
(2000) 06 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 301 of 1999

Arsh Casting Pvt. Ltd.

APPELLANT

Vs

H.P. State Electricity Board and Others

RESPONDENT

Date of Decision : 23-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 115
Court Fees Act, 1870 — Section 7
Himachal Pradesh Court Fees Act, 1968 — Section 7

Citation : (2000) 3 ShimLC 257

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : Kuldip Singh and Bimal Gupta, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—The Petitioner-Plaintiff by virtue of the present revision petition u/s 115, Code of Civil Procedure, challenges the order dated 18.9.1999 of the learned Sub Judge Ist (1), Paonta Sahib, directing it to pay Court fees of Rs. 2,75,882.40 paise on the amount of Rs. 1,69,13,533/-.

2. Briefly, the facts of the case leading to the present petition may be stated thus. The Plaintiff, a private limited company duly incorporated under the Companies Act, 1956, obtained an electricity connection for its industrial unit at Jagatpur Majra in Paonta Sahib. Such electric connection was disconnected by the defendants on 11.8.1995 on the false allegations of electricity theft. The disconnection was challenged by the Plaintiff by way of a civil suit. In such suit an application was made for an interim injunction in a mandatory form for the restoration of electricity supply. Vide order dated 7.9.1995, the learned Sub-Judge Ist Class (2), Paonta Sahib held the disconnection of the electricity supply by the defendants as illegal. The learned Sub-Judge, however, directed the Plaintiff to pay half of the amount of penalty and other charges imposed by the

defendants vide notice dated 12.8.1995. The Plaintiff carried an appeal against the order dated 7.9.1995 of the learned Sub Judge. The appellate Court while holding the disconnection of the electricity supply as illegal ordered its restoration on the Plaintiff depositing a sum of Rs. 7,00,000/-. The Plaintiff was further directed to get his property recorded as attached in the revenue record. In revision carried before this Court by the defendants the order dated 12.4.1996 of the appellate Court was upheld. The matter was further carried to the Hon''ble Supreme Court by the defendants by way of a special leave petition. The Hon''ble Supreme Court while upholding the order of this Court directed the Plaintiff to deposit a sum of Rs. 30,00,000/- instead of Rs. 7,00,000/-. Such amount is stated to have been deposited by the Plaintiff with the defendants.

3. During the course of trial of the earlier suit, in view of the decision of the Supreme Court in Punjab State Electricity Board and Another Vs. Ashwani Kumar, the parties consented to refer the dispute for decision to the Board Level Dispute Settlement Committee. The said Committee vide its decision dated 12.3.1999 created a demand of Rs. 1,23,73,389/- against the Plaintiff alongwith interest at the rate of 18% per annum. On the basis of the decision of the Committee, the defendants vide notice dated 14.5.1999 raised a demand of Rs. 1,69,13,533/- against the Plaintiff and called upon the Plaintiff to pay the amount by 30.5.1999.

4. The Plaintiff then filed a suit, out of which the present petition has arisen for a declaration to the effect that the finding given by the Board Level Grievance Redressal Committee dated 12.3.1999 communicated to the Plaintiff on 20.5.1999 as well as the consequent notice dated 14.5.1999 calling upon the Plaintiff to deposit a sum of Rs. 1,69,13,533/- by 30.5.1999 is wrong, illegal, null and void, arbitrary, ineffective and not binding on the Plaintiff. As a consequential relief the Plaintiff prayed for grant of permanent injunction for restraining the defendants from enforcing the said notice by means of disconnection of the electricity supply of the Plaintiff or by recovering, realising or charging any amount of surcharge thereon from the Plaintiff on the basis of the said illegal, null and void notice.

5. In such suit an application was filed by the defendants under Order 7, Rule 11, Code of Civil Procedure, for the rejection of the plaint on the ground that the Plaintiff had undervalued the suit for the purpose of Court fee and jurisdiction. Such application was allowed by the learned Sub-Judge vide the impugned order dated 16.9.1999 whereby the Plaintiff has been called upon to pay the Court fee of Rs. 2,75,882.40 paise ad-valorem on the amount of Rs. 1,69,13,533/-. Feeling aggrieved, the Plaintiff is before this Court in revision.

6. The Plaintiff, vide para 26 of the plaint, has valued the suit for the purposes of Court fee and jurisdiction in respect of the reliefs of declaration and injunction at Rs. 200/- each and has affixed Court fee accordingly on the plaint.

7. The learned Counsel for the Plaintiff while assailing the impugned order has, by placing reliance on Section 7(iv)(c) of the H.P. Court Fees Act, 1968,

contended that the suit has been properly valued for the purposes of declaration as well as injunction. It was further contended that it is for the Plaintiff to put his own valuation in the suit for the purposes of Court fee and jurisdiction.

8. The learned Counsel for the defendants, on the other hand, while supporting the impugned order, contended that the Plaintiff has clearly attempted to evade the Court fee by framing the suit in a clandestine manner and filing it on the basis of declaration with consequential relief of injunction, whereas, in fact, the Plaintiff is trying to avoid his liability to pay the electricity charges amounting to Rs. 1,69,13,533/-. Since a suit for restraining the opposite party to recover the amount is not different from a suit for the recovery of the amount, the suit is required to be valued on the amount mentioned in the demand notice issued by the defendants to the Plaintiff. In support of his contention, the learned Counsel for the defendants has placed reliance on a Division Bench decision of the Patna High Court in Kishori Lal Marwari Vs. Kumar Chandra Narain Deo and Another, .

9. In the case before the Patna High Court, the Plaintiff therein had filed a suit for injunction for restraining the defendant/decreed holder from executing the decree on the ground that the decree was collusive and obtained by fraud and therefore, void and incapable of execution. Though the decree was for Rs. 1,38,804.09 paise inclusive of costs, the Plaintiff valued his suit for purposes of Court fee and jurisdiction only at Rs. 10,000/-. It was held that the Plaintiff should have valued the suit for purposes of Court fee and jurisdiction according to the amount of decree and he should pay ad-valorem Court fee on such amount.

10. I have heard the learned Counsel for the parties and have also gone through the record of the case.

11. There is no dispute that the present suit would be governed by Section 7(iv) (c) of the H.P. Court Fees Act, 1968.

12. Section 7(iv)(c), insofar as it is material for the purpose of the present case, reads:

The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:

(i)

(ii)

(iii)

(iv) In suits-

(a)

(b)

(c) for a declaratory decree and consequential relief to obtain a declaratory

decree or order, where consequential relief is prayed.

(d)

(e)

(f)

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal;

In all such suits the Plaintiff shall state the amount at which values the relief sought:

Provided that minimum Court fee in each case shall be thirteen rupees:

Provided further that in suit coming under Sub-clause (c), in cases where the relief sought is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by paragraph (v) of this section.

13. According to the learned Counsel for the Plaintiff a discretion vests in the Plaintiff u/s 7(iv)(c) of the H.P. Court Fees Act, 1968 according to his own estimation of the relief claimed by him and that such valuation has to be accepted by the Court unless it is arbitrarily, unreasonably and deliberately undervalued. The learned Counsel for the Plaintiff has contended that the restriction placed on the discretion of the Plaintiff as to valuation of the suit by second proviso to Section 7(iv)(c) would not be attracted in the present case since second proviso would be applicable only in respect of "immovable property". In support of his contention the learned Counsel for the Plaintiff has placed reliance on the ratio laid down by High Courts of Delhi, Punjab and Haryana in *Purshottam Dass and Others Vs. Har Narain and Another*, ; *Sundar Dass and Others Vs. Gurpartap Dass*, and *Govind Gopal and Others Vs. Banwari Lal*, wherein it has been held:

If the property to which a plaint refers does not relate to lands, houses and gardens or is such property of which the valuation cannot properly be worked out under any of the sub-clauses of Clause (v) of Section 7, the proviso in question would have no application at all to that suit, and notwithstanding the second proviso the Court fee payable on the plaint of such a suit shall be under the first proviso to that section.

14. Be it stated that the ratio laid down by the High Courts of Delhi and Punjab and Haryana in the above noted cases as to the interpretation of the word "property" used in second proviso to Section 7(iv)(c) and the applicability of the said second proviso is based on the ratio laid down by a learned Single Judge of Punjab High Court in *Bawa Bir Singh v. Ali Nawaz Khan* AIR 1964 Punjab 381.

15. The question as to true effect of the second proviso to Section 7(iv)(c) came to be reconsidered by a Division Bench of the Punjab and Haryana High Court in

Surat Singh v. Jagdish and Ors. 1979 PLR 82. After tracing out the history of the case laws leading to the insertion of second proviso to Section 7(iv)(c) of the Court Fees Act, 1870, as applicable in Punjab and Haryana, vide Court Fees (Punjab Amendment) Act, 1953, while over-ruling the ratio laid down by a learned Single Judge in Bawa Bir Singh v. Ali Nawaz Khan (supra), it was held that the word "property" appearing in the second proviso would include movable as well as immovable property.

16. In the case before the Division Bench, the defendants therein had obtained a decree for Rs. 21,500/- as compensation for non-performance of a contract. A suit was filed by the Plaintiff therein for cancellation of the decree on the ground that it was obtained by fraud and collusion. The Plaintiff also prayed for perpetual injunction for restraining the defendants from executing the decree. The suit was valued for the purposes of Court fee and jurisdiction at Rs. 130/- and, accordingly, Court fee of Rs. 13/- was affixed on the plaint. The valuation of the suit as put by the Plaintiff was challenged by the defendants. The trial Court accepted their objection and directed the Plaintiff to pay ad valorem Court fee of Rs. 1953.60 paise on the abovesaid amount of Rs. 21,500/-. Feeling aggrieved, the Plaintiff went up in revision before the High Court. While dismissing the revision, the High Court upheld the order of the trial Court.

17. In the The Andhra Pradesh State Electricity Board and Another Vs. K. Venkateswara Rao, a demand of Rs. 20,005.6 paise was raised by the Andhra Pradesh State Electricity Board against the Respondent therein by a bill containing a threat as to disconnection of, the electricity supply in case the amount was not paid by the specified date. The Respondent-Plaintiff instituted a suit for a declaration that the demand made was illegal and invalid and also for a permanent injunction restraining the Petitioners-Defendants from disconnecting the supply of electricity. Such suit was valued for the purposes of Court fee and jurisdiction u/s 7(iv)(c) of the Court Fees Act at Rs. 1,000/-. The objection raised by the Petitioners-Defendants as to valuation of suit was repelled by the learned trial Court. The matter was carried in revision before the High Court. Allowing the revision petition, it was held that what the Plaintiff-Respondent was seeking by the suit, was to avoid the payment of consumption charges of Rs. 20,005.65 paise and Court fee was required to be paid on the amount for the avoidance of which the suit was laid.

18. A learned Single Judge of Delhi High Court (Hon"ble R.C. Lahoti, J. as his Lordship then was) in Rampur Distillery & Chemicals Co. Ltd. v. Union of India 1995 (2) PLR 28, in a case where the Plaintiff therein had claimed the following reliefs:

(i) to grant a declaration to the effect that running contract No. J/13018/3/27/79/PUR.II dated 6.2.1979 is non-est and void;

(ii) and in the alternative, for the grant of declaration that the contract, if any, was rendered void and the Plaintiff was not obliged to make any supplies under

supply order No. J/13018/3/27/NINE/79/PUR.II dated 29.10.1979 since the defendant committed breach of contract;

(iii) further for grant of a declaration that the demand for risk purchase damages in the sum of Rs. 5,24,790/- made by the defendant Union of India is illegal, ultra vires, unwarranted, ineffective and inoperative;

(iv) and for grant of an injunction against the defendant Union of India restraining it from enforcing its aforesaid illegal demand and/or/acting to the prejudice of the Plaintiff company in any manner whatsoever in pursuance of the aforesaid demand;

and the suit was valued for the purposes of Court fee and jurisdiction at Rs. 1,000/- insofar as the relief of injunction was concerned, has held that the injunction sought for by the Plaintiff seeks avoidance of a specified money liability to the tune of Rs. 5,24,790/-, therefore, the Plaintiff was liable to pay ad valorem Court fee on such amount.

19. In Assam State Electricity Board Guwahati and Others Vs. Borjalinga Tea Company and Another, . The Assam State Electricity Board raised a demand of penal charges of Rs. 1,12,748.79 paise against the Plaintiff therein. The Plaintiff filed a suit for declaration that the demand raised was illegal. A permanent injunction was also sought for restraining the Board from recovering such amount. The Plaintiff valued his suit for injunction only at Rs. 100/-. Court fee of Rs. 22/- was affixed for relief of declaration and Rs. 10/- for the relief of injunction. The trial Court decreed the suit. In appeal before the High Court, it was held:

The validity of the decree passed can also be looked at from another angle. The Plaintiff is trying to avoid liability for an amount of Rs. 1,28,915.84 paise and he has valued the injunction at Rs. 100/- only and the Court fee has been paid for declaration at Rs. 22/- and Court fee of Rs. 10/- on the value of the injunction. This practice of valuing suits arbitrarily for the purpose of injunction seeking to avoid liability of a huge amount of money cannot be encouraged and as such a suit cannot be entertained by the Court. What is the basic purpose behind the suit or decree, that must be determined/found out by the Court. In this particular case the basic purpose is to avoid the liability of Rs. 1,28,915.84 paise and that liability cannot be avoided by filing a declaratory suit and paying the Court fee of Rs. 22/- only. Court fee should have been paid on the amount of value of the suit and that not being done, the plaint should not have been entertained by the trial Court. The learned Assistant District Judge No. 1 Cachar at Silchar shall realise the amount of Court fee from the Plaintiff and for that purpose he shall refer the matter to the Collector for realisation of the Court fee, as I find this to be an attempt to evade the Court fee due on the plaint.

20. I am in full agreement with the ratio laid down in Kishori Lal Narwari v. Kumar Chandra Narain Deo; Surat Singh v. Jagdish and Ors.; The Andhra Pradesh State Electricity Board and Ors. v. K. Venkateswara Rao; Rampur

Distillery & Chemicals Co. Ltd. v. Union of India and Assam State Electricity Board Guwahati and Ors. v. Borjalunga Tea Co. and Anr. (supra), and hold that the word "property" appearing in the second proviso to Section 7(iv)(c) of the H.R Court Fees Act, 1968, would included both movable and immovable property and that a suit for injunction restraining the defendant from recovering the amount which stands on equal footing as a suit for recovery of the said amount, has to be valued for the purposes of Court fee and jurisdiction to the extent of the amount the liability to the extent of which avoidance is claimed.

21. In coming to the above conclusion I am also supported by the decision of the Madhya Pradesh High Court in Badri Lal v. State AIR 1964 MP 9 and Mangi Lal Jain v. Madhya Pradesh Electricity Board Jabbalpur 1977 MPWN 480, wherein the relief claimed was for avoidance of liability under the demand bill and for restraining the defendants from disconnecting the supply of electricity and it was held that ad valorem Court fee on the amount of the liability sought to be avoided was payable u/s 7(iv)(c) of the Court Fee Act.

22. Again in Deora P.U. Cabncon MFG Co. (P) Ltd. v. Maharashtra State Electricity Board and Anr. 1991 (70) CompCas 220, the Plaintiff therein had filed a suit for declaration that the bank guarantee furnished by the Bank of Baroda was not legally enforceable and a permanent injunction was sought against the Maharashtra State Electricity Board from enforcing such bank guarantee to the extent of Rs. 50,000/-. It was held that the Plaintiff in fact was seeking the avoidance of the bank guarantee of Rs. 50,000/- and, as such, suit should have been valued for the purposes of Court fee and jurisdiction at Rs. 50,000/- and ad valorem Court fee thereon should have been paid.

23. In the present case as well the Plaintiff is seeking to avoid its liability to the extent of Rs. 1,69,13,533/-. It has valued its suit for purposes of Court fee and jurisdiction (vide para 26 of the plaint) for the reliefs of declaration and injunction at Rs. 200/- each and has affixed Court fee on the plaint. Such a suit stands on equal footing as a suit for recovery of the amount and has, therefore, to be valued for the purposes of Court fee and jurisdiction to the of the amount involved. The learned trial Court, has, therefore, rightly called upon the Plaintiff to pay the requisite Court fee. Such order does not call for any interference.

Resultantly, the present petition fails and the same is accordingly dismissed.