

(2008) 08 MP CK 0019
In the Madhya Pradesh High Court

Bansal Highway

APPELLANT

Vs

General Manager, Gramin Sadak Vikas Pradhikaran Pariyojna
Kriyanvayan and Others

RESPONDENT

Date of Decision : 20-08-2008

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2008) ILR (MP) 2912 : (2008) 4 MPHT 457 : (2008) 4 MPLJ 351 :
(2009) 106 RD 25

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Gupta, J.

This is a petition filed by the petitioner, who is the plaintiff in the Court below, invoking the writ jurisdiction of this Court under Article 227 of the Constitution of India whereby the petitioner challenges the order dated 30-11 -06 (Annexure P-5) passed in Civil Suit No. 13-A/06. By this order, the Trial Court has directed the petitioner to pay the Court fee. As a consequence of the same, an objection was raised on behalf of the respondent/defendant under Order VII Rules 11 and 13 have been allowed.

The aforesaid objection was submitted on the ground that the suit has been filed for declaring the order dated 10-8-06 as illegal and as a consequence of the same, the amount of security which has been deposited by the plaintiff/petitioner for a sum of Rs. 44,75,000/- be refunded. The Trial Court directed that since no Court fee has been paid by the petitioner/plaintiff for the consequential relief, therefore, the Court directed the petitioner/plaintiff to pay ad valorem Court fee on the aforesaid amount.

On behalf of the petitioner/plaintiff, it is contended that in the present case ad valorem Court fee is not payable which is fixed under the Schedule I but the

Court fee is payable u/s 7 Sub-section 4 (A) of the Act. It is contended that the suit filed on behalf of the petitioner was in fact a suit for declaration and when the suit for declaration is filed then no Court fee for the consequential relief has to be paid.

Learned Counsel for the petitioner relied upon the judgment passed by the Apex Court in the case of State of Uttar Pradesh Vs. Ramkrishan Burman (Dead) by L. Rs. and Others, and it was contended that suit for declaration was enough. Not only the aforesaid suit is maintainable but no Court fee is payable for the consequential relief for the possession. In this regard, the facts of the case are to be taken into account. The instant suit before the Civil Judge was filed for a declaration that the plaintiff is the "owner in possession" of the estate left. On that basis, it is clear that the property was in possession of the plaintiff therefore, the suit for declaration could only be filed as the relief with regard to possession could not have been claimed by the plaintiff because the plaintiff himself was in possession. Thus, this judgment has no application in the present case. The facts of the present case are different.

In the present case, the amount which has been directed to be forfeited in pursuance to the impugned order dated 10-8-06 against which the relief is sought to declare it illegal then the security amount is not being in possession of the plaintiff but being in possession of the defendant has to be prayed for by the plaintiff for its refund. Under the circumstances, mere suit for declaration will not be enough until the amount is to be refunded to the plaintiff and if this is the consequence of the same then the petitioner/plaintiff has to pay the Court fee. In this reference with profit it may be mentioned that consequence to set at naught to the order dated 10-8-06 is the refund of the forfeited money. The security amount has been forfeited which vests with the State Govt. and the amount which vests with the State then it is necessary for the plaintiff to claim the relief of its possession by way of refund by paying the Court fee, therefore, ad valorem Court fee as prescribed in Schedule I has to be paid by the plaintiff.

Learned Counsel appearing on behalf of the petitioner/plaintiff further relied upon the judgment of this Court in Dharmraj Singh Vs. Vaidya Nath Prasad Khare and Others, . The aforesaid case also has no application in the present petition. In fact this Court was considering the question with regard to pecuniary jurisdiction of the Court u/s 8 of the Suit Valuation Act. The suit for pecuniary jurisdiction was valued at Rs. 85,500/- for the purposes of suit for declaration. In view of the aforesaid fact, the Court considered that question in the backdrop of that particular case. In the present case, the question in fact is entirely different.

Another judgment in this regard is also to be considered which is reported in State of Madhya Pradesh and Another Vs. Jiwanlal Chikotiya and Another, . This is a judgment passed by the Division Bench of this Court and the Division Bench in Para 11 of the judgment held that if the suit is filed for declaration with injunction as a consequential relief, the plaintiff is bound to pay ad valorem Court fee as per valuation of the suit for the relief of permanent injunction. Therefore,

the judgment as has been relied upon by the respondent/defendant decides the question for payment of ad valorem Court fee on a consequential relief.

Learned Counsel for the petitioner further relied upon the judgment passed by the Apex Court which is reported in Rahim Khan v. Gaffar Khan 1974 MPLJ SN 14. In the aforesaid judgment it is seen that for the purposes of determining the Court fee one has to look into the allegations made in the plaint. The Court further held that it is a settled rule of law that it is not the form of plaint but the contentions of it which the Court while taking into account to determine the question of the Court fee shall be relevant.

On the basis of the aforesaid ratio of this judgment, if the plaint allegations are to be seen for the purposes of determining the Court fee as viewed by the Court below then the petitioner/plaintiff prayed for quashment of the order dated 10-8-06 by which the security amount has been forfeited. In view of the above circumstances, mere declaring suit for declaring the order dated 10-8-06 to be illegal, is not enough. A particular amount of Rs. 44,75,000/- by this order has been forfeited which vests with the State Govt. The aforesaid amount was not in physical possession of the plaintiff. On behalf of the petitioner/plaintiff it is submitted that in M.A. No. 1185/07, this Court while passing the order on 16-3-07 has directed that the bank guarantee shall not be en-cashed until further orders. On this basis, it is submitted that the bank guarantee submitted by the petitioner has not yet been en-cashed. Under the circumstances, even assuming that the said bank guarantee is en-cashed but the same is not in physical possession of the plaintiff/petitioner. Thus, mere declaration under these circumstances and keeping in view the nature of the suit, a consequential relief will also arise by refund of the said amount. The petitioner/plaintiff has not paid the Court fee on the aforesaid amount.

In view of the aforesaid, I do not find that the Court below has committed any illegality in directing the petitioner/plaintiff to pay the Court fee on the amount which has been directed to be forfeited.

In view of the aforesaid. no ground is made out for the interference or to quash the impugned order Annexure P-5. As a consequence of the same, the present petition is misconceived and is dismissed.