
(1991) 05 BOM CK 0007
In the Bombay High Court
Case No : C.R.A. No. 414 of 1991

Betel Stores

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 03-05-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Railway Claims Tribunal Act, 1987 — Section 13, 16, 22, 23

Citation : (1991) 93 BOMLR 422

Hon'ble Judges : G.D. Patil, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.D. Patil, J.—Rule made returnable forthwith. Heard learned Counsel for the respective parties.

2. This is the revision under Rule 4(v) of Chapter V of the Bombay High Court Rules, 1960, read with Section 115, CPC against the decision dated 26.3.1991 of the Taxing Officer of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur (for short referred to as "the High Court") in First Appeal Stamp No. 25947 of 1990, holding that the Court fee paid by the applicant-appellant is inadequate and directing him to pay the deficit Court fee of Rs. 15/- on the Memo of Appeal filed u/s 23(1) of the Railway Claims Tribunal Act, 1987. The applicant had filed the claim petition u/s 16 of the Railway Claims Tribunal Act, 1987, (for short "the Act"), seeking relief in respect of the matter referred to in Sub-section (1) of Section 13 of the Act. The Railway Claims Tribunal by its order dated 4.10.1990, rejected the petitioner's claim to the extent of Rs. 634.82. As against this rejection of the applicant's claim to the extent of Rs. 634.82 by the Railway Claims Tribunal, the applicant filed the appeal u/s 23 of the Act, to this Court paying therein the Court fee of Rs. 49/- calculating the same as per the provisions of Rule 6 of the Railway Claims Tribunal (Procedure) Rules, 1989, read with Schedule II of the rules.

3. The office of this Court raised objections as regards the Court fee paid. As per the decision of the Taxing Officer of this Court, the Court fee paid on the memo of the appeal was insufficient as the Court fee to be paid on the Memo of the Appeal before this Court has to be calculated as per Article I of Schedule I of the Bombay Court Fees Act, 1959, and the total Court fee payable was Rs. 64. Accordingly the Court fee already paid was, therefore, short by Rs. 15/- as the claim in the appeal was to the extent of Rs. 634.80. The applicant has challenged this decision of the Taxing Officer in the present Civil Revision Application.

4. I have heard Shri Dubey learned Counsel for the applicant and Shri Parate learned Honorary Assistant Government Pleader for the non-applicant State. It is contended by Shri Dubey learned Counsel for the applicant that having regard to the provisions of the Act and Railway Claims Tribunal (Procedure) Rules, 1989 and further having regard to the provisions of Rule 2 of Chapter V of the Bombay High Court Appellate Side Rules and the provisions of Section 7 of the Bombay Court Fees Act, 1959, the Court fee paid by the applicant on the memorandum of the appeal was perfectly corrected and proper and contrary decision arrived at by the Taxing Officer was not justified. Shri Parate learned Counsel for the non-applicant the State tried to justify the order of the Taxing Officer.

5. As per Section 13 of the Act, the claims tribunal under the Act, is empowered to exercise jurisdiction, powers and authority as were exercisable immediately before the commencement of the Act, by any Civil Court or the Claims Commissioner under the provisions of the Act relating to (a) the responsibility of the railway administration as carries under Chapter VII of the Railways Act in respect of claims for (i) compensation for loss, destruction, damage, deterioration or non delivery of animals or goods entrusted to a railway administration for carriage by railway (ii) compensation payable u/s 82-A of the Railways Act or the rules made thereunder; and (b) in respect of the claims for refund any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway. Section 16 of the Act provides for making application to the Claims Tribunal for seeking any relief in respect of the matters referred to in Sub-section (1) of Section 13 and it further provides that every such application shall be accompanied by such fee in respect of the filing of the application and by such other fees for the service or execution of the process as may be prescribed. Under the provisions of Rule 6 of the Railway Claims Tribunal (Procedure) Rules, 1989, framed under the Act, it is provided that every application made under Sub-section (1) of Section 16 for seeking relief in respect of matters, other than claim of compensation for death or injuries to the passengers shall be accompanied by the fees as specified in Schedule II. Schedule II of the Act, prescribes different rates in accordance with the value of the claims made. Section 22 of the Act relates to the execution of the orders of the Claims Tribunal and provides that an order made by the Claims Tribunal under this Act shall be executable by the Claims Tribunal as a decree of Civil Court and for this purpose, the Claims Tribunal shall have all the powers of a Civil Court. Notwithstanding anything contained in Sub-section (1) of Section 22 of

the Act the Claims Tribunal may transmit any order made by it to a Civil Court having local jurisdiction and such Civil Court shall execute the order as if it were a decree made by that Court. Having regard to these provisions it is apparent that the order made by the Claims Tribunal u/s 16 of the Act has been given a force of decree and it has been made executable by the Civil Court, though it is not an "order" as required in the Civil Procedure Code, the same having not been made by the Civil Court.

6. Section 5(1) of the Bombay Court Fees Act, provides that no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in support of such document there has been paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document. Section 7(1) of the Bombay Court Fees Act, 1959, provides for the fees to be paid on a memorandum of appeal against an order relating to the compensation under any Act for the time being in force for acquisition of land for public purposes and further provides for the amount of fees payable on a memorandum of appeal against an award of the claims tribunal preferred u/s 110-D of the Motor Vehicles Act, 1939. Provisions of Section 7(1) of the Bombay Court Fees Act, 1959, apparently is not applicable to the appeal preferred u/s 23 of the Act to this Court. What is, however, been urged is that since specified provisions have been made in the Bombay Court Fees Act, 1959, in relation to these appeals in the matter of payment of compensation under certain Acts and since such provision has not been made in the Bombay Court Fees Act in relation to the appeal as against the compensation awarded under the Act, the fee payable on the memorandum of the appeal before this Court u/s 23 of the Act is necessarily the fee which was payable on the claims petition before the Tribunal u/s 16(1) that is the fee as prescribed under Rule 6 read with Schedule II of the Railway Claims Tribunal (Procedure) Rules, 1989. In this behalf the applicant is also relying upon the provisions of Rule 2 of Chapter V of the Bombay High Court Appellate Side Rules. Chapter V of the Bombay High Court Appellate Side Rules, 1960, deals with the procedure after presentation, removal of office objections etc. Rule 2 of Chapter V deals with enquiry regarding difference in Court fees paid and provides that when the Court fees paid on an appeal is found corresponding with the Court fees paid and accepted in the Court below no further enquiry need be made unless it appears that the Court fee has been assessed on the mistaken principle and that a different Court fee stamp is required on the appeal. Shri Dubey learned Counsel for the applicant contended before me that this Sub-rule 2 of Chapter V postulates payment of the Court fees on memorandum of appeal corresponding with the Court fees paid and accepted in the Courts below and in such a case no enquiry as regards difference in the Court fees can be made and the instant one was a case in which no such enquiry should have been made by the office of this Court. Neither of the aforesaid submissions of Mr. Dubey can be accepted. It cannot be said on the basis of provisions of Section 7 of the Bombay

Court Fees Act, 1959, that by implication in all matters of compensation the Court fee payable on the memorandum of the appeal before this Court is the fee payable on the claim petitions preferred before the Tribunal. The charging section in the matter of the Court fee is Section 5(1) of the Bombay Court Fees Act, 1959, which as aforesaid provides that no document of any of the kinds specified as chargeable in the first or second Schedule to this Act, annexed shall be filed, exhibited or recorded in any Court of justice, or shall be received or furnished by any public officer, unless in respect of such document there has been paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document. Section 7 of the Bombay Court Fees Act, 1959, is not a charging section. It only provides for the computation of the Court fee payable on ad-valorem basis in certain matters specified therein. Such a computation can be made only with respect to the memorandum of the appeals in relation to the compensation under any act for acquisition of the land for public purposes and with respect to the memorandum of the appeals preferred by the Insurer or the owner of the motor vehicles as against the award of the claims tribunal preferred u/s 110 of the Motor Vehicles Act, 1939. The benefit of this provision cannot be given to the memorandum of the appeals against the orders relating to the compensation under the other enactments nor it also can be said that by implication such memorandum of the appeals against the orders relate to the compensation under the other enactments can be filed by paying the fees payable on the claims petitions before the Tribunal.

7. Similarly, reliance placed on Rule 4(ii) of Chapter V of the Bombay High Court Appellate Side Rules is also not justified, inasmuch as firstly, this rule does not relate to imposition of the Court fees at all. The rule speaks of only the procedure to be followed by the office after presentation of the matter and says that where the court fee paid on the appeal is found to correspond with the Court fees paid and accepted in the Court below no further enquiry need be made unless it appears that the Court fee has been assessed on the mistaken principle and that different Court fee stamp is required on the appeal. When the Court fee paid on the appeal is found to correspond with the Court fee paid and accepted in the Court below further enquiry is dispensed with apparently for the reason that the Court fee paid in the Court below is presumed to have been accepted by the Court below after verification. The rule itself, however, provides that if it appears that the Court fee has been assessed on the mistaken principle and that different Court fee stamp is required on the appeal the office is entitled to make an enquiry.

8. The Railway Claims Tribunal Act, 1987, or the rules made thereunder do not provide as to how much Court fee is to be paid on the memorandum of the appeal to be presented to this Court u/s 23 of the Act, and the provisions of the Bombay Court Fees Act, 1959, alone, therefore, govern the payment of the Court fees on the memorandum of the appeals to be presented before this Court u/s 23 of the Act. As pointed out hereinabove the fees are chargeable as per the provisions of First or Second Schedule of the Act. Article 1 of Schedule I which

relates to ad valorem fees deals with the Court fees payable on the plaint or memorandum of the appeal not otherwise provided for in this Act or on cross-objection presented to any civil or regular Court. If there is no specific provision in relation to the memorandum of the appeals to be filed u/s 23 of the Act, the memorandum of the appeal presented to this Court u/s 23 of the Act would be squarely covered by provisions of Article 1 and ad valorem fees as prescribed would, therefore, be liable to be paid. However, Article 3 of this Schedule I provides for the fees payable on plaint, application or petition (including memorandum of appeal) to set aside or modify any award otherwise than under the Arbitration Act, 1940, and the fee payable is the fee on the amount or value of the award sought to be set aside or modified according to the scale prescribed under Article 1. It, therefore, matters little whether the Court fee is payable either under Article 1 or Article 3 of Schedule I of the Bombay Court Fees Act, the Court fee payable under both the Articles being the same. The order of the tribunal u/s 16(1) of the Act will be an Award within the meaning of the term Award in Article 3 of Schedule I. The Court fee payable on the memorandum, of the appeal u/s 23 of the Act would, therefore, be governed by the provisions of Article 3 of Schedule I of the Bombay Court Fees Act, 1959. As per Article 3 of Schedule I of the Court fee payable on memorandum of the appeal is the fee on the amount or value of the award sought to be set aside or modified, according to the scale prescribed under Article 1 and the appellant was required to pay the Court fee accordingly.

9. In this view of the matter the Taxing Officer of this Court is justified in holding that the Court fee paid by the appellant is inadequate and in directing him to pay the Court fee of Rs. 15/- on the memorandum of the appeal filed u/s 23(1) of the Act. There is, therefore, no merit in this revision application and it is therefore, rejected. There will be, however, no order as to costs.