

(2009) 03 GUJ CK 0065

In the Gujarat High Court

Case No : Special Civil Application No. 1934 of 2009

Gopibai

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 04-03-2009

Acts Referred:

Bombay Court Fees Act, 1959 — Section 12, 14, 5
Constitution of India, 1950 — Article 227

Citation : AIR 2009 Guj 91 : (2009) 2 GLH 238 : (2009) 2 GLR 1219 : (2010) 8 RCR(Civil) 2533

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : C.L. Soni, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Buch, J.—Invoking jurisdiction of this Court under Article 227 of the Constitution of India, the petitioner has challenged the order

passed in Court Fee Reference No. 1 of 2004, whereby, the learned Presiding Judge dismissed the application exh.14 and imposing cost of Rs.

3,000/- on the applicant. Say of the petitioner before the lower Court was that Court Fee Reference requires to be heard and decided by the

Presiding Judge before whom the suit is pending and therefore, the Reference requires to be transferred to the Court where the suit is pending and

at the time of deciding other issues.

2. It is submitted by Mr. Soni, learned Counsel appearing for the petitioner that initially, Court Fee Reference was pending before the learned Civil

Judge [Junior Division], but vide office order No. 4839 of 2004, dated 17th December, 2004 issued by the District Judge, the same was

transferred to the court of Civil Judge [Senior Division] Gandhidham-Kachchh for disposal in accordance with law. Reference was, therefore,

pending for hearing and disposal in the court of learned Civil Judge [Senior Division]. The petitioner [original plaintiff] was directed to pay deficit

court fee and that order was challenged by State of Gujarat before this Court. This Court [Coram: Akil Kureshi, J.], vide order dated 12.2.2008

remanded the matter to the trial court, but before the trial court could hear and decide the quantum of court fees on remand of the matter, the suit

came to be transferred to the court of learned Civil Judge [Junior Division] on account of change in the pecuniary jurisdiction qua Civil Judge

[Junior Division].

3. According to Mr. Soni, learned Civil Judge [Senior Division] ought not to have undertaken hearing and Reference could have been sent to the

appropriate Court where the suit was pending for hearing and disposal. By pointing out the scheme of Section 5 read with Section 14 of the

Bombay Court Fees Act, Mr. Soni submitted that the Court Fee Reference can be decided by the Judge where the suit is pending and the same

should be done along with the suit.

4. This Court, while remanding the matter had directed the lower court to see that proper opportunity is given to the parties, because, Taxing

Officer had valued the property at the amount more than Rs. 35.00 lakhs and therefore, the plaintiff was asked to pay being responsible to pay

court fee on the amount of Rs. 17.00 lakh and odd valued by the Taxing Officer.

5. Earlier, after hearing the parties, more particularly, learned Counsel for the plaintiff, the Court had decided that the plaintiff should pay court fees

valuing the suit at Rs. 1.00 lakh tentatively. That order was not brought before this Court by State invoking writ jurisdiction under Article 227 of

the Constitution of India. So, appropriate payable court fee, obviously is still required to be determined. It is possible for the Presiding Judge to

determine the exact amount of court fees payable by the plaintiff in exercise of powers vested with the Court u/s 14 read with Section 5 of the

Court Fees Act while deciding the suit if reference is pending with that very Court.

6. It would be appropriate at this stage to reproduce Section 14 of the Bombay Court Fees Act pointed out by Mr. Soni. The same reads as

under:

14. Decision of questions as to valuation.--[1] Every question relating to valuation for the purpose of determining the amount of any fee chargeable

under this Chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be is

filed, and such decision shall be final as between the parties to the suit.

[2] But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been

wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would

have been payable had the question been rightly decided.

7. On plain reading of the above Section, it becomes clear that scheme of Section 14 is independent and has no relevance qua the procedure

contemplated for determination of the amount of court fee on valuation of the suit contemplated u/s 12 of the Act. Section 12 of the Court Fees

Act is reproduced hereunder:

12. Appointment of inspecting officers and recovery in cases reported by them--
[1] The State Government may appoint generally, or in any case,

or for any specified class of cases, in any local area, one or more officers to be called inspecting officers.

[2] The inspecting officer may, subject to the control of the court concerned, examine the records of any case which is pending or has been

disposed of, with a view to finding out whether proper fees have been paid therein.

[3] If on such examination, the inspecting officer finds that the fee payable under this At on any document filed, exhibited or recorded in such case

has not been paid or has been insufficiently paid, he shall report the fact to the presiding officer of the Court.

[4] Such presiding officer, after satisfying himself of the correctness of such report, shall record a provisional finding that the proper fee has not

been paid and determine the amount of the fee payable and such further sum as he thinks reasonable as the costs of the inquiry and the person

from whom the fee or the difference thereof, if any, and the costs shall be recoverable.

[5] After recording a finding under Sub-section [4], the presiding officer shall issue a notice to the person referred to in that Sub-section to show

cause why he should not be ordered to pay the fee and the costs determined hereunder, and, if sufficient cause is not shown, the presiding officer

shall confirm the finding and make an order requiring such person to pay the proper fee and the cost before a specified date.

[6] If such person fails to pay the fee and the costs in accordance with the provisions of Sub-section [5], they shall, on the certificate of such

presiding officer, be recoverable as an arrear of land revenue.

8. So, the learned trial Judge, while dealing with application exh.14 was not dealing with the dispute between the parties as to assessment of the

valuation of the suit and the court fees payable thereon.

9. Having considered the scheme of Section 12 read with Section 5 of the Bombay Court Fees Act, the Court is of the view that a Presiding

Officer who has been entrusted to deal with the Court Fee Reference by administrative order of the District Judge, can hear and decide the Court

Fee Reference, being independent proceeding. Section 14 of the Court Fees Act is in reference to a dispute as to valuation of the property and the

court fee paid thereon if becomes a matter at issue between the parties. The Court Fee Reference is an independent proceedings initiated on

account of the report made by the Taxing Officer. So, the officer entrusted to deal with the Court Fee Reference can positively deal with and

decide the quantum of the court fees on the strength of the report submitted by the Taxing Officer after hearing the party is under obligation to face

the proceeding initiated on the strength of such report submitted. A court fee can be decided even after determination of suit. In this background,

Civil Judge [Senior Division] can decide the Court Fee Reference, being a Reference specially entrusted and assigned matters by the District Judge

under the above mentioned orders of December, 2004.

10. In short, there is no merit in the petition. However, the Court is inclined to accept the submission made by Mr. Soni that while rejecting the

application, the learned Judge ought not to have imposed cost of Rs. 3000/- as the application placed by the learned Counsel for the plaintiff was

nothing but placement of legal logic, more particularly, in view of scheme of Section 14 of the Bombay Court Fees Act. Therefore, the order

passed by learned trial Judge of imposing cost of Rs. 3000/- is hereby quashed.

11. In the same way, when an advocate while hammering a point before the

Court gets disturbed, the Court should avoid criticism on such a conduct of the counsel appearing for the party unless his behaviour is totally unwarranted or misplaced or unethical. It is always open for the Court to initiate action against a lawyer misbehaving or disturbing the proceedings of the Court. Anger of a Presiding Judge should not be reflected in operative para 4 of the order, because, Courts are supposed to pass orders in accordance with law and considering the submissions made at the time of canvassing arguments to make his point good. Mr. Soni submits that the petitioner would be satisfied if remarks made against the lawyer who appeared before the lower court are expunged by the Court, being unwarranted. It is therefore observed that the trial Court ought not to have made such remarks while deciding the application exh.14.

12. In compliance of the order passed by the Court below application exh.5, the court fees are paid, but now, in view of the grievance of the State that was made before the Court, the learned Judge, after offering an opportunity to the plaintiff and learned Counsel for the State Government [i.e.

AGP], shall have to hear and decide the quantum of court fees payable by the plaintiff. The learned trial Judge shall issue notice to the learned

District Govt. Pleader for the purpose and the counsel for the plaintiff.

13. To avoid complexity, it would be appropriate for the District Judge to see that the Court Fee Reference is not heard and decided by the

learned Judge who has decided the application exh.14 and it would be in the fitness of things that the same is heard and decided by the Judge

where the suit is pending independently.

14. It is clarified that jurisdiction of other Civil Judge cannot be said to be even impliedly barred for hearing Court Fee Reference independently

being special proceeding initiated under the scheme of Section 12 of the Court Fees Act.

15. The petition is dismissed. Registry shall send writ of this order to the concerned Court and the District Judge. Order and direction accordingly.