
(1972) 04 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Miscellaneous Revision Petition No"s. 1960, 1961, 1966, 1967, 1968 of 1971

Chunnilal and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 05-04-1972

Acts Referred:

Rajasthan Court Fees and Suits Valuation Act, 1961 — Article 11, 5

Citation : AIR 1972 Raj 292 : (1972) WLN 213

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Advocate : U.M. Trivedi and K. Murari, for the Appellant; S.K. Tiwari, Deputy Govt. Advocate, for the Respondent

Judgement

V.P. Tyagi, J.—In all these review petitions, which are directed against the judgment of this Court in a writ matter, objection has been raised by the office that these review petitions have been filed with a Court-fee stamp of Rs. 2/- each whereas according to the provisions of Article 5, Schedule I of the Rajasthan Court-fees Act (hereinafter referred to as the Act) application for review should bear one-half of the fee payable on the writ petition.

2. The contention of the petitioners is that the provisions of Article 11 (s) of Schedule II of the Act would apply for determining the question of payment of Court-fees in this matter.

3. Notice about this petition was given to the Government Advocate. Learned Deputy Government Advocate urged that the the correct provision of the Court-fees Act would be Schedule I, Article 5 which provides that applications for review of judgment shall be presented in the Court on 1/2 of the fee payable on the plaint or memorandum of appeal comprising the relief sought in the application for review. He further contended that the word "plaint" used in this article must, on the basis of analogy, be taken to mean the writ petition. In the alternative, he urged that if this article is found not to apply to the circumstances

of the present case, then Article 11 (k) of Schedule II would govern this case which provides a fixed Court-fee of Rs. 10/- on the original petitions not otherwise provided for when filed in the High Court. According to learned Deputy Government Advocate, a petition for review under Order 47, Rule 1 CPC shall be taken to be an original petition and, therefore, the petitioner should present his review petition on a stamp fee of Rs. 10/-.

4. Relying on *Ramsingh Vs. State of Rajasthan and Others*, learned Deputy Government Advocate contended that the review petition against the judgment passed by this Court on writ petition shall be governed by the provisions of Order 47, Rule 1 CPC and on the analogy of that provision the judgment passed by this Court in writ petition shall be taken to be a judgment passed in a suit. In *Ram singh's* case, the question that arose for the determination of this Court was whether Order 9, Rule 9, CPC would govern the matters arising out of the writ jurisdiction and the learned judges, after having an elaborate discussion on this question, laid down that the principle contained in Order 9, Rule 9, CPC can be suitably applied to writ proceeding which in the opinion of the learned Judges was undoubtedly a civil proceeding before this Court. On this analogy, learned Deputy Government Advocate urged that the writ proceedings before this Court should be taken as the proceedings out of a suit and relying on *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63 it is urged that a suit can be instituted only by the presentation of a plaint. In such circumstances, the contention of Mr. Tewari is that the writ petition filed by the petitioner must for the purpose of Court-fee be taken as a plaint and, therefore Article 5 of Schedule I shall be the proper provision of the Court-fees Act to govern the present case.

5. Court-fees Act is a fiscal statute and, therefore, it cannot be interpreted in the way in which Mr. Tewari wants this Court to interpret the word "plaint" appearing in Article 5 of Schedule I. The expression "plaint" has not been defined anywhere in any statute. The Privy Council in *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63 has, however, laid down that a suit is instituted only by presenting a plaint and the suit is no doubt a civil proceeding and, therefore, learned Deputy Government Advocate submits that an extended meaning may be given to the expression "plaint" in Article 5 of Schedule I.

6. It is true that the principle contained in Order 9, Rule 9 Civil Procedure [Code by analogy is made applicable to the matters arising out of a petition filed under Article 226 of the Constitution but simply because that procedure is made applicable on the basis of the analogy of the principle contained in Order 9, Rule 9, Civil Procedure Code, I find it difficult to hold that the petition filed under Article 226 of the Constitution would be covered by the expression "plaint" as used in Article 5 of Schedule I. In this view of the matter, I find it difficult to accept the contention of the learned Deputy Government Advocate that the proper article to apply to such review petitions would be Article 5 of Schedule I of the Court-fees Act.

7. It is next urged that Article II (k) would govern the question of the payment of

Court-fees on the review petitions filed against the judgment of this Court in writ matters. Article 11 (k) of Schedule II reads as follows:

"(k) Original petitions not otherwise provided for when filed in the High Court Ten rupees."

8. This argument raises a question whether a review petition can be called an original petition. Learned counsel appearing on behalf of the petitioners submits that original petitions are those petitions which initiate the proceedings for the first time in the High Court and since the review petition is filed in continuation of the proceedings that had already started, when the writ petition was originally filed in this Court, a review petition cannot be taken to be an original petition.

9. Review of the order or judgment of the Court can be entertained only under the provisions of Order 47 of the Code of Civil Procedure. Though Order 47 does not apply in terms but the principle laid down therein and the procedure prescribed thereby govern the disposal of the review petitions. The proceedings to review the prior order or judgment are initiated by filing a review application, under Order 47, Rule 1, Civil Procedure Code. It is not a proceeding which can be called a proceeding in continuation of the old proceedings which are concluded by the pronouncement of the judgment or final order by this Court on the writ petition. It is only after the review application is admitted after hearing the concerned parties that the previous order or judgment is reviewed by the Court. In these circumstances, the review application filed by a person who wants the previous order or judgment to be reviewed shall fall within the term "original petition" and it can be said that these proceedings which arise out of the provisions of Order 47 are originated on an application filed by the person who wants the previous order or judgment to be reviewed and, therefore, a review application can conveniently be said to be original petition filed in the High Court. In this view of the matter, provisions of Article 11 (k) of Schedule II shall be attracted to the review applications filed in the High Court to get the previous order or judgment passed on the writ petition reviewed. Under this clause a fixed Court-fee of Rs. 10/- is provided. In these five review matters the petitioner has fixed a two-rupee stamp on the review application. The petitioner ought to have fixed ten-rupee stamps in place of Rupees 2/-. The Court-fee is, therefore, deficient.

10. The petitioner in each petition is hereby directed to make up the deficiency of Court-fees within 15 days.