

(2000) 12 GUJ CK 0058

In the Gujarat High Court

Case No : Civil Revision Application No. 76 of 1997

Gujarat Electricity Board and Another

APPELLANT

Vs

Patel Manguben Khemabhai

RESPONDENT

Date of Decision : 15-12-2000

Acts Referred:

Bombay Court Fees Act, 1959 — Article 7, 12(3), 6

Citation : (2001) 21 GLH 606 : (2001) 2 GLR 1745

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : H.S. Mulia, for R.C. Jani, for the Appellant; J.V. Japee, for the Respondent

Final Decision : Allowed

Judgement

P.B. Majmudar, J.—The petitioners are the original defendants, against whom the respondent herein has filed a suit, being Regular Civil Suit No. 19 of 1993, in the Court of Civil Judge (Senior Division), Himamagar. The said suit is for a declaration and injunction. It is the case of the plaintiff that even though he is not a consumer of the defendant No. 1-Gujarat Electricity Board, still, he has been subjected to bills, that the defendants had no authority to issue such bills to the plaintiff, and that therefore, the bill, which was dated 7th January, 1993 is without authority. It was, therefore, prayed in the suit that it may be declared that the defendants have no right to issue any bill to the plaintiff and that a permanent injunction be given restraining the defendants from taking any action for the purpose of recovery of any amount on the basis of such bills.

2. According to the defendants, the plaintiff was liable to pay Rs. 41,836/-, for which he was served with the bill and since he has consumed the electricity unauthorisedly, under Condition Nos. 33 and 34 of Miscellaneous Conditions and Charges Act, he was required to pay the said amount. In the aforesaid proceedings, the Inspecting Officer, Court Fees, Mehsana submitted his report u/s 12(3) of the Bombay Court Fees Act, 1959. In his report, he has stated that the

defendants have issued an average bill for an amount of Rs. 41,836/- and since the suit is for challenging the bill in question, proper Court fee was required to be paid as the suit is filed only on the Court fees of Rs. 30/-. As per the report of the Court Fee Inspector, the valuation put by the plaintiff is not proper and that the subject-matter is susceptible of monetary evaluation and would fall under Art. 7 of Schedule I of the Bombay Court Fees Act, 1959. Calculating the Court fee on the basis of the claim of Rs. 41,836/-, the Court Fee Inspector found that Court fee of Rs. 2,230/- was required to be paid by the plaintiff. The aforesaid provisional finding was submitted to the Court. Thereafter, the learned Civil Judge (Senior Division), Himatnagar, after hearing all concerned parties, passed an order below Exh. 1 in the said suit. Thereafter, the learned trial Judge passed an order below" Exh. 19 and ultimately, after hearing both the sides, the trial Court came to the conclusion that the suit would fall u/s 6(iv)(j) of the Bombay Court Fees Act, 1959 and Court Fee Reference No. 1 of 1996 made by the Court Fee Inspector was accordingly rejected. The aforesaid order has been challenged by the petitioners-original defendants in this Revision Application.

3. This Court, at the time of admitting this Revision Application, also stayed the order of the learned Civil Judge.

4. At the time of hearing of this Revision Application, Mr. H. S. Mulia, who is appearing for Mr. R. C. Jani, has argued that the learned trial Judge has committed an error of jurisdiction in coming to the conclusion that the Court fee paid by the plaintiff is adequate and that it is also an error on the part of the learned Judge in coming to the conclusion that the case in question will fall u/s 6(iv)(j) of the Court Fees Act.

5. Mr. Japee, on the other hand, has supported the reasoning of the trial Court.

6. After hearing both the sides, I am of the opinion that the impugned order of the trial Court is not at all sustainable. It is the duty of the Court to find out whether appropriate Court fee is paid by the plaintiff or not. In order to find out whether required Court fees is paid or not, the basic document which is required to be considered is the plaint. From the reading of the plaint, ultimately, it is required to be found out as to what relief the plaintiff is seeking from the Court. If the subject-matter in question is not susceptible of monetary evaluation and not otherwise provided for by the Act, such suit can lie on Court fees of Rs. 30/-. Section 6(iv)(j) provides as under :-

"6. The amount of fees payable under this Act in the suits next hereinafter mentioned shall be computed as follows :-

(iv)

(j) In suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act-thirty rupees.

In all suits under clauses (a) to (i), the plaintiff shall state the amount at which he values the relief sought, with the reasons for the valuation;"

The plaintiff has valued his suit for the purpose of Court fees in the present case u/s 6(iv)(j) of the Court Fees Act. However, it cannot be said that the subject-matter in dispute is not susceptible of monetary evaluation. In the instant case, the plaintiff has prayed for injunction, by which prayer for restraining the defendants from recovering any amount on the basis of bill is sought for. Simply because in order to see that he may not have to pay adequate Court fees, the plaintiff has not stated the amount of bill in question, the same will not be sufficient to attract the provisions of Section 6(iv)(j) of the Bombay Court Fees Act. If by clever drafting in the plaint the amount in question is not mentioned, the plaintiff cannot get benefit by resorting to Section 6(iv)(j) of the Bombay Court Fees Act. Looking to the plaint, it is clear that the plaintiff wants to avoid the liability of payment of certain amount for which the defendants have issued bill to him and as per the say of the defendants, the amount involved in the bill is Rs. 41,836/-. It, therefore, cannot be said that the said subject-matter is not capable of monetary evaluation. It is, therefore, clear that the valuation put by the plaintiff for the purpose of Court fees is not correct.

7. This Court in *Anil Starch Products Ltd. v. Gujarat Labour Welfare Board & Anr.*, 1983 (2) GLR 1082, has clearly laid down that the amount of monetary gain is basis for levying ad valorem Court fees under Art. 7. Relief of declaration that demand notice for unpaid accumulation is illegal would be at any rate for (te prevention of the monetary loss. Such suits will be governed by the provisions of Art. 7 of Schedule I of the Bombay Court Fees Act.

8. In case of *Motilal Shamaldas Makwana and Others Vs. The Recovery Mamlatdar and Others*, , this Court has held that in a case where a member of a Housing Society is filing suit for permanent injunction restraining Recovery Officer from continuing attachment, in substance, relief of injunction is consequential in nature. Such suit is, therefore, governed by Section 6(iv)(a) of the Court Fees Act and half of the ad valorem Court fees, therefore, is payable.

9. Considering the averments in the plaint and also considering the pleadings as a whole, it is clear that the plaintiff has tried to put his case u/s 6(iv)(j) of the Court Fees Act. However, as stated earlier, in substance, he is avoiding the liability of payment of fixed amount, and for which he is subjected to bill issued by the G.H.B. The subject-matter, therefore, is fit for the purpose of calculation of monetary loss and monetary evaluation. The subject-matter, therefore, is clearly susceptible of monetary evaluation and would fall under Art. 7 of Schedule I of the Bombay Court Fees Act, inasmuch as, this is a suit capable of being valued in term of prevention of monetary loss, and therefore, ad valorem Court fees would be payable on the amount of monetary loss sought to be prevented by means of the present suit. The plaintiff, therefore, is liable to pay Court fees on the said average bill of Rs. 41,836/- and is accordingly liable to pay Court fees of Rs. 2,260/- and after deducting the amount of Court fees which he

has already paid, i.e. Rs. 30/-, he is liable to pay rest of the amount towards insufficient Court fees. The learned trial Judge, has therefore, committed a clear error of jurisdiction and has also misread the provisions of law as well as pleadings of the parties. The aforesaid order is required to be set aside. Accordingly, the order passed by the learned 3rd Joint Civil Judge (J.D.), Himatnagar, below Exh. 19 in Regular Civil Suit No. 19 of 1993 is hereby quashed and set aside. The Reference of the Inspecting Officer, Court Fees, being Court Fees Reference No. 1 of 1996, is upheld. The plaintiff is directed to pay deficit Court fees on the basis of the aforesaid report of the Inspecting Officer, Court Fees, on or before 31st January, 2001.

10. This Revision Application is accordingly allowed. Rule is made absolute with no order as to costs.

11. Application allowed.