
(1996) 01 AHC CK 0109
In the Allahabad High Court
Case No : C.M.W.P. No. 38226 of 1995

Dinesh Kumar

APPELLANT

Vs

Addl. District Judge Roorkee and Others

RESPONDENT

Date of Decision : 04-01-1996

Acts Referred:

Court Fees Act, 1870 — Section 6A, 7

Citation : (1996) 01 AHC CK 0109

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : Chandra Shekhar Sharma and Ajay Kumar Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—Heard learned Counsel for Petitioner and Shri I.S. Singh, learned Standing Counsel. Both the learned Counsel have agreed that this petition may be decided finally at this stage.

2. Facts giving rise to this petition are that auction of shop/accommodation, situate in Court Compound in town Roorkee, for 1991-92 was held on 16.3.1991. The bid of the Petitioner for Rs. 47,200 was found highest and consequently it was accepted. This auction was confirmed by the Collector on 30.3.1991 and Petitioner was allowed to work from 1.4.1991. He deposited the first instalment of Rs. 11,800. The remaining amount was payable in three instalments to be deposited in the months of July and October, 1991 and January, 1992. The Petitioner committed default in payment of the amount which is being sought to be recovered from him as land revenue arrears, challenging which he filed Original Suit No. 33 of 1993 in the Court of Civil Judge, Roorkee. In para 6 of the plaint of this suit, it has been stated that at the time of the auction, the Sub-Divisional Magistrate had given an assurance to persons willing to participate in auction that a second canteen will not be opened in the court premises and they may participate in the auction without any fear of the same. It is stated that

from 2.4.1991, a second canteen was opened in the building of the Bar Association, Roorkee and that affected his business and he is not liable to pay the amount. It has also been stated that raising this aspect, he made several applications before the authorities but nothing has been done and they want to recover the amount as land revenue arrears, hence this suit for permanent injunction has been filed.

3. A written statement was filed by Respondents disputing the claim of Petitioner and challenging the valuation of the suit and the payment of court-fee. Issue No. 7 was struck by the trial court which was decided on 14.2.1995. The trial court found that though the valuation of the suit is correct, the payment of court-fee of Rs. 500 for relief of injunction is not sufficient. The court decided the issue holding the Petitioner liable to pay court fee on full amount of Rs. 33,400 which is being recovered from him. Aggrieved by this order, Petitioner filed appeal u/s 6A of the Court Fees Act which has been dismissed by the learned Additional District Judge, Roorkee by his order dated 13.11.1995, aggrieved by which this petition has been filed.

4. Learned Counsel for Petitioner has submitted that from a perusal of the plaint, it is clear that the only relief sought by the Petitioner is that of permanent injunction for which the court fee prescribed under the Court Fee Act is Rs. 500 which has been paid and the view taken by the courts below that the court fee paid is not sufficient is based on misconception and against the various judgments of this Court and Hon''ble the Supreme Court. Learned Counsel for Petitioner has placed reliance in case of *The Vishnu Pratap Sugar Works (P) Ltd. Vs. The Chief Inspector of Stamps, U.P.*, ; *Hannuman Oil Industries v. Kanpur Electric Supply Administration* 1983 ACJ 648 and *Radha Charan Das Vs. Th. Mohini Beharji Maharaj and Others*, .

5. Learned standing counsel, on the other hand, submitted that if the determination of the liability to pay the amount is incidental, then the court fee payable on the relief of injunction could be sufficient but in case for granting the relief of injunction substantial determination is with regard to the liability to pay the amount, then the court fee payable shall be ad valorem. Learned standing counsel has placed reliance in case of *Ratlam Straw Board Mills Private Ltd. Vs. Union of India and Another*, .

6. I have seriously considered the submission of the learned Counsel for the parties. In this case, the plaint has been filed as Annexure 1 to the writ petition. Para 6 of the plaint sets out the real grievance of the Petitioner, It says that at the time of the auction, Sub-Divisional Officer had given an assurance that second canteen will not be opened in the court premises and they may participate in the auction without any fear of the same. It is stated that acting on that assurance, the Plaintiff-Petitioner participated in the auction for the year 1991-92. It is not the case of the Petitioner that this condition was part of the agreement. Whether the Petitioner is entitled for any remission in the agreed amount on the basis of the allegations made in para 6 of the plaint is the real

controversy which has to be resolved in the suit for granting the Petitioner relief of permanent injunction claimed by him. The substantial and real relief sought in the suit is to avoid the payment of Rs. 33,400, the balance of contract money which is being recovered from him. This relief has a definite value. The relief is dependant on determination of plea raised in para 6 narrated above. In my opinion, in such circumstances, the payment of fixed court fee for the relief of injunction alone will not be sufficient. In fact, the relief of injunction in the facts and circumstances of the case is a consequential relief and not main relief. The Delhi High Court in case of Ratlam Straw Board Mills Private Ltd. v. Union of India and another has observed as under in para 13:

In the instant case the Defendants claim a sum of Rs. 1,40,000 on account of risk purchase alleged to have been made by them in terms of the cancelled contract vide risk purchase acceptance of Tender dated 29th July, 1969 on the stores of the same specification as in the cancelled Acceptance of Tender. The Plaintiff seek to avoid this liability which, but for the suit, is being enforced against him. The Plaintiff want to be relieved of this liability. The relief sought by the Plaintiff has a real money value which is a definite amount sought to be recovered would be the value of the relief claimed by the Plaintiff and the court fee payable must be ad valorem court fee on the amount of the liability from which the Plaintiff seek to be relieved.

7. I am in respectful agreement with the view taken by Delhi High Court. The cases relied on by the learned Counsel for the Petitioner are clearly distinguishable. In the case reported in 1983 ACJ 648 , the case of the Plaintiff has been discussed in para 3 of the judgment, which shows that all the dues had already been paid by Plaintiff and nothing was due from him and even though the dues were cleared, Defendants were there attempting to disconnect the supply of the electricity. Thus, for grant of injunction, the determination required was to see whether the amount has been paid or not. The quantum of the amount showing liability of Plaintiff was not to be gone into by the Court. In such circumstances, the court rightly held that the court fee payable will be u/s 7(iv-B) (b) of the Court Fees Act. Similarly, before Hon"ble the Supreme Court in case of Vishnu Pratap Sugar Works, the question involved for determination was whether an Act passed by the Central or the State Legislature can be said to be an instrument and, if so, an instrument securing money or other property having such value. In that case, payment of the amount as sugarcane cess and purchase tax by the factory was sought to be avoided on the ground that the Acts passed by the State Legislature were invalid and void for diverse reasons. The Court found that in such a case, the Act could not be treated as Instrument and the court fee payable shall not be ad valorem on the amount sought to be recovered. In case reported in Radha Charan Das Vs. Th. Mohini Behariji Maharaj and Others, , dispute was with regard to valuation of suit and jurisdiction of the court to hear the same. In my opinion, all the cases relied on by the learned Counsel for the Petitioner are clearly distinguishable. In the present case, Petitioner cannot say definitely and specifically that he is entitled for remission of

the amount. It has to be established by adducing evidence which may or may not be accepted.

8. In these circumstances, in my opinion, the view taken by the courts below is justified and does not suffer from any error of law.

9. The writ petition has no force and is accordingly rejected.