

PUNJAB AND HARYANA HIGH COURT

Kanwar Jagat Bahadur Singh

Vs

The Punjab State

(Kapur and B Narain, JJ.)

11.05.1956

JUDGMENT

Kapur, J.

1. The question for determination in these proceedings at this stage is the amount of court-fee which is to be paid by the appellant.

2. The petitioner was the owner of a large' area of land out of which 1,699 bighas and 1 biswa in village Ralli was requisitioned by the State of the Punjab on the 15th February 1951 and it was acquired on the 8th February 1952. The compensation allowed to him by the Collector was Rs. 1,97,402/14/4 but the petitioner did not accept his to be adequate, therefore Mr. J. S. Bedl, District Judge, Ambala, was appointed as an arbitrator under the Act. He enhanced the amount by Rs. 53,687/11/-. Against this award the petitioner brought an 'appeal under Section 11 of Act XI of 1953 and his prayeris for enhancement of the amount of compensation by Rs. 2,68,274/5/-. He has stamped his memorandum of appeal with Rs. 4/- under Schedule II Article 11 of the Courtfees Act. The State has filed cross-objections, but they have paid court-fee ad valorem, and by an order dated the 1st December 1954 I referred the question of courts fee to a Division Bench which has been heard by us.

3. Under the Punjab Requisitioning and Acquisition of Immovable Property Act, XI of 1953, assessment of compensation is provided for in section 8 and payment in section 9 of the Act. Appeals are provided in Section 11 ; The relevant portion of this section is-

"11. Any person aggrieved by an award of the arbitrator made under Section 8 May, within thirty days from the date of such award, prefer an appeal to the High Court within whose jurisdiction the requisitioned or acquired property is situate."

Section 22 gives power to make rules, but the Rules which are contained in Part V of 1954 Lah LT 16 (A) have no rules about appeals under Section 11.

4. In order to determine the amount of court-fee reference has to be made to the various sections of the Court-fees Act section 4 deals with fees on documents filed in High Courts and Section 8 with fees on documents filed in Mufassal Courts, Section 7 of the Act provides for computation of fees payable in certain cases. Its relevant portion runs as under:

"7. The amount of fee payable under this Act In the suits next hereinafter mentioned shall be computed as follows:....."

Section 8 of this Act deals with fees on memorandum of appeal against order relating to compensation. It provides-

"8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the differences between the amount awarded and the amount claimed by the appellat."

Section 4 is in Chapter 2 which deals with fees in High Courts and Chapter 3 with fees in other Courts and in public offices.

5. As to what is the amount of court-fee to be charged, in various cases is given in Schedules I and II of the Act. Schedule I deals with ad ' valorem court-fee and Schedule II with fixed fees. Article 1 of Schedule I is a residuary Article and runs as under:

"I. Plaint, written statement pleading a set off or counter claim or memorandum of appeal (not otherwise provided for in the Act) or of cross-objection presented to any Civil of Revenue Court except those mentioned in Section 3".

Other Articles of Schedule I are not necessary for the purpose of this case. In Schedule II the only Article Which is necessary to be considered is Article 11 which provides.

"11. Memorandum (a) to any civil Court One
of appeal when the other than a High Rupee
appeal is not *** Court, or to any Re- Eight
from a decree or venue Court or Exe- annas,
an order having cutive Officer other
the force of a de- than the High Court
cree, and i s pre- or Chief Controlling
sented Revenue or Executive Authority;
(b) to a High Court. Pour
or Chief Commis- Rupees,
sioner, or other
' Chief Controlling

Executive or Revenue Authority."

6. The argument raised on behalf of the appellant is that this case falls under Article 11 of Schedule II in that this is a memorandum of appeal and the appeal is not from a decree or an order having the force of a decree and is presented to a High Court and therefore it is liable to a fixed fee of Rs. 4/- and he relies on a judgment of the Bombay High Court in *Hirji Virji Jangbaji v. Govt. of Bombay*¹, His submission is that the District Judge was acting as an arbitrator and not as a Court and the award made by him is neither a decree nor an order having the force of a decree. In my opinion, the memorandum of appeal before us is not an appeal from a decree or an order having the force of a decree. The Punjab Requisitioning and Acquisition of Immovable Property Act provides for the appointment of an arbitrator who can make an award granting compensation and an appeal lies from this award. Section 11 of the Act gives to any person aggrieved by the award of the arbitrator a right to appeal to the High Court. The words used in the Act are "award", "compensation" and "arbitrator." No where is the arbitrator constituted a civil Court nor is the award made by him a decree or an order having the force of a decree. The case is very much analogous to *Secy. of State for India v. Hindusthan Co-operative Insurance Society, Ltd.*².) where it was held that no appeal lay to the Privy Council from a decision of a High Court upon an appeal under the Calcutta Improvement Act from an award of the Tribunal appointed under that Act assessing compensation in respect of land acquired. It was argued before the Privy Council that the Tribunal is not a civil Court or a Court subject to the superintendence of the High Court within the meaning of Clause 16 and there was no right of appeal to the Privy Council, and Sir George Lowndes pointed out at p. 80 (of ILR): (at p. 151 of AIR) that the departure made in the local Acts from the provisions of the Land Acquisition Act is that a Tribunal, was constituted to take the place of a Court under the Land Acquisition Act and the Tribunal was not a Court for the purpose of Section 54 of the Land Acquisition Act, and therefore, an appeal did not lie to the High Court under the general right of appeal which is given by the Land Acquisition Act, but a special provision was made for appeals against the awards of Tribunal, but subject to certain limitations. The Punjab Act is careful to exclude the applicability of the Arbitration Act, Act X of 1940. It is not necessary in this case to determine whether this exclusion is effective or otherwise, but it does show that but for s. 11 no appeal would be competent. I am of the opinion therefore that the award made by an arbitrator is not a decree nor an order.

having the force of a decree within the words used in Article 11 of Schedule II.

7. Counsel for the appellant relied on AIR 1945 Born 348 (B), in which the question for determination was the amount of court-fee to be paid in an appeal against an award of compensation under the Defence of India Act. It was there held that the award of an arbitrator was not a decree nor an order having the force of a decree and therefore the memorandum of appeal was to be stamped under Article 11, of Schedule II of the Court-fees Act. The learned

Judge held that both under the Calcutta Improvement Act as well as under the U. P. Town Improvement Act, the Tribunals making the award were to be deemed to be Courts under , the Land Acquisition Act, and the word "order" used in Section 8 Court-fees Act, has the same connotation as the word "order" used in Section 2(14), Civil P. C., namely the formal expression of a decision of a civil Court which is not a decree. The learned Judge further held that Section 8, Court-fees Act, was not a charging section and was merely a rule for computing ad valorem fee and that the court-fee payable was to be determined by Schedules I and II of the Act.

8. The learned Advocate General mainly relied on section 8 and submitted that the effect of this section was that in cases where an appeal was brought in regard to an order relating to compensation under any Act for, the time being in force for the acquisition of land the amount of fee payable on a memorandum of appeal under the Court-fees Act has to be computed according to the difference between the amount awarded and the amount claimed relied on two Judgments, one of the Calcutta High Court *Anandalal v. Karnani Industrial Bank Ltd*,³ and the other of the Allahabad High Court *Debichand v. Secy of State*⁴, The former is a judgment of Rankin C.J. on a reference under Section 5, Court-fees Act. Certain properties which were within the zemindari of the appellant were acquired and the Collector directed that the whole of the compensation be paid to the Karnani industrial Bank. On the matter being referred to the Tribunal it was held that the lands were rent free and the whole of the compensation was to be paid to the Bank and thus the claim of the appellant was rejected and he took an appeal against this award to the High Court. Dealing with the question as to whether Section 8 is a charging section or not the learned Chief Justice was of the opinion that the section did not itself impose any fee upon anyone, but it provided rule for computation of fee payable under the Act in a certain class of cases. At p. 532 (of ILR) : (at p. 348 of AIR) the learned Chief Justice observed:

"Now, that section standing in the text of the Act proceeds clearly upon the assumption that otherwise in the Act there is a charge which is an ad valorem charge and is not a fixed charge but for that assumption there would be nothing to compute, and the only way in which it can be said that there is a charge which has to be computed is that the charge is imposed by Article 1 of schedule I. Now, Article 1 of Schedule I puts a charge upon a plaint or a memorandum of appeal not otherwise provided for in this Act presented to any civil or revenue court except those mentioned in section 3.

The purpose of section 3 is to say that, when you come to make a charge under Article 1 of Schedule (SIC) the figure which is to be taken as the appropriate figure under the second column is the figure to be computed by finding out the difference between the amount awarded to the appellant and the amount claimed by him."

He was also of the opinion that provisions of s. 8 are themselves sufficient to exclude the applicability of Article 11 of Schedule II to cases of compensation under the Improvement Act. Continuing he said at page 535 (of ILR) : (at p. 349 of AIR)-

"Nevertheless, the Section has to be taken into account when one is construing the Act as a whole and, on the face of that Section, I have no doubt at all that an ad valorem fee is chargeable

under Article 1 of Schedule I of the Court-fees Act."

9. The next case relied upon is a case under the U. P. Town Improvement Act, ILR 1939 All 142 : (AIR 1939 All 127) (E). In that case section 8 was held to be applicable where the appellant was claiming a larger amount of compensation or where the Secretary of State was claiming that he should pay a lesser amount. It was also held that a Tribunal was a civil Court and the award of the Tribunal is a formal expression of its decision which not amounting to a decree is an order as denned in the Civil Procedure Code and therefore Section 8 of the Court-fees Act was applicable to an appeal from award.

10. The Court-fees Act is an enactment dealing with revenue and therefore no amount is leviable unless it clearly falls under the provisions of the Court-fees Act. Section 4 of the Court-fees Act prohibits the filing of any document in a High Court unless it is stamped with a fee chargeable within the 1st Schedule or II Schedule of the Act.

In my opinion, this section makes it clear that a document is to be charged with fees in accordance with Schedules I and II of the Act in other words, the charging provisions are Schedule I & II. But argues the learned Advocate-General that if it were read in that way Section 8 would become superfluous, and he also submits that if in the case of Section 7, Court-fees Act, fees are paid ad valorem, there is no reason why they should not be paid ad valorem under Section 8 which is similarly worded, but I am unable to accept this argument.

No doubt Section 11 and Sections 7 and 8 are similarly worded, but Section 7 is only a computing section and what has to be paid in cases which fall under Section 7 has to be looked for in Schedules I and II. If there were no Schedule, Sections. 7 and 8 by themselves would be of no assistance to the State. It Is under the provisions of the various Articles of Schedule that the amount is to be determined.

11. The Bombay High Court in AIR 1945 Bom 348 (B), has emphasised that the word "order" used in Section 8 has the same meaning as the word used in Section 2(14) of the Code of Civil Procedure, namely the formal expression of decision of a Civil Court which is not a decree. Both in the case of the Calcutta Act as well as the U. P. Act the Tribunals were deemed to be Courts and therefore the award of compensation would be a formal expression of the decision of a civil. Court which does not amount to a decree. One of the grounds on which the matter was held to be within Section 8 in ILR (1939) All 142; (AIR 1939 All 127) (E) was that the award " of the Tribunal was an order as denfted In the Code of Civil Procedure (see page 148 of ILR) : (at p. 129 of AIR). In the Calcutta case his question does not seem to have been raised. In my opinion, therefore, for a matter to be brought within section 8 there must be an order as defined in Section 2(14) of the Act, and as the present case is not such an order as I have held above, Section 8 is inapplicable.

12. If the determination by an arbitrator making an award is not a decree as it is not considering the rule laid down by the Privy Council in ILR 59 Cal 55 : (AIR 1931 PC 149) (C), and it is not

an order, then Article 11 of Schedule n will be applicable and on that ground the residuary Article, i.e., Article 1 of Schedule I will not apply.

13. Article 1 of Schedule I applies to plaints, written-statements, pleadings, a set-off or counterclaim or memorandum of appeal, and if a plaint and a written statement have the same connotation as they would have in the Civil Procedure Code, there is no reason why the words "memorandum of appeal" should have a different connotation unless the words of the section expressly say so, and in the present case the appeal is being brought not against a decree or an order of a civil Court but against an award of an arbitrator under a special Act.

14. The only way that the various sections and the Schedules of the Court-fees Act can be reconciled is that Section 8 should be confined to orders as understood in the Civil Procedure Code and that where any matter does not fall within a decree or an order having the force of a decree, the matter should be held to be covered by Article 11. Schedule II, and once we hold that Article 1. of Schedule I is excluded.

15. The learned Advocate General referred to an older Allahabad case, sheo *Rattan Rai v. Mohri*⁵ where it was held that an appeal under the Land Acquisition Act has to be stamped as an appeal from an original decree. In this case there is no discussion. All that is stated is that the Taxing Officer had decided that ad valorem court-fee was to be paid and it had been paid.

16. The other case relied upon is a Judgment of Lodge J. In *Sohan Lal v. Province of Bengal*⁶, where it was held that the award of an arbitrator under S. 19 is neither a decree nor an order having the force of a decree, that a taxing statute must be interpreted in favour of a tax-payer and that the word "requisition" was included in the word "acquisition" as requisition was a temporary acquisition and this interpretation was the ratio of these decisions.

17. Mr. Sikri also relied upon a judgment of Teja Singh J. as Taxing Judge in Punjab *Province v. Raja Dhian Singh*⁷, but the observations in regard to the definition of the word "order" in Section 8 were obiter because the learned Judge had held that Section 8 did not govern an appeal brought by the Province against the amount in an award.

18. In my opinion, therefore, the amount of court-fee payable on appeal such as the one now before me is governed by Article 11 of Schedule n and not by Article 1 Schedule I. Rs. 4/- is therefore the proper fee In this case.

Bishan Narain, J.

19. I agree.

3ILR 59 Cal 528 ; (AIR 1932 Cal 348) (D)
4ILR (1939) All 142 : (AIR 1939 All 127) (E)
5, ILR 21 All 354 (P)
6AIR 1946 Cal 524 (G)
757 Pun LR 14 (H),