
(1923) 03 CAL CK 0005
In the Calcutta High Court

Idol Sri Sri Gokul Nath Jin

APPELLANT

Vs

The New Birbhum Coal Co.

RESPONDENT

Date of Decision : 23-03-1923

Acts Referred:

Citation : 80 Ind. Cas. 589

Hon'ble Judges : B.B. Ghose, J

Bench : Single Bench

Judgement

B.B. Ghose, J.—The memorandum of appeal in this case was filed with a Court-fee of Rs. 20 in accordance with the provisions of Schedule II, Article 17(iii) of the Court Fees Act, 1870, as amended by Bengal Act, IV of 1922. There being a difference of opinion as to the fee payable between the Stamp Reporter and the Vakil for the Appellant, the Taxing Officer referred the matter to the Chief Justice who has appointed me to decide the question u/s 5 of the Court Fees Act. I thought it necessary to look into the plaint in order to enable me to decide it, and the learned Vakil for the Appellant supplied me with a copy of it and also another copy to the learned Government Pleader who appeared on behalf of the revenue authorities. It is contended on behalf of the Appellant that the court-fee paid is sufficient. Article 17 of Schedule II. of the Court Fees Act runs thus: "Plaint or memorandum of appeal in each of the following suits: (iii) to obtain a declaratory decree where no consequential relief is prayed." The third column prescribes the fixed fee payable. The fixed fee is payable under this article only when the suit is for a declaratory decree without any prayer for consequential relief. One of the grounds for dismissal of the suit by the Trial Court was that the plaintiff ought to have asked for consequential relief, which he had not done. I also find that the plaintiff has not prayed for any consequential relief in his plaint. It struck me on reading the plaint that on the statement of facts the plaintiff might and ought to have prayed at least for an injunction, if not for any other relief. The learned Vakil for the Appellant, however, argued that assuming it is so, he has not made any such prayer and says that, if his suit is found to be badly framed having regard to the provisions of Section 42 of the Specific Relief Act,

his appeal and the suit would be liable to be dismissed on that ground, but he cannot be asked to pay additional fee having regard to the fact that he has not prayed for any consequential relief. I am of opinion that his contention should be accepted. I think, the observation of Jenkins, C.J., in *Deokali Koer v. Kedar Nath* 15 Ind. Cas. 42 : 39 C. 704 at p. 707 : 16 C.W.N. 838 is appropriate to this case where he says: "It is a common fashion to attempt an evasion of Court-fees by casting the prayers in the plaint into a declaratory shape. Where the evasion is successful, it cannot be touched, but the device does not merit encouragement or favour." The learned Chief Justice further observed: "If the Courts were astute, as I think they should be to see that the plaints presented conformed to the terms of Section 42, the difficulties that are to be found in this class of cases, would no longer arise." It is, however, not within my province to see whether the suit is properly framed, whether the plaintiff is entitled to the declaration asked for or what would be the effect if the plaintiff succeeds in obtaining a declaration as prayed for. If the Court trying the appeal finds that the suit as framed is not maintainable, it will either dismiss it or make such other order as it considers proper. I have only to see whether it is a memorandum of appeal in a suit to obtain a declaratory decree where no consequential relief is prayed. I think, it is such a suit. The learned Government pleader states that, if the plaintiff frames his prayer in this manner with full knowledge as to its effect, he cannot ask that the plaintiff should be compelled to pay additional Court-fee. Under the circumstances it seems to me, the Court-fee paid is sufficient according to the provisions of Schedule II, Article 17 (iii) of the Court Fees Act.