(1985) 12 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1353 of 1977

Billa Singh APPELLANT

Vs

Firm Narain Mal Durga Dass RESPONDENT

Date of Decision : 03-12-1985

Acts Referred:

Citation : (1986) PLJ 410 : (1986) RRR 639

Hon'ble Judges : B.S.Yadav, J

Advocate : Mr. A.N. Mittal, Advocate., Advocates for appearing Parties

Judgement

B.S. Yadav, J.

1. The short point involved in this appeal is whether the defendant is liable to pay to the plaintiff the costs awarded by the learned trial court. The brief facts are that the respondentfirm (for short the plaintiff) had filed a suit for the recovery of Rs. 10,500/ which sum was made up of Rs. 7700/ as principal and Rs. 2800/ as interest. It was averred by the plaintiff that the defendant had borrowed the principal amount on interest and had executed a bahi entry.

2. The defendant contested the suit on various grounds and inter alia pleaded that the plaintifffirm was a moneylender and was not entitled to interest. The learned trial Court held that the plaintiff had borrowed Rs. 7700/ and had executed the bahi entry in dispute. It further held that the plaintiff was not a moneylender. Accordingly, the plaintiff''s suit for the recovery of Rs. 10,500/ with costs was decreed. Future interest at the rate of 6 per cent per annum on the above amount from the date of the institution of the suit till realisation was also awarded under the decree. Feeling aggrieved, the defendant filed an appeal while the plaintiff filed crossobjections. The defendant had challenged the whole decree. In cross objections the plaintiff had claimed for stamp duty and the penalty which he had to pay in respect of the bahi entry which had been impounded being an unstamped agreement. While calculating costs these items were not included in the memorandum of costs prepared by the trial Court. The appeal and the crossobjections were heard by the learned District Judge,

Faridkot. He upheld the findings of the learned trial Court and the defendant had executed the bahi entry in dispute for consideration. He further held that the plaintiff was a moneylender as defined in the Punjab Registration of Money Lenders Act, 1938 but it had obtained the moneylender''s licence during the pendency of the suit. He further held that the plaintiff had not complied with the provisions of the Punjab Regulation of Accounts Act, 1930 (for short 1930 Act) and, therefore, under section 4 of the 1930 Act, the plaintiff was not entitled to costs and interest. He, accordingly partly accepted the defendant''s appeal and modified the decree of the learned trial court to the extent that a decree for Rs. 7700/ with proportionate costs was passed in favour of the plaintiff against the defendant. The defendant had also challenged the costs awarded by the learned trial Court but that objection was overruled as he had not paid the court fee on the amount and in that connection reliance was placed upon Kundan Lal v. Ram Partap, AIR 1936 Lahore 469,wherein it was remarked :

``The Court is bound to disallow costs if a case falls within the purview of section 3, Punjab Regulation of Accounts Act. If, therefore, the defendant wants to have order allowing costs to be set aside, it is incumbent on him to pay court fee thereon''''.

Crossobjections filed by the plaintiff were also dismissed as he had not complied with the provisions of 1930 Act. Still not feeling satisfied the defendant has come to this Court in appeal.

3. Both the learned Courts below have given a concurrent finding of fact to the effect that the defendant had executed the bahi entry, Exhibit P.1 for consideration. It being a finding of fact is not liable to be interfered with in second appeal. It was not argued by the learned counsel for the appellant that finding is not based upon evidence.

4. The learned counsel for the appellant argued that when the plaintiff had been proved to be a moneylender and it had not complied with section 3 of 1930 Act, the District Judge ought to have accepted the defendant''s prayer and should have disallowed the costs awarded by the trial Court. I am of the opinion that the said argument has force.

5. No doubt Kundan Lal''s case supports the stand taken by the District Judge but in Beni Prasad and another v. Raja Ram, AIR 1935 Lahore 379, which is a Division Bench ruling, it was remarked :

``The last question for consideration is that of costs. The learned counsel for the respondents contended that the appellants were not entitled to raise this question in appeal, as the appellants had not paid any courtfee on the costs decreed against them. In support of this contention the learned counsel has relied on Rowline v. Lachmi Narain, 1918 Pat. 210 a Single Bench decision of the Patna High Court, which lays down that where the appeal is against costs and separate from other parts of appeal, courtfee must be paid ad valorem on the amount of costs. But, in the present appeal, the appellants have prayed for the dismissal of the whole of the claim against them and have paid the proper courtfees on that relief, costs being merely incidental to that relief, I do not think it was necessary for the appellants to pay separate ad valorem fees on the costs in the circumstances of this case.''''

In the present case also the defendant in his appeal before the lower Appellate Court had prayed for the dismissal of whole of the claim against him and had paid proper courtfee on that relief. I respectfully follow Beni Prasad''s case (supra). Costs being incidental to the relief claimed by the defendant in the lower Appellate Court it was not necessary for him to pay separate ad valorem courtfee on the costs.

6. The matter can be looked into with other angle also. Section 3 of the 1930 Act lays down that when the plaintiff, who is a moneylender, has not complied with the provisions of that section, he shall not be allowed the costs of the suit. As noticed earlier, the trial Court had held the plaintiff not to be a moneylender and, therefore, it had awarded costs. The lower Appellate Court held the plaintiff to be a moneylender and further held that he had not complied with the provisions of section 3 of the 1930 Act. While allowing proportionate costs, the District Judge was confirming the decree of the trial Court to that extent. The appeal is a continuation of suit. Therefore, the decree passed by the District Judge contravened Section 3 of the 1930 Act.

7. For the foregoing reasons I partly accept the appeal and modify the decrees passed by the learned Courts below to the extent that the plaintiff will not be entitled to the costs of the suit. In this appeal leave the parties to bear their own costs.

Appeal partly accepted.