

(2014) 12 BOM CK 0184

In the Bombay High Court

Case No : Civil Application [CAF] No. 2238 of 2014 in First Appeal No. 177 of 2014

Guru Datt Enterprises

APPELLANT

Vs

Sunflag Iron and Steel Co. Ltd. and Others

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 10, Order 33 Rule 11, 35

Citation : (2014) 12 BOM CK 0184

Hon'ble Judges : P.R. Bora, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : N.N. Thengre, Advocates for the Appellant; A.C. Dharmadhikari, Advocates for the Respondent

Judgement

1. This is an application for a direction to the Civil Judge [Senior Division], Bhandara, for issuance of a Certified copy of the Decree passed in Special Civil Suit No. 24 of 2009.

2. Though the prayer as well as application are for a direction, as aforesaid, an important Question of Law has arisen for our decision. We, therefore, frame the following Question of Law:-

Having succeeded only in part in getting a decree only in the sum of Rs. 1,78,827/-with six per cent interest as against the claim for recovery in the suit for Rs. 01,55,42,730-00 and the suit being allowed to be prosecuted in forma pauperis, whether the appellant-plaintiff will be liable to pay court fees on the entire claim made in the suit or the part decree passed?

3. The relevant provisions are Order-XXXIII, Rules 10 and 11, Civil Procedure Code, which we quote hereunder:-

ORDER XXXIII [Suits by Indigent Persons]

1. Suits may be instituted by indigent person.-.....

10. Costs where indigent person succeeds.-Where the plaintiff succeeds in the suit, the Court shall calculate the amount of Court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person; such amount shall be recoverable by the State Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

11. Procedure where indigent person fails.-Where the plaintiff fails in the suit or the permission granted to him to sue as an indigent person has been withdrawn, or where the suit is withdrawn or dismissed,-

(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the Court-fee or postal charges (if any) chargeable for such service or to present copies of the plaint or concise statement, or

(b) because the plaintiff does not appear where the suit is called on for hearing, the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the Court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person.

4. Learned counsel for the appellant-plaintiff cited the Division Bench decision in the case of *Dev Vs. Chief Secretary, Government of Kerala*, , which was considered by the Supreme Court and confirmed in appeal *R.V. Dev @ R. Vasudevan Nair Vs. Chief Secretary, Govt. of Kerala and Others*, . However, we find that the decisions of Kerala High Court and the Supreme Court both have no application in the instant case, since in the Kerala case the suit was entire dismissed as against the part decree in the present case.

5. From the perusal of the provisions as aforesaid, we find and we respectfully agree with the decision of Patna High Court in the case of *Ram Saran Singh and Others Vs. State of Bihar and Others*, The relevant Paragraph 26 in the said Judgment is quoted below:-

26. Rule 10 of Order 33, of the Code of Civil Procedure, deals with the case of a pauper plaintiff who succeeds in the suit, and Rule 11 of Order 33, deals with the case of a pauper plaintiff who fails in the suit. Rule 10, Order 33, does not apply to a case when the pauper plaintiff partly succeeds and partly fails. No separate and specific provision has been made in either Order 33 itself, or anywhere else in the Code for the case of a pauper plaintiff succeeding in part and failing in part. In the absence of any such provision, the discretion rests entirely with the Court to direct which of the parties or if both of them proportionately, should pay the court-fees due to the Government, and, the Court is not fettered by any hard and fast rule, but must only be guided by the equities of the case.

Such a discretion can be exercised by the Court in such a case under Section 35, of the Code. Under Section 35, the discretion rests entirely with the Court to direct which of the parties should pay the court-fee due to the Government.

Therefore in a suit of a pauper plaintiff in which the plaintiff's claim is partly decreed and partly dismissed, or in other words, a modified decree has been passed in favour of the pauper plaintiff, the discretion rests with the Court in the matter of the payment of the court fee as to which party or parties should pay the court-fee due to the Government. The equities of a particular case must be considered by the Court in making the order, and no hard and fast rule can be laid down with regard to the equities in such a case.

6. We, therefore, find, applying the above principle, that the appellant, who has filed the instant appeal in forma pauperis and who had filed the suit in the same manner, will have to pay court fees only to the extent of his success, i.e., the decree in the sum of Rs. 1,78,827-00 [rupees one lakh seventy-eight thousand eight hundred and twenty-seven only]. In the result, we make the following order:-

ORDER

Appellant to pay Court-fees on Rs. 1,78,827-00 [rupees one lakh seventy-eight thousand eight hundred and twenty-seven only] within a period of eight weeks from today and thereafter the Court of Civil Judge [Senior Division], Bhandara, shall issue a certified copy of the Decree to the appellant.