

(1963) 11 OHC CK 0020
In the Orissa High Court
Case No : Civil Revision No. 7 of 1963

Abhimanyu Patnaik and Another	Vs	APPELLANT
Ramahari Patro and Others		RESPONDENT

Date of Decision : 12-11-1963

Acts Referred:

Court Fees Act, 1870 — Article 5

Citation : (1964) 30 CLT 190

Hon'ble Judges : Barman, J

Bench : Single Bench

Advocate : S.C. Das, in Civil Revision No. 7 of 1963 and A.K. Tripathy, in Civil Revision No. 8 of 1963, for the Appellant; Govt. Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

Barman, J.—This is a reference under the Court-fees Act by the learned Registrar of this Court as Taxing officer for a decision as to the proper court-fee leviable on the two civil review petitions. Both the cases have arisen from a judgment and decree passed in Second Appeal No. 362 of 1960. In Civil Review No. 7 of 1963 Appellants Nos. 10 and 15 are the Petitioners while in Civil Review No. 8 of 1963 Respondent No. 20 is the Petitioner. In their petitions they pray for review of the judgment in respect of certain items of property mentioned in their respective review petitions. They paid court-fee on the value of the subject-matter of the review and not on the value of the second appeal, judgment in which is under review. The Stamp Reporter of this Court raised an objection that the valuation is not correct and that deficit court-fee has to be paid under Article 5, Schedule I of the Court-fees Act.

2. Article 5 of Schedule I of the Court-fees Act reads as follows:

Number Application for review of judgment if presented before the ninetieth day from the date of the decree.

Proper Fee One-half of the fee leviable on the plaint or memorandum of appeal.

In both the cases the review petitions were filed within 90 days of the judgment in the second appeal. The Petitioners contend that as they are not interested in the entire subject-matter of the second appeal but only pray for review of certain items of the subject-matter of the second appeal mentioned in their respective review petitions, they valued their review petitions and paid requisite fees accordingly. The learned Government Advocate for the Advocate-General for the State of Orissa on the other hand contends that Article 5 quoted above is applicable and that the court-fee on 3, review petition should be paid on the entire value of the subject-matter of the appeal, judgment in which is sought to be reviewed.

3. This point is concluded by a Full Bench decision of the Patna High Court in *Narayan Tiwari and Ors. v. Vasudeo Narayan Missir and Ors.* AIR 1958 Patna 587 (F.E.), where it was held that there is no scope for saying that the words "the plaint or memorandum of appeal" as used in column 3 of Article 5 in Schedule I, mean anything else than the plaint or memorandum of appeal which has given rise to the judgment under review. The question of hardship or injustice cannot be allowed to have any sway on the decision taken in the matter of its interpretation. On the interpretation of the words "the plaint or memorandum of appeal" as used in column 3, as meaning the plaint or memorandum of appeal which has given rise to the judgment under review and not any other plaint or memorandum of appeal, it must necessarily follow that the fee which is leviable on an application for review should be one-half of the fee which was leviable on the plaint or memorandum of appeal. This is also the view of a Full Bench decision of the Allahabad High Court in *Deokinandan and Others Vs. Jhota Lal and Another*, . Indeed, the majority of the High Courts are of the view as stated above. The Madras High Court, following a previous *Born bay* decision, took a different view holding that the phrase "the fee leviable on the plaint or memorandum of appeal" means the proper fee to be levied if the Applicant for review was then putting in a plaint or memorandum of appeal for same relief. *Punya Nahako and Ors. v. King Emperor* AIR 1927 Mad. 360. With great respect I do not accept the Madras view. In my opinion, the Full Bench decision of the Patna High Court gives the correct view. The words "leviable on the plaint or memorandum of appeal" mean properly leviable on the plaint or memorandum of appeal in which the judgment sought to be reviewed is passed and not on any imaginary plaint or memorandum of appeal which might have been presented at the time the review application was filed asking for the same relief as in the application for review. The said words can be only interpreted to mean that the court-fee to be paid on an application for review of judgment must be either the fee or one-half of the fee leviable on the plaint or memorandum of appeal, that is to say, which is prescribed for the original plaint or original memorandum of appeal even though the review relates only to a part of the relief.

4. In this view of the case, the review petitions having been presented before the

ninetieth day from the date of the decree, the Petitioners have to pay one-half of the fee leviable on the memorandum of appeal less whatever court-fee the Petitioners have already paid as calculated by the "learned Registrar in paragraph 4 of his report dated August 20, 1963. The Petitioners are directed to pay the deficit court-fee within two weeks from today. The reference is answered accordingly in both the cases which were analogously heard. There will be no order for costs of this reference.

Reference answered accordingly.