
(1994) 07 GUJ CK 0006
In the Gujarat High Court

Amreli Municipality

APPELLANT

Vs

Inspecting Officer (Court Fees)

RESPONDENT

Date of Decision : 27-07-1994

Acts Referred:

Bombay Court Fees Act, 1959 — Section 12(6), 6(iv)(j)
Court Fees Act, 1870 — Section 18

Citation : (1995) 2 GLR 1904

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—The petitioner-Municipality is aggrieved by the order of the trial Court regarding payment of Court fees. The petitioner-Municipality had filed a suit for declaration and injunction that the notice dated May 15, 1990 issued by the Gujarat Electricity Board, was illegal and void and so also the letter dated May 30, 1990 demanding dues and threatening disconnection. By these notices marks 4/3 and 4/5, the defendant-Gujarat Electricity Board had demanded the electricity dues amounting to Rs. 6,96,135.33 on account of street light and Rs. 11,76,461.90 on account of water supply. This demand was also made in the letter dated May 15, 1990 at mark 4/3.

2. The suit was valued at Rs. 300/- for the purpose of declaration and injunction and the fixed Court fee of Rs. 30/- was affixed u/s 6 (iv)(j) of the Bombay Court Fees Act.

3. The Court Fee Inspector had made an application to the Court which was registered as Court Fee Reference No. 1 of 1990 contending that the suit cannot be valued u/s 6(iv)(j) and that the suit was capable of monetary evaluation because there was specific challenge to a demand of a specified amount exceeding Rs. 19 lacs. The demand consisted of two bills. The Court Fee Inspector contended that the two bills were separate bills and separate cause of action and, therefore, they were required to be valued separately and, therefore, the Court fee of Rs. 23,400/- was payable being Court fee of Rs. 9,300/- on the

bill of Rs. 6.96 lacs and odd and Rs. 14,100/- in respect of the bill of Rs. 11.76 lacs and odd. The trial Court accepted the contention and directed the plaintiff to pay the deficit Court fees of Rs. 13,370/- u/s 12(6) of the Bombay Court Fees Act.

4. Being aggrieved thereby, the plaintiff-Municipality has preferred this revision application. The learned Counsel for the plaintiff-petitioner has urged the following points:

(a) That the trial Court had no jurisdiction to pass any order regarding deficit Court fee after the suit was withdrawn.

(b) That the trial Court had erred in proceeding ex parte in deciding the Court Fee Reference.

(c) It is submitted that under the Bombay Court Fees Act as applicable in Gujarat, the maximum Court fee is Rs. 15,000/- and, therefore, the order for payment of Court fees of Rs. 23,400/- is illegal.

(d) Lastly, it was contended that in any case, the petitioner is entitled to refund of substantial Court fees because the suit has been withdrawn unconditionally and before the settlement of issues.

5. On the first point, it may be noted that on the withdrawal purshis Ex. 20 itself, the Court had made an endorsement that the Court Fees Inspector had already filed Reference No. 1 of 1990 and, therefore, the withdrawal purshis was kept for orders and ultimately when the withdrawal purshis was granted, the Court had made expressly clear that the effect of the withdrawal of the suit would not defeat the prayer of Court Fee Stamp Inspector and it was kept open for him and the parties to argue the matter regarding Court fees. It is, therefore, clear that the objection as to Court fees was already raised and was to be decided and the plaintiff cannot defeat that objection by withdrawing the suit. Even otherwise also, the question of Court fees may arise even after disposal of the suit and no hard and fast rule can be laid down that once the suit is disposed of, the question of Court fees cannot be raised. In the present case, the question of Court fees was already raised before the withdrawal of the suit and that application of the Court Fee Inspector was to be decided.

6. Reliance was placed on the judgment of this Court in the case of Ashwin N. Dave v. Krishnachandra Dave 1978 GLR 892. In that case, a plaint was rejected under Order VII Rule 13 for insufficient Court fees and it was held that when the plaint is rejected on such a ground plaintiff cannot be asked to make good the deficit Court fees and it was held that the Court cannot both reject the plaint on the ground of insufficient Court fees and still recover the Court fees. The petitioner has relied on the observations in that judgment to the following effect:

A litigant cannot be expected to attempt to enter the portals of the Court only provided he is in a position to correctly anticipate the view of the Court at the cost of having to pay additional Court fees which he may either be unable or

unprepared to pay regardless of whether he is prepared to litigate in that event. He may well say "I do not want to avail of the forum of Court and to litigate if my valuation is unacceptable to the Court and in that case, I may be permitted to abandon the attempt.

These observations can apply only when the plaint is rejected on the ground of insufficiency of Court fees and not when the suit is withdrawn. The provisions regarding refund of Court fees are contained in Section 43(1) and the notification u/s 43(2), which contention is considered hereafter.

7. It is also not correct to say that the Court had decided the matter without giving an opportunity to the plaintiff. The plaintiff and their advocate were fully aware of the application of the Court Fee Inspector as well as the Court order on their withdrawal application. If the plaintiff's Advocate had for any reason not appeared in the matter, it cannot be said that Court had not given reasonable opportunity to the plaintiff.

8. The third contention of the petitioner-plaintiff merits serious consideration. It is the contention of the petitioner that the maximum Court fees payable in the suit would be Rs. 15,000/- in Gujarat State. Schedule I to the Bombay Court Fees Act, 1959 as applicable in Gujarat provides for maximum Court fees of Rs. 15,000/-. On this aspect, there is no dispute. However, as far as the question of fixed Court fee and ad valorem Court fee is concerned, it is concluded by the judgment of this Court in the case of *The Anil Starch Products Ltd. Vs. The Gujarat Labour Welfare Board and Another*, . In that case, a suit was filed for declaring that notice of demand for unpaid accumulation under the Labour Welfare Act was illegal and it was held that such notice of demand was for recovery of payment of the unpaid accumulation and such amount would be the basis for determination of Court fees. Hence, the amount of monetary gain is the basis of levying ad valorem Court fees because the relief of declaration that demand notice for unpaid accumulation is illegal would be for the prevention of monetary loss and such suit should be governed by Article 7 of Schedule I. Therefore, the plaintiffs valuation and payment of fixed Court fees is totally unjustified and the suit was capable of monetary evaluation and it is to be valued on the basis of amounts of the bills in respect of which declaration and injunction was sought.

9. As regards the claim of the Court Fees Inspector u/s 18 of the Court Fees Act, for separate assessment of Court fees on separate cause of action, reliance has been placed on the judgment of this Court in the case of *Cotseeds Corporation Vs. Cotton Corporation of India and Others*, . In that case also, a fixed Court fee of Rs. 30/- was paid and Court, following the judgment of *Anil Starch (supra)*, held that the Court fees on the amount of consideration mentioned in the contract of sale was required to be paid. A further question which was considered was regarding separate causes of action. Section 18 of the Act deals with multifarious suits and provides that when the suit embraces two or more distinct subjects, the Court fees to be levied would be on the basis of calculation on each

separate subject and each separate subject is to be clubbed together. In the Cotseeds case (supra), there were two separate causes of action of two separate contracts dated 20-11-1986 and 8-12-1986 for different quantities and at different rates. Both the causes of action were wholly different and the Court held that separate causes of action have been clubbed together and, therefore, both the causes of action were required to be evaluated separately.

10. In the present case, the demands of electricity dues are contained in the same letters. Both the impugned letters of the Gujarat Electricity Board demand the total amount on account of electricity consumption for the street lights and for water supply. Merely because the consumer has been given two separate bills, they cannot be said to be necessarily different causes of action. The suit was filed on a single basis that the plaintiff-Municipality had to recover large amount from the defendant-Gujarat Electricity Board and there are other contentions also of similar nature against the whole demand. There was no question or any multifariousness or possibility of separate suits on such count. Therefore, Section 18 would not be attracted in the present case. Therefore, the maximum Court fees payable would be Rs. 15,000/- and deducting the fixed Court fees of Rs. 30/- already, the remaining Court fees payable would be Rs. 14,970/-.

Lastly, it was submitted that the plaintiff is entitled to substantial refund because the suit was withdrawn unconditionally before settlement of issues. Section 43 of the Act provides that when any suit in a Court is settled by agreement of parties before any evidence is recorded, half the amount of Court fees paid by the plaintiff shall be repaid to him by the Court. The present one is not a case of settlement and, therefore, Section 43 has no application.

Section 43(2) provides that the State Govt, may provide for repayment of any part of the Court fees paid on the plaint under such circumstances and subject to such conditions as may be specified in the order. The reliance is placed on the notification u/s 43(2) dated 6-8-1959 bearing No CFA-1056-III and it provides for refund of that part of the Court fee as specified in column 2 of the Schedule in the suits disposed of by it under the circumstances specified in column 1 of the said Schedule. It is, thus, clear that the refund of Court fees is permissible only under the circumstances specified in column 1 of the Schedule. There are six items in the Schedule; one is summary suit where leave to defend is refused or where the defendant does not appear; second item is where the suit claim is admitted; third item is suit which is got dismissed by the plaintiff for want of prosecution before the settlement of issues or recording of evidence. The learned Counsel for the petitioner submitted that when the plaintiff had withdrawn the suit before the settlement of issues and before recording of any evidence, his case is covered by this clause. It cannot be said that the plaintiff had got the suit dismissed for want of prosecution. The purshis filed by the plaintiff on the contrary shows that the suit was sought to be withdrawn conditionally seeking liberty to file a fresh suit on the same cause of action. It is true that the Court

had not granted leave to file fresh suit and the suit is dismissed as withdrawn unconditionally, but it cannot be said that the plaintiff had got the suit dismissed for want of prosecution.

11. The fourth item is somewhat nearer to the present situation. It provides regarding suit which is withdrawn unconditionally before settlement of issues or recording of any evidence as settled out of Court. In the present case, it can certainly be said that the suit is withdrawn unconditionally, but it cannot be said that it is settled out of Court. In fact, there is no settlement at all. Therefore, the conditions and the circumstances specified in this notification are also not satisfied.

Items No. 5 and 6 deal with rejection of the plaint without issuance of summons and where the judgment is given on admission before settlement of issues and recording of evidence. Thus, the plaintiffs case is not covered by any of these clauses and, therefore, the plaintiff is not entitled to any refund under any of these provisions.

12. Reliance was also placed on the judgment of this Court in the case of *Nirmala R. Shah v. Chamar Becharbhai Muljibhai* 1985 GLH (UJ) 47. In that case, the withdrawal purshis specifically stated that it was for the purpose of withdrawing the suit and it was also stated that in view of the compromise between the parties, the parties did not want to proceed further with the suit, and suit be disposed of accordingly. Reading these two statements together, the High Court held that the suit came to be withdrawn unconditionally because of the settlement between the parties out of Court and, therefore, the plaintiff was granted benefit of the notification referred to earlier. In the present case, there is no such question of any settlement between the parties out of Court or in the Court, Hence, this judgment also does not help the petitioner.

In the result, the revision application partly succeeds and the judgment and order of the trial Court directing payment of deficit Court fees of Rs. 23,370/- is quashed and substituted by an order for recovery of deficit Court fees of Rs. 14,970/-. At the request of the learned Counsel for the petitioner-plaintiff, time to pay Court fees is granted upto 16th September 1994. Rule is made absolute to the aforesaid extent. No costs.