
(1945) 10 MAD CK 0014
In the Madras High Court

Anne Venkatasubba Rao

APPELLANT

Vs

Anne Bhujangayya and Another

RESPONDENT

Date of Decision : 26-10-1945

Acts Referred:

Citation : AIR 1946 Mad 104 : (1945) 58 LW 631 : (1945) 2 MLJ 536

Hon'ble Judges : Bell, J

Bench : Division Bench

Judgement

Bell, J.—The petitioner was the respondent in certain arbitration proceedings at the conclusion of which he desired to set aside the award

which presumably had been made against him. He therefore filed an application u/s 33 of the Arbitration Act, 1940, praying that the award should

be set aside. He filed it as an ordinary application or petition and paid in accordance with Article 1(b) of Schedule II of the Madras Court-Fees

(Amendment) Act, a fee of twelve annas.

2. Objection was raised by the authorities to this fee and the Subordinate Judge of Guntur in whose Court the proceedings took place made an

order on the 29th March, 1945, that the applicant should pay a court-fee of Rs. 100. Hence this petition.

3. In his order the learned Judge dealt with the points made by the petitioner's counsel and agreed with him that Article 18, Schedule II of the

Court-Fees Act which prescribes a fee of Rs. 100 in certain circumstances applies only to applications made under paragraphs 17 and 20 of

Schedule II of the Civil Procedure Code, which have been repealed by the Arbitration Act and are now represented approximately by Sections

14(2) and 20 of that Act. Paragraphs 17 and 20 like Sections 14 and 20 do not in

any way deal with applications to set aside an award. No

specific provision, as the learned Subordinate Judge agrees, is made in the Court-Fees Act for such applications. The learned Subordinate Judge,

however, felt that an application to file an award u/s 31 was akin to matters provided for in Section 20, namely, an application to file an arbitration

agreement in Court and therefore that a similar fee should be payable. He thought that an application to set aside an award would be an

independent application for an independent relief and that as such the same court-fee should be payable as on an application to file an award.

4. It is an old principle of fiscal legislation that it must be strictly construed and that where there is any doubt, the benefit of it should be given to the

tax-payer. The learned Government Pleader agrees that this is the true position with regard to such legislation. There is no doubt that this particular

application is not provided for in the Court-Fees Act. The application in question has to be brought under some existing provision and all that can

be done is to use the general article, namely, Article 1. The Court-fee paid therefore, namely twelve annas, was correct and the order of the

Subordinate Judge must be set aside.

5. Only the Government appears as respondent; there will therefore be no order as to costs.