

(2007) 08 AHC CK 0114
In the Allahabad High Court
Case No : Writ Petition No. 8297 of 1989 (MS)

Bharat Electricals and Others

APPELLANT

Vs

Addl.Civil Judge, Sitapur and Others

RESPONDENT

Date of Decision : 06-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 7 Rule 11
Constitution of India, 1950 — Article 227
Uttar Pradesh Court Fees Act, 1870 — Article 1, Schedule 1, 6(2)

Citation : (2007) 08 AHC CK 0114

Hon'ble Judges : Rajiv Sharma, J

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Heard learned Counsel for the parties.

2. By means of instant writ petition, the writ petitioner has sought the quashing of the order dated 22nd August, 1989 passed by the Addl. Civil Judge, Sitapur in suit No. 112 of 1986 [M/s Prasad Enterprises v. M/s Bharat Electricals and others].

3. M/s Prasad Enterprises opposite party No. 2 in the present writ petition instituted a suit for the recovery of Rs. 12,79,619.12 paise in the Court of the Civil Judge, Sitapur against the petitioners by paying a Court fee of Rs. 5/ only. The Munsarim of the Court submitted the suit for presentation with following report;

"Court fee payable on the plaint under Schedule I Article I comes to Rs. 12,500.00 but the plaintiff has paid at presently a Court fee of Rs. 5/. In this way there is a deficiency in Court fee with Rs. 12.495/ for which he has moved a separate application for time to make up the aforesaid deficiency. Plaintiff has not file papers. Put up before P.O. for orders. The suit is liable to be registered as Misc. Case."

4. Learned Counsel for the petitioner has submitted that Schedule I of Article 1 of

the Court Fee Act, 1870 has. been amended by U.P. Act No. 44 of 1958. By the said amendment the provisions of maximum Court Fee of Rs. 12.500/ was deleted and a chart for the Court fees upto the valuation upto Rs. 10,000/ and above has been inserted. As per amendment, on ten thousand rupees the fee payable under clause (vi), and on the remainder, thirty seven rupees and fifty naya paise for every five hundred rupees or part thereof.

5. Elaborating his arguments, learned Counsel submitted that in view of Order 7 Rule 11 of the Code of Civil Procedure, a plaint which is insufficiently stamped is liable to be rejected unless the deficiency in the Court fee is made good within the period prescribed by the Court. Moreover, under Section 6(2) of the Court Fees Act it is clearly provided that the Court may receive a plaint or memorandum of appeal having deficiency in Court fee but no such plaint or memorandum of appeal shall be acted upon unless the plaintiff or the appellant, as the case may be, makes good the deficiency in Court fee within the prescribed period. It is in this background that the petitioners, on receiving summons, made an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint but instead of deciding the said application, the Court concerned passed an order to the effect that the application 17C shall be disposed of alongwith the suit and fixed a for filling written statement and issues.

6. Aggrieved by the order dated 31st May, 1988 passed by the Civil Judge, Sitapur, the petitioners preferred a Civil Revision before this Court bearing Civil Revision No. 92 of 1988. The said Revision was allowed on 3.11.1988 by this Court and the relevant portion of the judgment reads as follows:

"When objection was raised that Court fee was insufficient and the Court was duty bound to proceed and enter into this question as so long there is no valid plaint before it there can be no proceedings, the Civil Judge committed jurisdictional error in not considering the applications moved by the applicant and deciding the pleas of insufficient Court fee paid. The revision application in these circumstances is allowed and the order dated 31.5.1988 passed by the Civil Judge is setaside."

7. Consequent to the aforesaid judgment dated 3.11.1988, the learned Civil Judge proceeded to hear the application under Order 7 Rule 11 of the Code of Civil Procedure and by the order dated 22nd August, 1989 rejected the said application. This order has been impugned in the present writ petition and this Court stayed the proceedings of suit No. 112/86 pending in the Court of Civil Judge, Sitapur.

8. Learned Counsel for the petitioners has vehemently argued that while passing the order impugned in the present writ petition, the learned Court below has not at all decided the amount of Court fee payable as per the amended provision of the Court Fees Act and it was not open for the Court below to interpret the judgment passed by this Court in Civil Revision No. 92 of 1988. All also added that the learned Court below committed an error in law in not considering the

amendments which were made in the Court Fees Act,

9. Sri U.S. Sahai appearing for the respondent No. 2 submitted that as to whether proper Court fee has been paid or not by the plaintiff or the appellant, as the case may be, it was between the plaintiff or the appellant and the State but the defendant or respondent has no locus to question the same and further there is no provision which enables the defendant or respondent to approach the higher Court. He further submits that it is only the aggrieved party, who can approach the higher Court in case there is deficiency and in the instant case, it is the State which can be said to be aggrieved party and not the defendant. Thus the present writ petition is not maintainable and is liable to be dismissed.

10. In support of above contention, learned Counsel for the petitioner has relied upon AIR 1961 SC 1299; Sri Rathnavarmaraja v. Smt. Vimla, and a judgment of this Court in Ramayan Ram v. Kashinath [Civil Revision No. 156 of 1983 decided on 16.5.1983]. In Rathnavarmaraja's case (supra) the dispute was regarding valuation of the properties by the plaintiff and payment of Court fee thereon. In the latter case, the Court below has held that the reliefs of injunction and declaration are independent reliefs and as such the plaintiff opposite party was directed to pay additional Court fee. These two cases are not applicable in the present case as in the instant case there is no dispute regarding the valuation of suit but as to whether the Court fee is payable under the amended provision or under the old provision of the Court Fees Act.

11. Petitioners, in the instant case, have invoked the jurisdiction of this Court under Article 226 read with Article 227 of the Constitution as the Trial Court proceeded under the wrong notion and applied the provisions of the Act which were not applicable at the relevant time and as such this Court has ample power to entertain the writ petition under Article 227 of the Constitution.

12. It is also well established that it is only when an order of a subordinate Court or the Tribunal is violative of the fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure or law has crept in or where the order passed results in manifest injustice, then a Court can justifiably intervene under Article 227 of the Constitution. In the instant case, the Court below committed a manifest error in not considering the plea raised by the petitioners that the plaint is liable to be rejected on the ground of being insufficiently stamped. Further, the Trial Court has ignored the provisions of U.P. Act No. 44 of 1958.

13. A plain reading of Order 14 Rule 1 of the Code of Civil Procedure would show that while proceeding with the case, Court has to frame issue on the material proposition of facts and law both. Accordingly, it can very well be inferred that the framing of issues in a civil suit is a condition precedent to proceed with a suit. A plain reading of Section 6 of the Court Fees Act read with Order 14 Rule 1 of the Code of Civil Procedure shows that question relating to Court Fees Act can be very well considered by the Trial Court after framing issues. However, it is

incumbent upon the Trial Court to decide the issue relating to Court fee as preliminary issue and in case, the trial Court finds that sufficient Court fees has not been paid, then Court may direct the plaintiff to make good the deficiency in Court fee within the specified time. In case the Court fees is not paid, then Court may not proceed further and the suit can be dismissed on account of noncompliance of the order passed by the Trial Court.

14. The aforesaid principle has been applied by a learned Single Judge of this Court in M/s Sarin Printing Press v. District Judge, Lucknow and others, 2005(23) LCD 1642 and I am in full agreement with the view expressed in the aforesaid case.

15. Taking the holistic view of the matter, the order dated 22nd August, 1989 passed by the learned Addl. Civil Judge, Sitapur in suit No. 112 of 1986 is hereby quashed. The Trial Court is directed to decide the objection with regard to payment of Court fee under the amended provision as a preliminary objection after giving due opportunity of hearing to the parties and thereafter shall proceed with the case. The learned Trial Court is directed to decide the case expeditiously as the parties are litigating the case since more than 20 years and shall avoid granting unnecessary adjournments.

16. The writ petition stands finally decided in above terms. In the facts and circumstances of the case, parties shall bear their own costs.