cross-objection. The matter was tersely dealt with by Sir Arthur, J. H, Collins in the case of *In re Makki*¹¹, by, saying :

"The appellant has made the costs the subject-matter of dispute, and therefore, a court-fee stamp is leviable."

11. Taking the question in its widest form, the difficulty I should feel in accepting that view, apart from the question of what has been the practice in this Court, is that it seems to ignore the problem, which was pointed out by Mitter, J, in the case of *Jyoti Prosad* (32 CWN 1105 : AIR 1928 Calcutta 878) referred to above, in a case coming under Schedule II Article 17. The matter seems more simple if the main subject-matter in dispute is one on which court-fee is payable *ad avlorem* and comes under Art. I, sch. 1, and by following the view of Sir Arthur J.H. Collins it can be said that all that is necessary is to add the costs, where specifically to be in dispute, to the main amount in dispute and charge court fee accordingly. The same, as pointed out by Mitter, J., cannot be easily done if the main subject matter in dispute has no value and the case comes under Article 17 of sch. II.

12. But in any case the matter seems to me, so far as this Court is concerned at any rate, to be settled by the admitted practice that at any rate where a part of the main subject-matter is in dispute in appeal, even though there is a specific dispute about the costs because they have not followed the event, no fee is charged; in other words, the amount of costs in that case is not taken to be part of the subject matter in dispute. I cannot see how, if that is the practice, in such a case any difference can be made in the case where the dispute on the main subject matter, so to speak, in the appellants Court vanishes to zero. It seems to me that the practice should be consistent and

while agreeing that in a case, such as the present, which is admittedly one under Article 1 Schedule 1, court-fee leviable is to be calculated under that Article, I come to the conclusion that as the costs are not to be taken as part of the subject-matter in dispute, the slightly anomalous result is reached that there is an appeal, though the amount of the subject-matter in dispute being in the particular case is nil. The court-fee payable under Article 1 of Schedule 1 there is also nil, because, in my opinion the fees payable are 6 annas on Rs. 5 or part thereof, and here the so called part is nothing; nothing cannot, in my opinion, be deemed to be a part of something. The Court-fees Act is in essence a taxing statute and if the interpretation given is deemed by the powers concerned not to achieve the results they wish, there is no difficulty in their making specific provision for this problem of appeals relating to cost only.

13. I should mention that in the case of *Kamal Kumari Devi V. Bungpur North Bengal*

¹¹(19 Mad 350)

*Bank*¹², Chatterji, J. was dealing with a Cross-objection and made it specifically clear that he expressed no opinion as what is to be done as to the memorandum of appeal; but, on the other hand, in view of the manner in which he dealt with the cross-objection, there can be little doubt that he would not have followed the view I now express. Indeed so far as I can see, there can be no difference between the two cases and both the cross-objection and the memorandum of appeal come under Article 1 Schedule I and are chargeable either as I have indicated, if the view is taken as I have done that the amount of costs does not form part of the subject matter in dispute, or is chargeable in full ad valorem on the view taken by other High Courts. I cannot see how either can be held as coming under Art. II sch. II or Article 1-D of Schedule II. All that section 6 of the Court-fees Act says is that certain documents are to be chargeable with certain fees according to the Schedules. It nowhere said that every document filed in a Court is necessarily chargeable with a fee specified somewhere under the Court-fees Act, and if it cannot be fitted under one, or if the article under which it appears to come does not give any amount of fee as chargeable then by some process of reasoning it must somehow or other be fitted under some other Article.

14. I would also point out that some if not all of the reasons given by Chatterjea, J. for distinguishing between the case of a memorandum of appeal and a cross-objection appear to have lost their validity in view of the amendment of Section 2, Court fees Act, 1870 by Bengal Act VII (7) of 1935 whereby a suit has been defined as including an appeal, and an appeal as including a cross-objection.

15. At any rate, so far as the memorandum of appeal is concerned, the decision of Chatterjea, J. left the matter entirely open, In my opinion, in a case like the present one, it clearly comes, as I have said, under Article 1 Schedule I, although the result is that the fee payable is nothing. The court-fee paid in this case is more than adequate.

Reference answered.

¹²25 CWN 934 : (AIR 1921 Cal 55)