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**(2009) 04 MP CK 0019**  
**In the Madhya Pradesh High Court**

Fatehchand

APPELLANT

Vs

Land Acquisition and Rehabilitation Officer and Others

RESPONDENT

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**Date of Decision :** 02-04-2009

**Acts Referred:**

Land Acquisition Act, 1894 — Section 18, 54  
Negotiable Instruments Act, 1881 (NI) — Section 138

**Citation :** (2009) ILR (MP) 2073 : (2009) 3 MPHT 228 : (2009) 2 MPJR 206 :  
(2009) 4 MPLJ 50

**Hon'ble Judges :** Sushma Shrivastava, J;K.K. Lahoti, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

Heard.

Office has raised an objection that the appellant is required to make payment of Court fee ad valorem, while the appellant has paid fixed Court fee Rs. 1,50,000/- claiming benefit of the Court Fees (Madhya Pradesh Amendment) Act No. 6/2008 (hereinafter referred to as "Amendment Act" for short).

Learned Counsel for appellant submitted that by the Amendment Act a maximum Court fee on appeal has been fixed at Rs. 1,50,000/-, as per Section 3 amending Schedule I Clause 1-A providing maximum Court fees and the office objection that the appellant should make payment of ad valorem Court fee is not correct. He has placed reliance to the Apex Court judgment in Lakshmi Ammal Vs. K.M. Madhavakrishnan and Others, , and submitted that where there is doubt in respect of payment of Court fee benefit must go to the subject. In the present case, when there is a doubt in respect of payment of Court fees, the appellant is entitled for benefit of the Amendment Act. It is submitted that the office objection be repelled and the appellant be permitted to prosecute this appeal at a fixed Court fee of Rs. 1,50,000/-.

Shri Vivekanand Awasthy, learned G.A. opposed the contention and submitted

that the Amendment Act is prospective in nature and is applicable in respect of the matters which are filed after coming into force of the Amendment Act w.e.f. 2-4-2008. It is submitted that in absence of any specific provision in the Amendment Act making its enforcement retrospectively the appellant is not entitled to take benefit of Amendment Act. Reliance is placed to an Apex Court judgment in the case of State of Bombay Vs. Supreme General Films Exchange Ltd., , a recent Division Bench judgment of this Court in M.A. No. 2110/2008, Smt. Supriya Kathand and Ors. v. Shri Lal Singh and Ors. decided on 25-6-2008 and two Single Bench judgments of this Court in Dinaji Tukaram Pawar v. Jiwanlal Pawar 1980 MPLJ 801 and Gramin Vidyut Sahkari Samiti v. Rajesh Kushwaha 2000 (II) MPWN 70, and submitted that the contention of the appellant is without merit.

To appreciate the aforesaid contention the factual position in the case may be stated.

The lands of appellant were acquired by the respondents because of submergence in Indira Sagar Project (NSDC). The Land Acquisition Officer passed an award on 27-1-2004 by which the appellant was allowed compensation of Rs. 13,62,232/-. The appellant was not satisfied with the aforesaid award sought a reference u/s 18 of the Land Acquisition Act, 1894, the matter was referred to the Civil Court and was registered as L.A. Case No. 1/2008 by 1st Additional District Judge, Harda. The Additional District Judge considered the reference on merits after affording both the parties to adduce evidence and found that the reference of appellant was without merit and rejected the reference. Against the aforesaid order, this appeal has been filed u/s 54 of the Act claiming Rs. 33,26,64,445/-. Though the appellant has valued the claim in the appeal for the aforesaid amount, but has paid Court fee of Rs. 1,50,000/- claiming benefit of Amendment Act. The office raised an objection that the reference was filed prior to coming into force of Amendment Act so the appellant was liable to pay ad valorem Court fee. It is this objection which is to be decided by this order.

The State of M.P. amended the Court Fees Act, 1870 by the Court Fees (Madhya Pradesh Amendment) Act, 2008. By Section 3 of this Amendment Act, Schedule I, Article 1-A has been substituted. To appreciate the contention, firstly the statement and object of the Amendment Act may be seen, which reads thus:

Statement of objects and reasons. - In order to rationalise the Court fees leviable on plaint, written statement pleading a set-off or counter-claim, or memorandum of appeal presented to any Civil or Revenue Court, it is decided to amend Article 1-A of Schedule I to the Court Fees Act, 1870 (No. 7 of 1870) in its application to the State of Madhya Pradesh.

At present incidences of dishonoured cheques are in abundance and there is no provision of levy of Court fees in such complaints. Therefore, it is decided to levy Court fees on application for complaint of an offence triable u/s 138 of the Negotiable Instruments Act, 1881 (No. 26 of 1881), by suitable amendment of

Article 1 of Schedule II to the Principal Act in its application to the State of Madhya Pradesh.

It is also decided to provide for levy of Court fees on memorandum of appeal when presented to the High Court by the claimant for enhancement of award passed by the Motor Accident Claims Tribunal, by suitable amendment of Article 11 of Schedule II to the Principal Act in its application to the State of Madhya Pradesh.

Hence this Bill.

From the perusal of aforesaid objects and reasons, it is apparent that the legislation has decided to reduce the Court fees and restricted the maximum limit of a payment of Court fees on plaint, appeal, set off, counter-claim etc., at Rs. 1,50,000/-.

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Plaint, written When the amount or Twelve per cent statement pleading a value of the subject subject to a set-off or counter- matter in dispute minimum of one claim, or memo- does not exceed five hundred rupees, randum of appeal lacs rupees. (not otherwise Sixty thousand provided for in this When such amount rupees plus seven Act) presented to or value exceeds per cent on the any Civil or Revenue lacs rupees but does amount or value in Court except those not exceed ten lacs excess ot five lacs mentioned in rupees. rupees. Section 3.

When such amount Ninety five thousand or value exceed ten rupees plus three lacs rupees: per cent on the amount or value in excess of ten lacs rupees subject to a maximum of one lac and fifty thousand rupees. Provided that minimum fee leviable on a memorandum of appeal shall be one hundred rupees.

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As per this amendment in a suit or in an appeal, the maximum limit of Rs. 1,50,000/- has been provided, but the entire Amendment Act does not provide that this amendment shall be retrospective in nature, in absence of which it should be treated as prospective in nature.

The Apex Court has an occasion to consider this aspect in Supreme General Films Exchange Ltd. (supra). The Apex Court considering this aspect held thus:

Where a suit is filed prior to 1-4-1954, on which the Court-fees (Bombay Amendment) Act, 1954, levying enhanced Court-fees, came into force, in the absence of provisions giving retrospective effect to the amendments, the Court-fees payable on the memorandum of appeal filed after the relevant date (1-4-1954) are payable according to the law in force at the date of filing of the suit (which was prior to the relevant date) and not according to the law in force at the date of the filing of the memorandum of appeal (which was after the relevant date : Sawaldas Madhavdas Vs. Arati Cotton Mills Ltd., , Affirmed.

It is thus clear that in a long line of decisions approved by this Court and at least in one given by this Court, it has been held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment.

We are, therefore, of the view that the High Court was right in the view it took, and the orders of refund of excess Court fees which it passed were correct in law.

The Division Bench of this Court in Smt. Supriya Kathane (supra), recently considered this aspect, in particular this Amendment Act, held thus:

The aforesaid view is apposite and squarely applies to the case at hand. The enhancement of the Court fee, irrefragably, is an onerous condition and destroys the pre-existing right of appeal without making the amendment retrospective by express words or necessary intendment. Once we hold that the pre-existing right of appeal continues to exist, it is deducible by necessary implication that the old law which created the right of appeal must also exist to support the continuation of that right. The unamended provision must govern the exercise and enforcement of the right of appeal. It would be an anathema to the concept of interpretation if it is held that the amended provision, as has been couched, is applicable to appeals that would arise from claim petitions that have been initiated prior to the cut off date, i.e., 2-4-2008.

The learned Single Judge of this Court in Dinaji Tukaram Pawar (supra), considering the similar point held that the provisions of the Court Fees Act as amended in M.P. Act No. 4 of 1976, whereby suits for possession of land not assessed to land revenue were required to be valued for purposes of Court fees at 20 times the land revenue have no applicability to appeals filed after the amendment arising out of the suit filed prior to the amendment. Similar view has been reiterated by another Single Bench of this Court in Gramin Vidyut Sahkari Samiti (supra).

So far as the judgment of Apex Court in Lakshmi Ammal (supra), is concerned, the Apex Court held that two things have to be made clear, Courts should be anxious to grapple with the real issues and not spend their energies on peripheral ones. Secondly, Court-fee, if it seriously restricts the rights of a person to seek his remedies in Courts of justice, should be strictly construed. After all access to justice is the basis of legal system. In that view, where there is a doubt, reasonable, of course, the benefit must go to him who says that the lesser Court fee alone be paid. But the factual position in the present case is entirely different. The Amendment Act is prospective in nature and in absence of specific provisions in the said Amendment Act, this Amendment Act cannot be given effect retrospectively. The appellant agitated the matter before the Civil Court in a reference u/s 18 of the Land Acquisition Act, the aforesaid reference was made in respect of award dated 27-1-2004 and the matter was referred to the Civil

Court on 5-1-2007. The crucial date in the matter would be the date when a reference was made to Civil Court, because this appeal is against the order of Civil Court in reference case.

In view of aforesaid the appellant is not entitled to take benefit of Amendment Act and accordingly we find that the appellant is liable to make payment of Court fee as applicable to the appellant on 5-1-2007, when the matter was referred to the Civil Court u/s 18 of the Land Acquisition Act and accordingly appellant is directed to make payment of aforesaid Court fee.

At this stage learned Counsel for appellant submitted that in view of the aforesaid order appellant be permitted to put a fresh valuation of the appeal and to make payment of Court fees ad valorem. Considering the facts of the case, we find merit in the prayer, allow the prayer and appellant is permitted to do so by filing an appropriate application in this regard.