

(2013) 07 RAJ CK 0211
In the Rajasthan High Court
Case No : Civil Writ Petition No. 115 of 2008

Dinesh Pediwal

APPELLANT

Vs

The Additional District Judge (Fast Track) No. 2, Bhilwara and
Others

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2014) 2 CDR 767 : (2014) 1 WLN 322

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : K.C. Samdariya, for the Appellant; Rajat Dave, for the Respondent

Final Decision : Dismissed

Judgement

Vijay Bishnoi, J.—By the instant writ petition, the petitioner-plaintiff has challenged the order dt. 24.10.2007 passed by the learned Additional District Judge (Fast Track) No. 2, Bhilwara (for short "the trial Court" hereinafter) in Civil Original Suit No. 80/2006, whereby the learned trial Court has decided the Issue No. 5A and held that the plaint was required to be presented with the Court fees of Rs. 50,45,520/- and directed the plaintiff to supply deficient Court fee stamps within a month after adjustment of amount already paid towards the Court fees. The petitioner and the respondent No. 5 have filed a suit in the trial Court and stated that one Maheshwari Textile Mills, Bhilwara took a loan from the Rajasthan Financial Corporation (for short "the RFC hereinafter) for the purpose of establishing an industry. It is stated that the Maheshwari Textile Mills, Bhilwara was a registered partnership firm in which late Shri Om Prakash Pediwal was the partner along with two other persons and the loan for establishing the industry was obtained by the said partnership firm. It is further stated that on account of non-payment of loan amount, the industry was taken over by the RFC and later on, the same was sold and the amount received was adjusted by the RFC in the loan account. It is also stated that on account of death of Shri Om Prakash Pediwal, the partnership firm came to be dissolved but from the Branch Office of

the RFC, the plaintiffs received a notice, whereby they were asked to deposit the loan amount of Rs. 50,42,520/- within a period of fifteen days, to which they had submitted their reply through Registered Post stating therein that Shri Om Prakash Pediwal died without leaving any movable or immovable property and the plaintiff-respondents are not liable to repay the loan amount of the Maheshwari Textile Mills as they have nothing to do with the said industry and the same belonged to a partnership firm, which came to an end with the death of Shri Om Prakash Pediwal. It is further stated in the plaint that the respondent-RFC had illegally sent an award/demand notice to the Collector, on the basis of which, the Collector had issued a notice to them to repay the loan amount to the tune of Rs. 50,42,520/- within fifteen days, and the plaintiffs are apprehending that on the basis of said demand, the Collector may attach the private property of the plaintiffs and, therefore, they had filed this plaint for declaration and permanent injunction. The relevant averments made in the plaint read as under:

2. While opposing the claim of the plaintiffs, the RFC had filed its written statement in which objection regarding the deficiency of the Court fees had also been raised and the learned trial Court framed an additional Issue No. 5A "Whether the valuation of the suit was not made properly and Court Fee is insufficient?"

3. The learned trial Court thereafter proceeded to decide the Issue No. 5A as preliminary issue and after hearing both the parties, has passed the impugned order directing the plaintiffs to pay the Court fees of Rs. 50,42,520/- within one month. Out of two plaintiffs, only one plaintiff i.e. petitioner Dinesh Pediwal has challenged the order dt. 24.10.2007 by way of filing this writ petition.

4. The learned counsel for the petitioner has contended that by way of filing the plaint, the plaintiffs had only sought a declaration to the effect that they are not liable to repay the loan amount pertaining to the Maheshwari Textile Mills, a registered firm as the loan was extended by the RFC to the said Mill only and the plaintiffs were not party to the said contract. It is further contended by the learned counsel for the petitioner that the plaintiffs are simply seeking a declaration to the effect that the demand raised by the RFC is invalid so far as plaintiffs are concerned and are not seeking cancellation of the demand notice and in such circumstances, they are not liable to pay ad veloram Court fees on the said demand amount. It is further contended by the learned counsel for the petitioner that the suit for declaration that demand notice is not binding upon the plaintiffs more particularly when the plaintiffs are seeking to establish and find themselves threatened by a transaction between the third party, they are not in a position to get the demand cancelled in toto and the proper remedy for them in such a case for declaration that demand was invalid so far as it is against them and, therefore, in that case, the valuation of the suit had to be made in accordance with Section 24 of the Rajasthan Court Fees and Suit Valuation Act, 1961 (for short "the Act of 1961" hereinafter) and not in accordance with Section 38 of the Act of 1961, whereas the learned trial Court without taking into

consideration the said aspect of the matter has passed the impugned order.

In support of the above contention, the learned counsel for the petitioner has relied upon the decisions of this Court in Sukh Lal and Others Vs. Devi Lal and Others, ; and Shantilal Agarwal Vs. Smt. Ramabai and Others,

5. The learned counsel for the petitioner has further argued that the defendant - RFC had no right to object and could not be allowed to raise objection regarding the payment of deficient Court fees and it was only for the State Government to raise such objection. In support of this contention, the learned counsel for the petitioner has relied upon the decision of this Court rendered in Khema and Others Vs. Shri Bhagwan and Others, . The learned counsel for the petitioner has further placed reliance on a decision of Hon"ble Supreme Court in Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others, and has argued that the notice issued by the RFC under Sec. 32 of the State Financial Corporation Act itself was bad in law as the same was not issued after following the proper procedure, whereas the learned trial Court has not taken into consideration all these aspects of the matter and has illegally passed the order dt. 24.10.2007.

6. Per contra, Mr. Rajat Dave, learned counsel for the RFC has argued on the preliminary objections raised in the reply to the writ petition and has submitted that from bare reading of the plaint and the reliefs sought in the plaint preferred by the petitioner and respondent No. 5, it is clear that the plaintiffs have challenged the award/demand raised against them and, therefore, as per the provisions of Section 38 of the Act of 1961, the Court fee payable was on the amount of Rs. 50,42,520/- and the learned trial Court has not committed any illegality in directing to pay the same while passing of the order dt. 24.10.2007. The learned counsel for the respondents has placed reliance on decisions of Hon"ble Supreme Court, High Court of Chhattisgarh, and of this Court in S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, ; Virendra Kumar Shukla Vs. UCO Bank and Another, ; and in Moti Lal Sahu vs. A.D.J. No. 3, Udaipur & Anr. (SBCWP No. 3499/2008) decided on 27.05.2008 and has claimed that it is the wholesome reading of the plaint that makes out the true nature of the relief claimed and as to what is the real intent of the suit.

7. The learned counsel for the respondents has further claimed that by way of the suit, the plaintiffs have claimed for declaration of the award/demand against them as illegal and, therefore, the plaintiffs are liable to pay the Court fees on the amount mentioned in the award/demand. In support of the above contention, the learned counsel for the respondents has relied upon the decisions of this Court in Samdu Khan Vs. The Rajasthan State and Others, and in Kamal Saraf vs. Raj. Financial Corporation (SBCWP No. 6567/2008) decided on 29.01.2009.

8. This Court has considered the rival submissions of the learned counsel for the parties and perused the plaint preferred by the petitioner-plaintiff and

respondent No. 5. It is settled proposition of law as held in cases of Sathappa Chettiar vs. Ramanathan Chettiar and Moti Lal Sahu vs. A.D.J. No. 3, Udaipur & Anr. (supra) that for the purpose of ascertaining the proper Court fees, the allegations levelled in the plaint and the relief claimed in the plaint are to be taken into consideration as it is the wholesome reading of the plaint that makes out the true nature of the relief claimed and as to what is the real intent of the suit.

9. From bare reading of the certain paragraphs of the plaint and the relief claimed in the plaint quoted in the earlier part of order, it is clear that the plaintiffs have sought a declaration to the effect that the award/demand raised by the District Collector against them be declared ineffective and as such has challenged the award/demand with intend to set aside it. The Explanation appended to Section 38 of the Act of 1961 clearly provides that a suit to set aside an award shall be deemed to be suit to set aside a decree within the meaning of this Section. The learned trial Court has taken into consideration this aspect of the matter and has held that as the plaintiffs have challenged the award itself and sought declaration to the effect that award may be declared as ineffective against them, the plaintiffs are liable to pay the Court fees on the amount of the award. There is no doubt about the proposition of law as laid down by this Court in Sukhlal vs. Devilal and Shantilal Agarwal vs. Smt. Ramabai & Ors. (supra), wherein this Court has laid down that when the plaintiff is seeking to establish a title and finds himself threatened by a decree or transaction between third party, he is not in a position to get that decree or deed cancelled in toto and in that case, he can only seek a declaration that the decree or deed is invalid so far as he himself is concerned and in that case, the Court fee is not payable on the amount involved in the decree, deed or transaction, but in the case in hand, the petitioner and the respondent No. 5 have challenged the award passed against them by the Collector and, therefore, the above referred decisions are not applicable on the facts of the present case and are distinguishable. Whether any such award can be passed against the plaintiff on the basis of transaction between the Maheshwari Mill and RFC is a question to be tried and decided in the trial but when the plaintiffs have challenged the validity of award/demand issued against them by way of plaint they have to pay the Court fees on the amount involved in the award/demand.

10. From perusal of the order impugned, it can be gathered that the trial Court has proceeded to decide the issue No. 5A in relation to deficiency in the Court fee as a preliminary issue and, therefore, the judgment of this Court rendered in Khema & Ors. vs. Shri Bhagwan & Ors. (supra) is not applicable on the facts of this case because in the above case, this Court has held that except the State Government, no other defendant can raise the question of deficiency in the Court fees but nowhere has held that if such a issue is already framed, the trial Court cannot decide it as preliminary issue. Whether the notice issued by the RFC under Sec. 32 of the State Financial Corporation Act was issued after following procedure or not is a question to be decided by the trial Court in trial, therefore,

the judgment of the Hon''ble Apex Court rendered in Karnataka State Financial Corporation vs. N. Narasimahaiah & Ors. (supra) is of no help to the petitioner particularly at the stage when issue in relation to deficiency in Court fees was decided by the trial Court as a preliminary issue and validity of that is examined by this Court. In view of above observations, this Court is of the opinion that from wholesome reading of the plaint preferred by the petitioner and the respondent No. 5 and particularly in view of the challenge made by them to the award issued against them, it cannot be held that the learned trial Court has committed any illegality in directing the plaintiffs to pay the Court fees on the amount of Rs. 50,40,520/- as mentioned in the award/judgment and, therefore, no interference is called for. Hence, this writ petition filed by the petitioner is hereby dismissed.