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**(1995) 06 GUJ CK 0018**  
**In the Gujarat High Court**

Indian Bank

APPELLANT

Vs

Advance Art Silk Pvt. Ltd. and Others

RESPONDENT

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**Date of Decision :** 15-06-1995

**Acts Referred:**

Suits Valuation Act, 1887 — Section 8, 8

**Citation :** (1995) 2 GLR 1089

**Hon'ble Judges :** N.J. Pandya, J

**Bench :** Single Bench

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## Judgement

N.J. Pandya, J.—A common question arises in all the Revision Applications and it is pertaining to the computation of Court fees.

2. Whenever a civil suit is filed, the plaintiff, is required to put valuation on the claim preferred in the suit. For this purpose, two statutes are to be borne in mind; one, of course, is Bombay Court Fees Act, 1959 under which Court fees are levied at different rates as provided thereunder. However, for the purpose of valuation of the suit attention has to be paid to Suits Valuation Act, 1887 in central Enactment.

3. Looking to the nature of the suit it is quite clear that Section 8 of the Suit Valuation Act, 1887 will be applicable. The suit it filed by the petitioner-Bank for recovery of its dues which according to the plaintiff-Bank were payable by the defendant-respondents by virtue of loan transactions.

4. In other words, the plaintiff-Bank was seeking refund (return) of the amount borrowed by the defendants. u/s 8 of the Valuation Act, therefore, valuation of the suit for the purposes of computation of Court fees as well as that of jurisdiction shall be the same. That is precisely what the plaintiff-Bank has done by filing plaint of respective suits.

5. With a view to elucidate the matter further, I refer to the plaint and the position of the record, if necessary as it is to be found in this Civil Revision Application No. 634 of 1995. It arises out of order passed by the learned Civil

Judge (S.D.), Surat on 3-2-1995 below application, Exhibit 43 regarding Court Fee Reference No. 2 of 1993 in Special Civil Suit No. 659 of 1995.

6. Needless to say that different facilities were granted under different nomenclatures and in respect of each of these facilities amounting in all to eight different amounts were found to be due. When totalled up, the amount turned out to be Rs. 1,29,53,667-68 paise as on the date of filing of the suit.

7. As mentioned earlier, so far as the suit valuation is concerned, u/s 8 (Supra) valuation for Court fees as well as jurisdiction is the same.

8. We have, therefore, now to consider as to whether the Court fees as paid originally, namely, the maximum Court fee of Rs. 15,000/- with the suit amount is enough or there is a deficit therein.

9. Accepting the Reference filed, by the Inspecting Officer (Court Fees), Surat, the learned Judge in his order dated 3-2-1995 held that there is a deficit. Therefore, directed the plaintiff-petitioner-Bank to pay a sum of Rs. 92,600/- to clear the said deficit.

10. The relevant provisions of Bombay Court Fees Act, 1959 would be Section 18 which reads as under:

Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Civil Procedure Code, 1908 (V of 1908), Schedule I, Order II, Rule 6.

As could be seen on going through this Act, the word "subjects" is not defined anywhere. In the second part of Section 18 there is a reference to the CPC and more particularly, Order II, Rule 6. Order II refers to cause of action.

11. We can, therefore, safely infer that the word "subjects" has the same meaning or overtone as well-known phrase "cause of action" under civil law has. By expressing this opinion not even for a moment do I suggest that word "subjects" could lend itself to a meaning other than the one imported to expression of "cause of action". The word "subjects" necessarily would cover a wider field than the expression "cause of action".

12. However, it is not necessary to be detained here with regard to the distinction if any between the two expressions. The reason is that the Bank as a financial institution has lent money under different heads and facilities. Those different heads and facilities accorded different implications so far as the rights and obligations of the parties inter se are concerned. For example, if it be a question of mere over-draft it would be a plain and simple loan transaction and if it is a loan against hypothecation and/or pledge there is a question of lien over

articles hypothecated or pledged for which relevant provisions of the Indian Contract Act will be attracted. Similarly, if there is a facility of bill purchase or discount relevant provisions of Negotiable Instruments Act will be applicable.

13. Once the commercial activity of a financial institution like the plaintiff-Bank is understood in the aforesaid background of different statutory provisions governing different set of transactions, it will become at once clear that what, in fact, the Bank has done is to make money available to the borrower, its customer under different terms and conditions. But so far as the Bank and the customer is concerned the amount due and payable as and when called upon by the Bank is the one to be paid by the borrower on the date of demand. The Bank can cancel all or any of the facilities and thereby can selectively make an amount payable. But if it so chooses, it can compel the borrower to pay up the entire amount due to the Bank though for mutual convenience and for legal purposes as well as to meet with commercial compulsions, money may have been advanced under different heads and facilities.

14. The net result, therefore, is that this sort of transaction would not amount to different subjects, but would be one subject only, namely, the amount advanced on interest. If that be the position, merely because different heads are there, each individual head is not to be taken as a separate cause of action and Court fees is not to be assessed on that basis. Precisely to meet with these circumstances, Section 18 has been incorporated in the Bombay Court Fees Act, 1959.

15. If any decision is required in this regard, the first one in the series is the decision of Allahabad High Court reported in ILR 9 All 252. Coming nearer home, there a decision reported in 23 BLR 995 (Full Bench Decision) which is otherwise also binding to this Court.

16. The abstract of the aforesaid two decisions is that in a suit for balance due on account of borrowing, which would ordinarily contain a number of items, each item does not constitute a distinct subject. The subject-matter of the suit is balance due on the account and therefore, there is only one cause of action and the Court fee payable is on the aggregate amount and not on each item of the amount of borrowing.

17. I have already taken a similar view in a matter decided by me on 13-1-1995 which was Civil Revision Application No. 411 of 1989. As stated therein if one refers to the prayer clause of the plaint, one will find that the decree sought for is the total amount that has been found due according to the Bank's case from the defendant-borrower. Even on that basis if the Court fees is required to be paid by virtue of Section 8 of the Valuation Act, the valuation for the purposes of Court fees and jurisdiction will be the same and as the ad valorem court fee in Gujarat stands today, the maximum Court fees of Rs. 15,000/- will be payable.

18. In view of this reasoning, obviously, the order of the learned trial Judge dated 3-2-1995 cannot be sustained. Obviously, the learned trial Judge has

committed jurisdictional error and has not applied the provisions of law referred to above.

19. The Revision Application is, therefore, allowed. The order below Exhibit 43 of Special Civil Suit No. 659 of 1992 regarding Court Fee Reference No. 2 of 1993 is hereby set aside. The Reference is also rejected. The additional Court fee if paid is ordered to be refunded to the plaintiff.

20. A copy of the judgment to be placed in each of the accompanying matters and it is clarified that reference to the Exhibits made in the present order in reference to Special Civil Suit No. 659 of 1992 shall be correspondingly modified and so is the reference to relevant Exhibits of the respective suits out of which different Revision Applications have been filed. In these different Revision Applications the result is that the Revision Applications stand allowed; the order of the trial Court is set aside; the Reference is rejected; and the additional Court fee, if paid is ordered to be refunded. Rule is made absolute accordingly. No order as to cost.