

TRAVENCORE COCHIN HIGH COURT

James Paul Alexandar

Vs

James Arthur Ewards

Criminal Revn. Petn. No. 297 of 1951

(Koshi, C.J. and Govinda Pillai, J.)

16.10.1952

JUDGMENT

Govinda Pillai, J.

1. The revision petition was filed against the order of the court below, refusing to set aside the attachment placed on the property under Section 143, Criminal Procedure Code. The proceedings started by the lower Court ended in a declaration of possession of the property in favour of one of the parties. In revision, that order was set aside by the High Court, and the lower Court was directed to be in possession of the property until the rights of the parties were settled in a civil suit. On the allegation that this matter was indirectly decided in O. Section 1 of 1124 on the file of the District Court of Nagercoil, the revision petitioner filed the petition in the lower court to give effect to the decree in that suit and to raise the attachment placed on the property. This was declined by the lower Court, and the order thus passed is now sought to be revised. A copy of the lower court's order was produced along with the revision petition; and the question arose as to what was the proper value of the court fee stamp to be affixed on the same. The revision petitioners' learned advocate, Mr. Paikedey, stated in the first instance that no stamp need be affixed on judgments and orders of criminal courts; for there was no proper provision for the same in Schedule I attached to the Court Fees Act. The Taxing Officer was of opinion that this question was governed by Article 10 of Schedule I and that the party was to affix stamps at the rate of eight annas for every 360 words or fraction thereof. Notice of this contention was given to the Advocate General; and the arguments of both sides were heard. The alternative argument of Mr. Paikeday was that, even if any stamp was to be affixed, it should be under Article 7 of Schedule I and not under Article 10. Articles 7 and 10 are extracted below for purposes of easy reference.

Number

Ad-valorem fees

Proper fee

*

*

*

7. Copy or translation of a judgment

or of an order not being or having force of a decree.

When such judgment or order is passed by any Civil Court other than the High Court or by the Presiding Officer of any Revenue Court or office or by any other judicial or executive authority.

(a) If the amount or value of the subject-matter is fifty rupees or less than fifty rupees. 4 annas

(b) If such amount or value exceeds fifty rupees. 8 annas

When each judgment or order is passed by the High Court. One rupee

* * *

10. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act or copy of any account, statement, report, or the like taken out of any Civil or Criminal or Revenue Court or office or of any Chief Officer charged with executive administration of a Division. For every three hundred and sixty words or fraction of three hundred and sixty words. 8 annas.

* * *

2. These Articles correspond to Articles 6 and 9 of the Indian Court Fees Act and Articles 4 and 7 of the Cochin Court Fees Act, II of 1080 as amended by Act 24 of 1122. Clauses (a) and (b) and the third clause in Col. 2 of Article 7 would show that the same could apply only when the judgment or order related to a subject matter which could be pecuniarily valued. So far as Travencore and Cochin are concerned, it can be seen that this Article will apply only to civil Proceedings. It was argued that, as regards criminal proceedings also, sometimes the subject matter could be valued; for example, proceedings under Section 145, Criminal Procedure Code, where it would be possible to value the subject matter of the dispute. Unlike the Civil Courts, the jurisdiction of the Criminal Courts is not determined with reference to the market value of the subject matter at least in some cases. It could not, therefore, be argued or stated that this Article would apply to proceedings in Criminal Courts. Necessarily, therefore Article 7 of Schedule I of the Court Fees Act will not apply to this case.

3. Before the present Court-fees Act was enacted, the provision governing such cases was Article 4 (a) of the Cochin Court-fees Act and the residuary Article 9 of the Travencore Court-fees Act. The Indian Court-fees Act corresponded to the present Article 10 and, since this caused hardship to parties, it would appear that the Legislatures in Cochin and Madras introduced a new Article,

i.e. Article 4 (a) in Cochin and Article 6 (a) in Madras, which specifically provided for a fee of eight annas for a copy or translation of Criminal Court judgments or orders. In Travencore, the residuary Article 9 of Act 6 of 1087 provided generally a fee of half a rupee, irrespective of the number of words in the order or judgment. It was this residuary Article that was being made use of with regard to Criminal Court orders and judgments; and, as pointed out in - '*Ijjatulla Bhuyan v. Chandra Mohan Banerjee*', (A) the working rule is that, where a statute used language of a doubtful import and has been interpreted in a particular manner for a term of years, the interpretation given to that obscure meaning may reduce the uncertainty to a fixed rule. Thus, the judicial proceeding mentioned in the present Article 10 and the repealed Article 9 of the Travencore Court Fees Act in "copy of any revenue or judicial proceeding or order not otherwise provided for by this Act" would apply to the judgments and orders of Criminal Courts. "Judgment" is not defined in the Criminal Procedure Code. But "Judicial Proceeding" is mentioned in Section 4 (m) to include any proceeding in the course of which evidence is or may be legally taken on oath. The proceeding terminates in a judgment or order; and so the judicial proceeding would cover a judgment or order of a Criminal Court. It necessarily follows that it is Article 10, Schedule I, Court-fees Act that will apply to cases of this kind. The argument, that no stamp used need be affixed on orders or judgments of Criminal Courts, does not, under the circumstances, call for consideration. The party will have to affix the necessary stamps on the copy of the order produced as provided for in the present Article 10, Schedule I, Court-fees Act.

4. It may, however, be mentioned that this would cause undue hardship to the parties; and recently the State itself had to pay a large amount on this account when they filed an appeal against the judgment in a Sessions Case acquitting the accused. It is also not proper to make a distinction between judgments of Criminal Courts and Civil Courts. As regards judgments and orders of Civil Courts, Article 7, Schedule I, Court-fees Act, prescribes a fixed fee. It was because of the hardship mentioned above that the Legislatures in Madras and Cochin thought of introducing a new Article to govern the decisions of Criminal Courts. In Travencore, there was no such difficulty; for, irrespective of the number of words, a fixed fee of half a rupee has been prescribed. Anyhow, this is a matter for the Legislature to consider. We are to interpret the Articles as they appear in the Act.

Order accordingly.

Cases Referred.