

(2019) 04 BOM CK 0028
In the Bombay High Court
Case No : Suit No. 835 Of 2014

Bai Mamubai Bhimji Bhanji Trust And Ors	APPELLANT
Vs	
Neelkanth Mansions & Infrastructure Pvt Ltd	RESPONDENT

Date of Decision : 05-04-2019

Acts Referred:

Maharashtra Court Fees Act, 1959 — Section 15, 16, 17, 17A, 43, 43A, 43(1)
Limitation Act, 1963 — Article 137

Citation : (2019) 04 BOM CK 0028

Hon'ble Judges : G.S. Patel, J

Bench : Single Bench

Advocate : Nilesh Modi, Rachit Thakkar, BN Jadhav, Drishti Modi, Adwait Kulkarni, Kunal Bhanage, Dilip Talekar

Judgement

1. A few days ago, Mr Modi mentioned the matter. He said he had applied to the registry for a certificate for a refund allowed by the court at the time when the suit was settled. The registry orally declined to issue that certificate. It said Mr Modi's application was barred by the proviso to Section 43(1) of the Maharashtra Court Fees Act, 1959. Mr Modi sought a direction to the registry to issue that certificate so that he could present it to the collectorate to get the refund.

2. That seemingly innocuous request raised, I found, a question of interpretation of one phrase under Section 43. Section 43 allows a refund of half the court fees when a suit is settled before evidence. But that refund, its proviso says, cannot be allowed if the 'claim for repayment' is made more than one year after the date when the suit is settled. The question therefore is this: when is 'a claim for repayment' said to be made? Is it when the party entitled to a refund gets an order allowing that refund, or is it when the party, having obtained such an order, applies to the registry for a certificate? Correctly read, does the application for a certificate have to be made within one year of the date of settlement? Is the 'claim for repayment' the application for a certificate, or is it the request to the court to allow a refund? At my request Mr Bhanage, learned AGP, has rendered

assistance Court on the question of interpretation.

3. The following facts will provide sufficient context. The suit itself was of 2014. The 1st Plaintiff is a private family trust. On 28th October 2014, parties tendered Consent Terms to RD Dhanuka J. He made an order on those. He took the Consent Terms on record, accepted the undertakings and disposed of the suit in accordance with the Consent Terms. The order itself did not say anything in regard to the refund at all. Clause 24 of the Consent Terms signed by the parties contained a single line: "refund of Court fees as per Rules". This is the usual compact wording we find in many Consent Terms and, indeed, routinely in judicial orders of this court.

4. The Plaintiffs did not immediately apply for a certificate from the Registry, one they needed to present to the collector to obtain the refund. They did so only on 27th October 2016 i.e. just a day before the second anniversary of the filing of the Consent Terms. The Registry passed no order on that application by praecipe. But it also did not issue a certificate. The Plaintiffs were told that no certificate could be issued because 'the claim for repayment' was not made within one year from the date of the settlement. Mr Modi questions the correctness of this refusal.

5. Section 43 (1) and its first proviso read thus:

"43. Repayment of fee in certain circumstances

(1) When any suit in a court or any proceeding instituted by presenting a petition to a Court under the Hindu Marriage Act, 1955 is settled by agreement of parties before any evidence is recorded, or any appeal or cross objection is settled by agreement of parties before it is called on for effective hearing by the Court, half the amount of the fee paid by the plaintiff, petitioner, appellant, or respondent on the plaint, petition, appeal or cross objection, as the case may be, shall be repaid to him by the Court:

Provided that no such fee shall be repaid if the amount of fee paid does not exceed twenty five rupees or the claim for repayment is not made within one year from the date on which the suit, proceeding, appeal or cross objection was settled by agreement."

(Emphasis added)

6. Mr Modi submits, and I think quite correctly, that the 'claim for repayment' is not the 'application for a certificate'. The claim for repayment is the direction obtained from the Court allowing a refund 'in accordance with the Rules'. It makes no difference, in his submission, again one I am inclined to accept, whether this is in the Consent Terms or in the order of the Court because once the Court disposes of the suit 'in accordance with the Consent Terms' every provision of the Consent Terms becomes an order of the Court.

7. Section 43 makes it clear that where there is a compromise of suit before evidence is taken, 50% of the Court fee is to be repaid by the Court. The words

are "shall be repaid". This is therefore a statutory entitlement of every plaintiff who has paid court fees. He is entitled to a refund of 50% of the court fees he paid if his suit is settled before evidence is recorded.

8. Consent terms (by whatever name called) are not the only way in which the suit are settled. It is possible, for instance, and certainly not unknown, for a suit to be settled entirely outside Court by some sort of an agreement. Sometimes, parties bring that agreement reduced to writing to Court, and ask the Court to take the settlement agreement on record. But they often only ask that the suit be allowed to be withdrawn as settled outside Court. When that happens, there are no consent terms at all, and nothing but a simpliciter withdrawal. In a situation such as that, i.e. where there are no Consent Terms, and the Plaintiffs withdraws the suit as settled, and the Court makes no order of refund at the time of its order on the suit, the plaintiff would be entitled to approach the registry invoking rights under Section 43 and to claim a refund. The first approach to 'the court' for a 'claim for repayment' would, in those circumstances, be the application to the registry because there was no previous application to the Court at all. Ordering a refund is something the registrar or Prothonotary & Senior Master can do under our Rules: see Rule 131(17) and Rule 163.

9. But if at the time when the suit is being withdrawn as settled outside Court, the plaintiff is cautious enough to request the Judge to allow him a refund according to the Rules, then that must certainly be the claim for repayment within the meaning of the proviso. A later application for a certificate is then merely a consequential or ministerial act required to be done to give effect to the judicial order already made allowing the repayment claim. Any other interpretation is extremely problematic. It would literally amount to the Registry denying that which the Judge permitted. If that judicial order is not a 'claim for repayment', then it is nothing at all, and no judicial order, or any part of it, can be seen or read to be entirely otiose or empty. That order allowing the refund cannot be unmoored from the date on which it is made. If the judicial order ('refund according to the Rules') is not an order allowing 'a claim for repayment', then it is nothing at all. There is only one claim for repayment. It may be made directly to the Court at the time of withdrawal or, if not made to the Court at that time, must be presented to the registry. All that the proviso says is that the claim for repayment must be made within one year of the date of the settlement. The Section does not prescribe any form for making that claim.

10. Now this is distinct from Sections 15, 16 and 17 of the Court Fees Act. Section 15 mandates a refund of fee in certain cases where an Appeal or a plaint rejected by a lower Court is ordered to be received or if the suit is remanded in appeal. In such a case, the Court is required to issue a certificate. Section 16 speaks of a similar refund accompanied by a certificate on an application for review of a judgment being allowed, and Section 17 deals similarly with a case where a Court reverses or modifies its former decision.

11. These sections have been subjected to an additional limitation under Section

17A introduced by the 1966 amendment, Maharashtra Act 18 of 1966, which reads as follows:

"17A. Period of limitation for refund of fees under section 15, 16 or 17 Where a certificate is granted to any person under section 15, 16 or 17, no fee thereunder shall be refunded unless such person presents it to the Collector or such other authority as may be prescribed by rules, for encashment, within two years from the date of issue of the certificate by the Court."

(Emphasis added)

12. Sections 15 to 17A operate in a wholly different sphere from Section 43A. Sections 15 to 17 relate to situations where there is an order of a court correcting course in appeal or review, or correcting a mistake, thus entitling a Plaintiff to a refund. The court is not required to allow only a refund. It is required to issue a certificate. Therefore Section 17A requires that the certificate itself must be presented for encashment within two years. Further, the starting point is entirely different. In these sections, the starting point of time is the date of issuance of the certificate, not the judicial order. There is no concept of making a 'claim for repayment'.

13. Mr Bhanage may be correct in saying that even in a case like the present one where a certificate is sought after two years, and assuming it is issued, it must be presented for encashment within the general period of limitation under Article 137 of the Limitation Act, i.e., three years from the date of issuance of the certificate. But that is not a question that falls for decision at all. There is no lateness or delay in presentation of the certificate. The question is whether the Registry is entitled to refuse to issue the certificate on the ground that more than a year has passed since the court allowed the claim for repayment made at the time of the Consent Terms.

14. I am unable to accept Mr Bhanage's submissions that the intention of the legislature was to place an across-the-board time-limit, including on Section 43. If that was so, then an equivalent provision to Section 17A with the necessary changes ought to have been inserted in the proviso to Section 43 limiting the time within which a certificate must be obtained and then presented for encashment. The legislature has not done that. I cannot read the provisions of one part of a statute into some other part of the same statute. I believe Mr Modi is correct in saying that the legislature must be deemed to have been aware of what it was doing when it inserted the restriction in Section 17A but made no such corresponding limitation to Section 43.

15. To my mind, the reason is as self-evident as the distinction. Sections 15, 16 and 17 all deal with situations where there is a judicial act being reversed or corrected judicially, thus entitling a litigant to a refund. It is not just the refund that then follows. It is the actual issuance of a certificate, and the time-limitation is then necessary simply because the certificate should not remain open indefinitely. Section 43 speaks of a settlement without any intervention of the

Court. It contemplates a situation where a party may not ever apply for a refund of court fees. It is the plaintiff's right to do so, but no party is under an obligation to make that claim for repayment, and no court is obliged to allow a claim if it is not made. There is no requirement of issuing a certificate. If a plaintiff makes that claim, it has to be allowed if the circumstances are met.

16. This distinction is important. Sections 15, 16 and 17 are triggered by a judicial act and order. That, in turns, triggers the issuance of a certificate. No claim for repayment need be made. Section 43 is an act of parties presented to court. It has preconditions (that no evidence has yet been recorded being the salient one). Then the plaintiff is entitled to claim repayment. Without that claim, the court is not required to grant it, and without the conditions being met, the court cannot grant it. A Section 43 scenario is, therefore, one step anterior to the Sections 15 to 17 scenario, and it is after that claim is allowed that the certificate must follow.

17. Therefore:

(a) if there is an order at the time of disposal of the suit allowing the refund of court fees "as per the Rules", then that is the claim for repayment. The application for a certificate may be made any time thereafter. No limitation will apply to the application for a certificate, this being a merely ministerial act or the generation of a memorandum for presentation to the collector.

(b) If at the time of disposal of the suit, there is no order sought or obtained for refund of court fees, then that application may be made either to the Registry or to the Court, but it must be made within one year of the date of settlement, and it is this later application (i.e. the one after the date of disposal of the suit) which will be the date of the claim for repayment.

(c) The presentation of that certificate for encashment will be governed by the provisions of the Limitation Act.

18. Having regard to these circumstances, and since the Consent Terms in question in clause 24 contained a provision that the refund would be in accordance with Rules, the Registry is directed to issue the necessary certificate. It will do so within two weeks from today acting on an authenticated copy of this order.

19. I must express my thanks to Mr Bhanage, Mr Modi and Ms Shruti Sardessai who aided Mr Modi in research for their assistance in the matter.