

(1969) 05 AHC CK 0012
In the Allahabad High Court
Case No : F.A.F.O. No. 66 of 1964

Asharfi Lal

APPELLANT

Vs

Firm Thakur Pd. Kishori Lal and Others

RESPONDENT

Date of Decision : 19-05-1969

Acts Referred:

Citation : AIR 1970 All 197 : (1969) 39 AWR 439

Hon'ble Judges : Yashoda Nandan, J; R.L. Gulati, J; Jagdish Sahai, J; D.D. Seth, J; C.D. Parekh, J

Bench : Full Bench

Advocate : V.B. Khare, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—On a reference made by our brothers Broome and G.S. Lal, JJ. this appeal u/s 6-A of the Court-fees Act (U.P. Amendment) has been laid before us.

2. The respondent firm Thakur Prasad Kishori Lal brought the suit giving rise to this appeal for accounting and for the recovery of the sum found due after accounting to the plaintiff respondent from the defendant appellant Asharfi Lal. In the plaint the suit was valued at Rs. 300, Paragraph 10 of the plaint, which deals with the valuation of the suit reads:

"Yeh ki tayun maliyat dawa bagarz akhtiyar samayat wa adaya court-fees mublig 300 rupaiye kayam kiya jata hai. Baad kitab jis kadam rakam yaftani mudiyaan mudalaham jimmgi mudalaham ayad ho us per mudaiyyan rasum sarkari ada kareng."

3. The relief claimed in the plaint reads thus:

"(a) Basadur digri infsakh sarakhat darmiyan farikain saakatdari fiks kar di lawe aur mudalaham ko hukum di jawe ki hisab kitab samiha de aur hisab kitab darmiyan farikain kara diya jawe aur jo rakam mudaiyyan jimmgi mudalaham

sabit ho uski digri khilaf mudalaham sadir ki jawe.

(b) Kharcha Mudaiyyan mudalaham se mile.

(c) Yeh ki alaba ya baiay ya basamul dadrasi maikoorwale ke ham mudayvan aur jis digar dadrasi ke mustahak badanist adalat karar pawe uske bhi digri bahaq mudaiyyan bahaq mudalaham sadir ki jawe."

4. On accounting it was found that a sum of Rs. 11, 825/50 was due to the plaintiff respondent from the defendant appellant but before the trial Court decreed the suit and passed a formal decree or signed it made the plaintiff respondent deposit ad valorem court-fee on the sum of Rs. 11,825/50.

5. Dissatisfied with the decree passed by the trial Court the defendant appellant appealed before the District Judge. In the memorandum of appeal the valuation was shown at Rs. 300 and Court fee was paid on that amount. The Munsarim of the District Judge's Court made an endorsement that the court-fee paid was sufficient and the appeal was registered but the plaintiff respondent made an application to the District Judge stating therein that the correct valuation of the appeal was Rs. 11,825/50 on which amount ad valorem court-fee was payable by the defendant appellant. The learned Additional District Judge agreeing with the contention made by the plaintiff respondent passed an order directing the defendant appellant to pay ad valorem court-fee on Rs. 11,825/50 and make good the deficiency to the extent to which the Court fee already paid was deficient.

6. The defendant appellant appealed to this Court u/s 6-A of the Court Fees Act (U.P. Amendment) and, as already stated earlier, the matter has come to this Full Bench on a reference made by two learned Judges of this Court.

7. We have heard Sri V. B.Khare for the defendant appellant and Sri S. N. Sahai for the plaintiff respondent. The only controversy between the parties is as to whether Section 7 (i) of the Court Fees Act (U.P. Amendment) or Section 7 (iv) (b) would be applicable. Sri. V. B.Khare contends that clearly the suit was one for accounts and inasmuch as there is a specific provision relating to accounts in the shape of Section 7 (iv) (b) the general provision contained in Section 7 (i) would not apply on the principle that the special would exclude the general. Sri S. N. Sahai, on the other hand, contends that inasmuch as a decree now has been passed for the recovery of a specific amount, i.e., the sum of Rs. 11,825/50 the special provision that will be applicable will be Clause (1) of Section 7 of the Court Fees Act (U.P. Amendment).

8. We are not impressed by the submission of Sri V. B.Khare that a suit of accounts always remains a suit for accounts even though a money decree is passed after accounting has been done. Properly analysed a suit for accounts is nothing but a suit for recovery of money but only after the amount has been determined. Consequently we find no justification for the submission that a suit for accounts would always remain a suit for accounts even though the purpose

for which accounting is held, i.e., to obtain a decree for the recovery of a specific amount of money, has been achieved and the sum recoverable specified.

9. We have seen the decree passed in this case. It is clearly one for recovery of the sum of Rs. 11,825/50. As pointed out earlier, the rendition or the taking of accounts is only incidental or ancillary and for the sole purpose of determining the exact amount due to the aggrieved party.

10. No direct authority has been brought to our notice which deals with the question raised before us. However, we find no difficulty in coming to the conclusion to which we have arrived, as stated above, on the basis of first principles. In circumstances similar to those before us it has been held by several High Courts on the basis of similar provisions that ad valorem court-fee would be payable on, the amount determined after accounting. We may refer to only some of those cases e.g. Kashiram Chaudhuri Vs. Ranglal Motilalshet Marwadi, ; In Re: Dhanukodi Nayakkar and Others, and Kanti Chandra Tarafdar and Another Vs. Radha Raman Sirkar and Others, . The decision in Ghalib Rasool and Another Vs. Mangu Lal and Another, was also brought to our notice but in our opinion the facts of that case are entirely different from those before us and the decision is distinguishable.

11. From the reasons mentioned above we are of the opinion that the order passed by the learned Additional District Judge demanding from the defendant appellant ad valorem court-fee on the sum of Rupees 11,825/50 is correct The appeal is, therefore, dismissed.