

(1951) 03 AHC CK 0005
In the Allahabad High Court
Case No : Civil Revision No. 301 of 1949

Chief Inspector of Stamps

APPELLANT

Vs

Ram Avadh Chowdhury and Others

RESPONDENT

Date of Decision : 07-03-1951

Acts Referred:

Citation : AIR 1952 All 175 : (1951) 21 AWR 436

Hon'ble Judges : Mootham, J

Bench : Single Bench

Advocate : Gopalji Mehrotra, for the Appellant; S.C. Asthana, for the Respondent

Final Decision : Allowed

Judgement

Mootham, J.—This is an application in revision u/s 6B, Court-fees Act, by the Chief Inspector of Stamps against an order of the learned District Judge of Basti.

2. A wife obtained a decree for maintenance in a suit on which, it is common ground, the court-fee was properly calculated in accordance with the proviso to Section 7(ii)(a) Court-fees Act. Under that Sub-section the court-fee payable is, in a suit for maintenance and annuities or other sums payable periodically, to be computed

"according to the value of the subject matter of the suit and such value shall be deemed to be ten times the amount claimed to be payable for one year :

Provided that in suits for personal maintenance by females and minors, such value shall be deemed to be the amount claimed to be payable for one year."

3. The husband appealed against the decree of the trial Court and he contended that the court-fee payable on the memorandum of appeal was also to be computed in the manner laid down in the proviso to Section 7(ii)(a). This contention was upheld by the learned District Judge, but it is argued on behalf of the Chief Inspector of Stamps that the court-fee on the appeal should have been computed in accordance with Section 7(ii)(b) which provides that :

"In suits for reduction or enhancement of maintenance and annuities or other sums payable periodically : according to the subject-matter of the suit and such value shall be deemed to be ten times the amount sought to be reduced or enhanced for one year."

In my opinion, the contention of the Chief Inspector of Stamps is correct. A "suit" is defined in Section 2 of the Act as including a first or second appeal, and therefore in proceedings for reduction or enhancement of maintenance, whether by way of suit or appeal, the court-fee must be computed in the manner prescribed in Section 7(ii)(b) of the Act.

4. The learned Judge says correctly, if perhaps somewhat loosely, that as the word "suit" includes an appeal, the court-fee payable on the memorandum of appeal is to be ascertained as if the appeal were a suit, but what I think he has overlooked is that the relief sought for in the appeal is not an order for personal maintenance by a female which would have attracted the provisions of Sub-section (ii) (b) of Section 7 but is an order for the reduction of maintenance already awarded, and that the court-fee in such case is regulated by another Sub-section namely (ii) (b).

5. The application must accordingly be allowed, but there will be no order as to costs.