

(1984) 03 BOM CK 0004

In the Bombay High Court

Case No : Civil Revision Application No. 575 of 1979

Ambadas Ramchandra Pachpor

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 06-03-1984

Acts Referred:

Bombay Court Fees Act, 1959 — Section 7(1)
Civil Procedure Code, 1908 (CPC) — Section 2, 2(2)
Displaced Persons (Debts Adjustment) Act, 1951 — Section 6
Land Acquisition Act, 1894 — Section 13, 14, 18, 23, 26

Citation : (1984) MhLj 1062

Hon'ble Judges : M.S. Deshpande, J

Bench : Single Bench

Advocate : V.M. Kulkarni, for the Appellant; H. Ahmed, Asstt. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Deshpande, J.—This revision application is directed against the order dated August 10, 1979, passed by Taxing Officer holding that the appellant's claim would be governed by section 7(1) of the Bombay Court Fees Act, 1959, and does not come within the purview of item 13(c) of Schedule II of the Bombay Court Fees Act and directing him to pay Rs. 1,850/- as deficit court fee.

2. A piece of land owned by the applicant admeasuring 2 acres 23 gunthas out of S. No. 681/1 of Akot was acquired by the State Government under the Land Acquisition Act, and the Land Acquisition Officer, Akot, awarded Rs. 51,500/- as compensation. The applicant made a claim for Rs. 1,10,500/- and requested the Collector to make a reference u/s 18 of the Land Acquisition Act in respect of the claim for Rs. 59,000/-, which was rejected. The Civil Judge, Senior Division, Akola, held that the applicant was entitled to an additional amount of only Rs. 30,013/-. The applicant thereafter filed an appeal in this court for recovery of Rs. 28,987/- and paid Rs. 5/- as Court fee as per Item 13(c) of Schedule II of the Bombay Court Fees Act, 1959. The Taxing Officer held that the applicant was

liable to pay Rs. 1,850/- as deficit court fee as the claim could not come under Item 13(c) of Schedule II of that Act. This order is being challenged by this revision application.

3. Schedule II Item 13 of the Bombay Court Fees Act provides a fixed court fee of Rs. 5/- in respect of a memorandum of appeal when the appeal is not from a decree or an order having the force of a decree, and is presented to the High Court. u/s 7(1) of the Bombay Court Fees Act, 1959, the amount of fee payable on memorandum of appeal against an order under appeal 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 difference between the amount awarded and the amount claimed by the appellant, According to the learned Advocate for the applicant Shri. V.M. Kulkarni, section 7(1) would not apply in the present case, because the award made by the Court u/s 18 of the Land Acquisition Act, 1894, would not be a decree or an order having the force of a decree and the only charging provision that can apply is Schedule II Art, 13(c) which prescribes a fixed court fee of Rs. 5/-. Reliance is placed on the observations in *Diwan Bros. Vs. Central Bank of India, Bombay and Others*, where it was held that an order of the Tribunal under Displaced Persons (Debts Adjustment) Act is not a decree and court fee will be payable under Schedule II Art. 11 of the Bombay Court Fees Act, 1870 (which corresponds to Schedule II Art. 13 of the Bombay Court Fees Act, 1959) and that this order will not be governed by Schedule I Art. 1 of the Bombay Court Fees Act which prescribes ad valorem court fees. Shri Kulkarni contended that an award passed by the Court under the Land Acquisition Act would not amount to a "decree" and he relied on the observations in paragraph 22, where Their Lordships endorsed the view taken by this Court in *Taxing Officer, High Court, Taxing Officer, High Court Vs. Jamnadas Dharamdas and Others*, . The observations were as follows:-

But the expression "decree" has not been defined in the Court-fees Act. The expression "decree" as used in the Court-fees Act appears to have the same connotation as that expression has in the Code of Civil Procedure. The Court-fees Act is intended to be a complementary piece of legislation to the CPC dealing with payment of court-fees in matters which are tried by the civil Courts. If the expression "decree" has the same connotation as that expression has in the Code of Civil Procedure, it would be difficult to regard an adjudication made by a Tribunal appointed under the Displaced Persons (Debts Adjustment) Act as a decree within the meaning of the Court-fees Act, even though it is so called under the Displaced Persons (Debts Adjustment) Act. In order that an adjudication should amount to a decree under the Code of Civil Procedure, it must be a formal expression of an adjudication conclusively determining the rights of the parties with regard to all or any of the matters in controversy in the suit. The proceedings to be initiated by displaced persons for adjustment of their debts or by displaced creditors or displaced debtors are by applications. Such applications cannot be regarded as complaints in Civil suits and are not required by law to bear ad valorem court-fee under Schedule 1, Cl. 1, of the Court-fees Act.

It is true that the provisions of the CPC are made applicable to the proceedings which are commenced by applications. But the proceedings under the Act cannot be called suits. Again the Tribunal in dealing with an application u/s 6 of the Displaced Persons (Debts Adjustment) Act is not merely deciding a claim made by a debtor, but is dealing with an application for adjustment of his debts.

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Even if the Legislature has chosen to call such an award a decree, it cannot amount to a decree within the meaning of sub-section (2) of section 2 of the CPC and in my judgment the award cannot be regarded as a decree within the meaning of Schedule II Art. 11 of the Court-fees Act.

We find ourselves in complete agreement with the aforesaid observations made by Shah J.

Their Lordship observed in para 17 of the Judgment that under the definition of a "decree" contained in section 2(2) of the Code of Civil Procedure, 1908, three essential conditions are necessary :

- i) that the adjudication must be given in a suit;
- ii) that the suit must start with plaint and culminate in a decree; and
- iii) that the adjudication must be formal and final and must be given by a civil or revenue court.

It may be noted that the Displaced Persons (Debts Adjustment) Act does not contain any provision similar to section 26 of the Land Acquisition Act, 1894, which is as follows :

26(1): Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section(1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, clause (2), and section 2, clause(9), respectively, of the Code of Civil Procedure, 1908.

4. According to Shri Kulkarni, Displaced Persons (Debts Adjustment) Act went much beyond section 26 of the Land Acquisition Act inasmuch as section 14 of that Act prescribes the procedure for displaced creditor's petition filed u/s 13 of the Act and authorizes the Tribunal to pass a decree as it thinks fit. Sub-section (3) of section 14 authorise the Tribunal to pass a decree if no cause is shown or if no dispute exists. Their Lordships of the Supreme Court observed in Diwan Bros. Vs. Central Bank Bombay (Supra) that a perusal of sub-sections (2) and (3) of section 14 clearly shows that the statute contemplates a decree which maybe one of rejection of the claim put forward by the displaced creditor or one which

amounts to allowing the claim and section 27 refers to the contents of the decree and section 28 provides for the forum and the court in which the decree passed by the Tribunal is to be executed. Shri Kulkarni, therefore, contended that when in the face of these provisions, their Lordships of the Supreme Court held that the decree under that Act cannot have the same meaning as the term "decree" used in Schedule II Art. 11 of the Bombay Court-fees Act, 1870 (which corresponds to Schedule II Art. 13 of the Bombay Court-fees Act, 1959), merely because of the deeming provision of section 26 of the Land Acquisition Act, it cannot be said that an appeal from an award would be excluded from the operation of Schedule II Art. 13 of Bombay Court Fees Act, 1959, since the words which would exclude this category of cases used are "decree or order having force of a decree."

5. It must be noted that the tests formulated by their Lordships and mentioned in paragraph 17 of the Judgment cannot apply to the present case, because of the clear wording of sub-section (2) of section 26 of the Land Acquisition Act. As pointed out above there are no provisions similar to section 26(2) of the Land Acquisition Act in the Displaced Persons (Debts Adjustment) Act which were being considered by their Lordships.

6. u/s 3(d) of the Land Acquisition Act, 1894, the expression "Court" means [except in sub-section (3) of section 18] a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act; (and shall in relation to any proceedings under this Act), include the Court of a Civil Judge (Senior Division) to which the principal Civil Court may transfer any such proceedings. Thus the Court which entertains and decides the issue as regards the amount of compensation or apportionment is a Civil Court and not a Tribunal as under the Displaced Persons (Debts Adjustment) Act. Though the reference by the Collector to the Court cannot be deemed to be a suit, it is obvious that by virtue of section 26(2), the award is deemed to be a "decree" u/s 2 clause 2 of the CPC Code, 1908. All that their Lordships of the Supreme Court observed in Diwan Brother's case was that the Court Fees Act is intended to be a complementary legislation to the CPC dealing with payment of court fees in matters which are tried by the Civil court and so the expression "decree" has the same connotation as that expression has in the Code of Civil Procedure. Their lordships were not disposed to construe the term "decree" used in Displaced Persons (Debts Adjustment) Act as a decree within the meaning of the Court Fees Act, even though it is so called under that Act because it did not answer the other essential conditions which were necessary for construing it as a "decree" so far as the application of the Court Fees Act is concerned. This evidently is not the position so far as the Land Acquisition Act is concerned. Taxing Officer, High Court Taxing Officer, High Court Vs. Jamnadas Dharamdas and Others, was also a case under the Displaced Persons (Debts Adjustment) Act, 1951 and in view of the difference in the provisions of that Act and the Land Acquisition Act, to which I have referred

above, the proposition laid down in that case cannot have any application to the present case.

7. In *Mangal Sen Vs. Union of India*, provisions of the Resettlement of Displaced Persons (Land Acquisition) Act 1948, came up for consideration and the essential features of that Act were similar to those of the Displaced Persons (Debt Adjustment) Act. It was observed in paragraph 28 there that it is well settled that an order made under the Land Acquisition Act is deemed to be a decree and an appeal against that order is, therefore, an appeal from a decree. The learned Single Judge of the Patna High Court in *Braja Kewat & another Vs. Madanlal Agarwalla & others* AIR 1951 Pat 608 held that the provisions of Schedule II, Art. 11 were not applicable to the appeal filed u/s 54 of the Land Acquisition Act, as the award given by the Additional District Judge was to be deemed to be a decree u/s 26(2) of the Land Acquisition Act. This of course is the view that I am taking.

8. Shri Kulkarni argued that in view of the Supreme Court ruling, the position with regard to the payment of court fee for an appeal u/s 54 of the Land Acquisition Act must be taken to be settled. It is difficult to accept this contention, as the case before the Supreme Court arose out of the provision of an entirely different Act. According to Shri Kulkarni the provision of Art. 15 of Schedule I of Bombay Court-Fees Act 1959 would show that the Land Acquisition Act had not been uniformly dealt with under the Bombay Court Fees Act because for an application to the Collector for a reference to the court u/s 18 of the Land Acquisition Act, 1894, in its application to this State, the court-fee payable would be one half of ad valorem fee on the difference, if any, between the amount awarded by the Collector and the amount claimed by the applicant, according to the scale prescribed under Article 1 of Schedule I, subject to a minimum fee of fifteen rupees. A separate provision apparently had to be made for such references because article 1 of Schedule I had reference to plaint or memorandum of appeal not provided for in the Act or of cross objection presented to any Civil or Revenue Court. There is nothing in the Land Acquisition Act which would show that a reference by the Collector stood on the same footing as a plaint. Merely because the reference was to be treated differently for the purposes of court fee, it would not mean that Article 13 of Schedule II did not have any application to an Award under that Act. In view of the deeming provision contained in section 26(2) of the Land Acquisition Act, even if the Award may be lacking in something and could not by itself have been equated with a decree, it would have to be treated as if it were a decree and will have to be construed as such. This meaning which has been given to an award for the purposes of section 2(2) of the CPC would be available also for the purposes of the charging provision of Schedule II, Article 13 of the Bombay Court-fees Act, 1959 and the Award must be taken to have been excluded from its operation. The Taxing Officer was, therefore, right in holding that Article 13 of the Schedule II had no application to the present case and that the ad valorem court fee as prescribed u/s 7(1) of the Court Fees Act should be paid.

In the result, the revision application is dismissed and the order passed by the Taxing Officer is affirmed. The applicant is granted four week's time to pay the deficit court fee.

In the circumstances of the case, there will be no order as to costs.