
(1984) 04 CAL CK 0033
In the Calcutta High Court
Case No : C.O. No's. 3079-3080 of 1983

A.K. Bajaj

APPELLANT

Vs

Nandy Trading Co. and Others

RESPONDENT

Date of Decision : 30-04-1984

Acts Referred:

Citation : AIR 1985 Cal 202 : 88 CWN 837 : 88 CWN 737

Hon'ble Judges : Prabir Kumar Majumdar, J;Anil K. Sen, J

Bench : Division Bench

Advocate : K.S. Roy, Rajan Dutta and M. Lahiri, for the Appellant;

Final Decision : Dismissed

Judgement

Anil K. Sen, J.—The revisional application (C. O. 3080/83) has been filed along with an application u/s 5 of the Limitation Act (C.O. 3079/83). There was ten days" delay in filing the revisional application. Having heard the learned Advocate for the petitioner and considering the facts and circumstances set out in the application, we are satisfied that there was sufficient cause for not preferring the revisional application within the period of limitation.

2. The delay in moving the revisional application (C.O. 3080/83) is, therefore, condoned and the application u/s 5 of the Limitation Act (C.O. 3079/83) is allowed.

Re : C. O. 3080/83 :

3. This revisional application is at the instance of the plaintiff in Money Suit No. 98/83 of the 2nd Bench of the learned Judge, City Civil Court, Calcutta The order impugned is one D/- 21-6-1983.

4 . The plaintiff as the endorsee of several Hundis drawn by the defendant instituted the above suit for recovery of a total sum of Rs. 75,524.44 due on those hundis so endorsed in his favour. In the plaint the plaintiff paid court fee on the consolidated amount claimed under the different hundis, namely, Rs.

75,524.44. The learned Judge held that the court fee so paid was deficit. According to the learned Judge Section 21 of the West Bengal Court-fees Act 1970 being clearly applicable, the plaintiff is liable to pay the court fee on the amount due on each of the hundis. Thus, according to the learned Judge's assessment, a further deficit court fee of Rs. 4,095.00 is payable on the plaint. This is the order which is being impugned before us on behalf of the plaintiff. The short point, which arises for our consideration, is as to whether Section 21 of the West Bengal Court-fees Act 1970 can have any application. Section 21 of the present Act is the exact replica of the Bengal amendment to the Court-fees Act 1870 as introduced by Bengal Act VIII of 1935. Section 21(1) provides as follows :

"In any suit in which, two or separate and distinct causes of action are joined and separate and distinct reliefs are sought in respect of each, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees with which the plaints or memoranda of appeal would be chargeable under this Act in separate suits instituted in respect of each such cause of action :

Provided that nothing in this sub-section shall be deemed to affect any power conferred by or under the Civil P.C., 1908, to order separate trials."

5. Mr. Roy appearing in support of the present revisional application has fairly conceded that the present suit is based on separate and distinct cause of action, such cause of action being based on the different hundis individually. He, however, has strongly contended that, though the suit is based on distinct cause of action, the relief claimed not being separate and distinct, Section 21 can have no application. According to Mr. Roy, the Court-fees Act being a fiscal statute, each of its provisions should be strictly construed and, if, on the terms of a section, the plaintiff can avoid the liability, the plaintiff should be given the benefit thereof.

6. We have carefully considered this contention of Mr. Roy. There can be no dispute that though Section 7 charges the court fees payable in respect of suits specified therein in the manner set out therein, if such a suit at the same time partakes the character of a multifarious suit within the meaning of Section 21, then in the matter of assessment of the court fees payable Section 21 would prevail. We do not dispute for a moment the contention of Mr. Roy that if the case made out by the plaintiff in the plaint does not come within the terms of Section 21, the plaintiff cannot be made liable to pay court fees on the amounts due separately under each of the hundis assigned in favour of the plaintiff. But we must read the plaint in its substance and find out what is the relief claimed? Mr. Roy has fairly conceded that in the present case the cause of action for the plaintiff is distinct and separate based on each of the hundis. But according to Mr. Roy, in the suit plaintiff is not seeking separate and distinct relief. He prays for a decree for the aggregate of the amounts due on the different hundis, and hence it cannot be said that the relief sought for is separate and distinct. In our view, in order to be distinct and separate, the reliefs claimed need not be different in

character from each other. Reliefs of the same nature as and when separately claimed having regard to separate cause of action would still bring the case within the scope of Section 21. In this case the plaintiff claims recovery of different sums due on different hundis. These are, therefore, the reliefs he is claiming and they though of same nature are separate and distinct. They might have been aggregated together for determining the total amount due, but such aggregating the different reliefs, does not render the relief one and inseparable. We may refer to a very short Bench decision of the Madras High Court in the case of Secretary of State Vs. N.M.R. Ayyasami Chettiar, . The decision of the Madras High Court fully supports the view taken by the learned Judge in the trial court. It was observed by the Madras High Court as follows : --

"The question that has been raised may be stated in this form. If two sums of Rs. 600/- and Rs. 400/- respectively are claimed in a suit on the basis of two promissory notes, what is the Court fees payable? Section 17 provides expressly that it is not on the aggregate sum that the fee is to be paid but on the several sums which go to make up that aggregate."

The same view was taken by the Allahabad High Court in the case of Parshotam Lal v. Lachman Das, (1887) ILR 9 All 253 and the Rangoon High Court in the Full Bench decision in the case of P. Chetty v. Po Kim 4 Ind Cas 289.

7. Strong reliance was placed by Mr. Roy on a Calcutta decision in the case of Kapil Charan Nayak Vs. Gitanjali and Others, . This case was cited before the learned trial Judge and has been distinguished by him. In our opinion, it was rightly distinguished. In that case the plaintiff having purchased 65 different properties under 65 different documents in the benam of the defendants, filed a suit for declaration of his title to those properties with a further declaration that the defendants are the benamdars. A plea was taken on behalf of the defendants that on application of Section 17 of the Court-fees Act, court fee should be paid in respect of distinct reliefs sought for in respect of each of these properties. This court overruled such a plea when it was rightly pointed out that the cause of action for such a suit was the dispute to the plaintiff's title in respect of those properties which might have been acquired under distinct and separate 65 documents. The dispute having been raised in respect of the plaintiff's title acquired by purchase, the suit was instituted for one and one relief only, namely, declaration of his title by purchase with a consequential declaration that the defendants were the benamdars. On the facts such a case does not come within the scope of Section 21 in any manner and is not comparable to the one now under consideration by us.

8. We, therefore, agree with the learned trial Judge that on the plaint the present suit is a multifarious suit, distinct reliefs on distinct causes of action were sought for in the same suit and as such, the Court fee payable would be in accordance with Section 21.

9. The revisional application, therefore, fails. We uphold the order passed by the

learned trial Judge and dismiss the present revisional application.

Prabir Kumar Majumdar, J.

10. I agree.