

(1960) 08 BOM CK 0015

In the Bombay High Court

Case No : Civil Revision Application No. 708 of 1958

Lachibai Sunderlal Agarwal and Another

APPELLANT

Vs

State of Bombay

RESPONDENT

Date of Decision : 29-08-1960

Acts Referred:

Citation : AIR 1962 Bom 23 : (1961) 63 BOMLR 307 : (1961) ILR (Bom) 463 : (1961) NLJ 284

Hon'ble Judges : Gokhale, J

Bench : Single Bench

Advocate : P.R. Gandhi and M.D. Pathak, for the Appellant; C.R. Dalvi, Asstt. Govt. Pleader, for the Respondent

Judgement

Gokhale, J.

(1) This revision application raises a somewhat important point as to the interpretation of S. 31 of the Court-fees Act, 1870, which was introduced by the Court-fees (Bombay Amendment Act XII of 1954. The question arises in this was Petitioner No. 1, Lachibai, had filed a suit in forma pauperis against petitioner No. 2, Hiralal, and one Gulab, for a declaration that a certain document dated 5th December 1956 taken by Hiralal with regard to 1/3rd share in certain property and the right of defendant to get an amount of Rs. 20 per mensem was void and not binding on the plaintiff, and for partition and separate possession of her 1/3rd share in certain house property situated in the Cantonment at Poona, and for other reliefs. The application for permission to file the suit in forma pauperis was presented on 14th December 1956 personally by the petitioner No. 1, Lachibai, and that application was numbered as Pauper Miscellaneous Application No. 794 of 1956. It appears that, in this application, petitioner No. 2 was impleaded as defendant No. 1 and Bholanath, his brother was impleaded as defendant No. 2 by the order passed on 6th April 1957, the Court of the Civil Judge (Senior Division), at Poona permitted the applicant to sue as a pauper, and ordered registration of the application as a plaint, and it appears that the suit

came to be numbered as Special Civil Suit No. 46 of 1957. It seems that defendant No. 2, Bholanath, died pending the suit, but his heirs were not brought on the record and his name was deleted. That order is dated 19th September 1957. On the same day, there was a compromise between the plaintiff and Defendant No. 1, and the terms of the compromise may be briefly stated as follows: The document dated 5th December 1956 was held to be void. It was agreed that defendant No. 1. Hiralal, should pay to the plaintiff during her life-time an amount of Rs. 45 per mensem in respect of her maintenance and the same was payable from 1st September 1957, the amount of maintenance of Rs. 45 in respect of September 1957 being made payable on 10th October, 1957, and thereafter the maintenance amount for each month was to be paid on the 10th of each moth. If the maintenance amount was not paid it was to be recovered from some house property on which a charge was created, and it was also agreed that defendant No. 1 was to be personally responsible for the payment of this amount of maintenance. The third condition in the compromise was that as the suit was filed in the forma pauperis, the amount of the court-fee stamp that was payable was to be paid by defendant No. 1, and the fourth term created a charge on house No. 16 in the Ghorpadi Bazar, worth about Rs. 10,000. The registration expenses of the decree were also to be paid by defendant No. 1 to the plaintiff. The plaintiff gave up her right regarding house No. 1952 situated in the Cantonment of Poona and it was also provided that the plaintiff should give a regular receipt of the maintenance paid by defendant No. 1, and without such a receipt, it would not be possible for the defendant to contend that he had paid the amount of maintenance. There was in short the terms of the compromise arrived at between the parties on 19th September, 1957 (Exhibit 12). The Court also passed an order on the same day on the compromise application, stating that the plaintiff and defendant No. 1 had personally admitted the compromise and the same was sanctioned and decree in terms of the compromise was ordered to be drawn up. It was further directed that as the suit was in forma pauperis, a copy of the decree was sent to the Collector, and the court-fee was to be recovered from defendant No. 1. It appears that the decree having been sent to the Collector, defendant No. 1, Hiralal, paid an amount of Rs. 916.87 nP. As court-fee sometime in December, 1957, and the Mamlatdar wrote to the Court of the Civil Judge (Senior Division), at Poona, in which the suit was pending, informing the court of the recovery of the said amount from the said Hiralal, and further stating that arrangement may be made to receive the amount from his office on production of an authority, and if approved the remittance would be arranged in form of court-fee stamps in the name of defendant No. 2. Now, the mention of defendant No. 2 in this letter of the Mamlatdar, dated 16th December, 1957 appears to be a mistake, because there is no dispute that the amount was paid by Hiralal, defendant No.1. defendant No. 2 having already died, he was not a party to the compromise. On 9th December 1957, before the Mamlatdar's letter referred to above was received by the Court, an application (Exhibit 15) was made on behalf of the defendant, stating that a sum of Rs. 916.87 nP., was paid by the defendant to

the Mamlatdar towards the court-fee and that is evidenced by the receipt, dated 7th December 1957 from the Mamlatdar. The application further requested that the necessary certificate of refund may be issued in favour of defendant in order to enable him to get the refund to which he was entitled in view of the terms of the compromise which was arrived at prior to the filing of the application. This application was endorsed by the pleader for the plaintiff, and it was stated that the plaintiff had no interest in court-fee which was paid in defendant's name, and had no objection to refund, if it could be legally granted. It appears, however, that it was realised that it would be the plaintiff who would have to make such an application, and on 27th December 1957, an application Exhibit 16, was filed on behalf of the plaintiff, in which it was stated that as the court-fee had been recovered, the plaintiff was entitled to a refund of Rs. 458.43 nP., and it was further stated that the amount had been paid to the Mamlatdar by defendant Hiralal. This application was endorsed by the pleader on behalf of defendant, stating that the defendant has no objection to the granting of this application as the payment was made for and on behalf of plaintiff and at her instance. The learned trial Judge, considering the provisions of S. 31 of the Court-fees Act, held that the defendant had no right under S. 31 to claim the refund. He also rejected the contention of the defendant that the court-fee stamp amount was paid by defendant as agent of the plaintiff. He also took the view that in the present case the Court-fee was not paid before the settlement. He, therefore, held that as the Court-fee was not paid by the plaintiff and as payment by defendant cannot be regarded as payment on behalf of plaintiff as her agent and as payment of court-fee stamp was not before the settlement, S.31 would have no application. He, therefore, rejected both applications, Exhibits 15 and 16 with costs. It is against this decision that the present civil revision application has been filed by petitioner No. 1, Lachibai, original plaintiff, and petitioner No. 2, Hiralal, original defendant No. 1, and the State of Bombay has been impleaded as opponent.

(2) Section 31 of the Court-fees Act was inserted by S. 10 of the Court-fees (Bombay Amendment Act, 1954, which received the assent of the President and was published in the Government Gazettee on 11th March 1954. It has to be mentioned that the Court-fees Act as amended in 1954 has been replaced "by the Bombay Court-fees Act, 1959, being Bombay Act 36 of 1959, which came into force on 1st August 1959, and the provision corresponding to S. 31 of the Old Act is section 43 in Chapter VII of the Bombay Court-fees Act, 1959, which further provides for refund of fees in certain circumstances even in the case of any appeal or cross-objection. But so far as the present case is concerned there is no dispute that we are concerned with S. 31 of the Court-Fees Act, 1870, as inserted by S.10 of the Court-fees (Bombay Amendment) Act XII of 1954. Now, S. 31 runs as follows:

"31. (1) When any suit in a Court is settled by agreement of parties before issues have been settled or any evidence recorded, half the amount of the fee paid by the plaintiff on the plaint shall be repaid to him by the Court:

Provided that no such fee shall be repaid if the amount of fee on the plaint does not exceed five rupees or the claim for repayment is not made within one year from the date on which the suit was settled by agreement.

(2) The State Government may, from time to time, by order, provide for repayment to the plaintiffs of any part of the fee paid on "plaints by them in suits disposed of under such circumstances and subject to such conditions as may be specified in the order.

We are concerned in this case only with the interpretation of sub-section (1) of S. 31, and the contention on behalf of the State is that the trial Court's view in this matter is correct as the amount of court-fee was not payable by the plaintiff and was not paid before the settlement of issues and was not in fact paid on the plaint, and therefore, S. 31 would have no application. As against this, it is contended on behalf of the petitioners by Mr. Gandhi that in fact the amount of the court-fee was paid by the defendant on behalf of the plaintiff as provided in the compromise, and that, as soon as it was paid to the Mamlatdar, it would be an amount paid on the plaint and therefore, S. 31 would apply, and petitioner No. 1 would be entitled to recover half the amount. As regard the question as to who is ultimately to take that amount, it is contended that that is a matter which the petitioners might settle amongst themselves, and, as I have already pointed out, in the application, Exhibit 16, made on behalf of the plaintiff, the defendant has clearly stated that he had no objection to the grant of the application.

(3) Now, in order to examine the correctness of these rival arguments, it is necessary to consider the provisions of Order XXXIII of the Civil Procedure Code. Order XXXIII deals with the subject of suits by paupers, and Rule 8 of that Order provides that where a pauper application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit. It will be noticed that under this rule, as soon as the application by the pauper for permission to sue in forma pauperis is granted, the application is to be deemed as a plaint in the suit, and the plaintiff, will not, therefore, have to pay any Court-fee in respect of any proceeding connected with this suit. But this rule does not provide for the ultimate payment of the court-fee on the plaint. As I have already indicated, in the present case the application of petitioner No. 1 to be permitted to sue as a pauper, was granted on 6th April 1957, and the suit came to be numbered as Special Civil Suit No. 46 of 1957. Rule 9 of Order XXXIII provides for dispaupering, but we are not concerned with this rule. Under Rule 10, it is provided that 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 a pauper; 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. Rule 11 provides for procedure where the pauper fails, and it stated that there where plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed on the grounds mentioned in clauses (a) and (b), 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 a pauper. Now, the present obviously is a case which is not governed by Rule 11 of Order XXXIII. In this case, the plaintiff has in fact obtained a partial relief claimed by her in fact obtained a partial relief claimed by her in the suit, and, in my view, it would be the provisions of Order XXXIII, Rule 10, that would be applicable. Now in a suit which is allowed to be filed in forma pauperis as soon as the application is granted, the application itself becomes a plaint in the suit, but the plaintiff does not cease to be liable to pay the court-fee on the plaint, though he has not to pay the court-fee initially in order to be able to prosecute the suit. Where he succeeds, provision is made as regards the payment of court-fees under Rule 10 and where the pauper fails, the procedure under Rule 11 of Order XXXIII is to be followed. Under Rule 11-A, where the suit abates by reason of the death of the plaintiff or of any person added as a co-plaintiff the Court shall order that the amount of court-fee which would have been paid by the plaintiff if he had not been permitted to sue as a pauper shall be recoverable by the State Government from the estate of the deceased plaintiff. Rule 12 provides that the State Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under Rule 10. Rule 11 or Rule 11-A. Rule 13 provides that all matters arising between the State Government and any party to the suit under Rule 10, Rule 11, Rule 11-A or Rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of S. 47. Under Rule 14, where an order is made under Rule 10, Rule 11 or Rule 11-A, then Court shall forthwith cause a copy of the decree or order to be forwarded to the Collector, who may without prejudice to any other mode of recovery, recover the amount of court-fees specified therein from the person or property liable for the payment as if it were an arrear of land revenue.

(4) Now, the argument on behalf of the State of Bombay, in the first instance, is that in the present case, the amount of court-fees has been made recoverable under the decree from defendant No. 1, and it was defendant No. 1 who paid the amount and since it was not a payment by the plaintiff, S. 31 would not be applicable. It is not disputed that the present suit has been settled by an agreement of parties before the settlement of issues. But it is urged that the payment being not made by the plaintiff, she would not be entitled to half the amount of fees as contemplated by section 31. Mr. Dalvi, learned honorary Assistant Government Pleader, further contended that in the present case, there was an order by the Court that the court-fee should be recovered from defendant No. 1, and therefore it could not be a payment made on behalf of the plaintiff. I am not impressed by this argument. The decree is a decree in terms of the compromise and under the provisions of Order XXXIII, the ultimate responsibility

for payment of court-fees is on the plaintiff. In the present case, it was stated in term No.3 of the compromise decree that as the suit was filed by the plaintiff in formal pauperis, whatever court-fee was payable the same should be paid by defendant No. 1. It would be clear, therefore, that under the terms of the compromise decree, the defendant was to satisfy the liability of the plaintiff in respect of the court-fees and the decree ordered to be drawn up in terms of the compromise, and that is why the Court directed that the Court-fee should be recovered from defendant No.1. In Exhibit 16, which is the application filed on behalf of the plaintiff, on 27th December 1957, on behalf of the defendant it has been stated that the court-fee was paid for and on behalf of the plaintiff. This has obviously reference to the terms of the compromise. In view of the wording of the compromise it cannot be said that the payment of the court-fee was not made by defendant on behalf of the plaintiff. The learned Judge's view on this point, therefore, does not appear to be correct.

(5) Then it was contended that section 31 would not apply because the court-fee was not paid before the issues were settled. It is only after the decree was passed that defendant No. 1 has paid the amount of court-fees to the Mamlatdar. Now, to stretch this argument to its logical conclusion. Section 31 would have to be construed as being not applicable to pauper suits at all, because, in suits filed in forma pauperis once the application of the plaintiff is granted, he would not be liable to pay the court-fees during the proceedings of the suit. I do not think it was the intention of the Legislature to exclude pauper suits from the operation of section 31, which appears to me to have been inserted by Act XII of 1954, to encourage the litigants to compromise the suits at an early stage of the proceedings, that is to say, before the settlement of issues, or before any evidence is recorded. The wording of section 31 is that the settlement between the parties in any suit must be before the settlement of issues or before any evidence is recorded, entitling the plaintiff to get the refund of half the amount paid by him. It is not necessary u/s 31 that the court-fee should be paid before the settlement of issues or before the recording of evidence. On this point, Mr. Gandhi contended that once the court-fees are paid, it must be deemed to have been paid when the suit was instituted, and in support of this argument, he has relied on the provisions of section 149 of the Civil Procedure Code. Now, section 149 empowers the Court at any stage to allow any person by whom court-fee is payable to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance. I do not think that section 149 can apply to the facts of the present case. This is a case of a suit allowed to be filed in forma pauperis. By reason of Order XXXIII, Rule 8, as soon as the plaintiff was permitted to sue as a pauper, the plaint came to be registered as a suit. It cannot be said that the Court had, in the present case, any discretion to allow the plaintiff to pay court-fee later on. But though section 149 would not be applicable in terms, in my view, the principle of that section would be applicable. It appears that the amount which is paid to the

Collector is to be remitted to the Court. But, unfortunately neither Mr. Dalvi nor Mr. Gandhi has been able to draw my attention to any rules in this behalf. But the Mamlatdar's letter, dated 16th December 1957, shows that the Mamlatdar having received the amount of Rs. 916.87 nP from defendant No. 1, the Court was asked to arrange to take it away from the office of the Mamlatdar, and the letter also proceeds to state that after the authority was approved the remittance will be made in the form of court-fee stamps in the name of defendant No. 2 which should have been really defendant No. 1. It, therefore, appears that the amount which is credited with the Collector in such a case has to be ultimately utilised for the purpose of affixing the necessary court-fee stamp on the plaint. If that is so, as soon as the amount is recovered either from the pauper or from any person on his behalf, as directed in the decree, the court-fee will be deemed to have been paid as from the date of the institution of the suit. Moreover, it appears from the Mamlatdar's letter that the amount is recovered for affixing the requisite court-fee stamps on the plaint. It must be held therefore, that the court-fee is paid ultimately on the plaint itself. In my view, in case of suits allowed to be filed in forma pauperis, it is not necessary for the application of section 31 of the Court-fees Act that the court-fee should be paid before the settlement of issues or recording of any evidence but that it should be recovered from the plaintiff or from any person who has agreed to pay on behalf of the plaintiff in accordance with the terms of the compromise arrived at between the parties. If the suit itself is settled by agreement of parties before issues are settled or any evidence recorded half the amount of the court-fees subsequently recovered from the pauper or any person on his behalf is liable to be refunded to him.

(6) It is apparent, however, that u/s 31, it would be only the plaintiff who will be entitled to a refund of the amount, and the learned Judge was, therefore, right in so far as he rejected the application. Exhibit 15, preferred on behalf of the defendant. The learned Judge was, however, in error in rejecting the application, Exhibit 16, made on behalf of the plaintiff which was supported on behalf of the defendant.

(7) The result is that this revision application will have to be allowed, and the order of the trial Court in so far as it rejects the application Exhibit 16 filed on behalf of the plaintiff will be set aside. That application will be granted and it will be directed that the plaintiff would be entitled to a refund certificate for the amount of Rs. 458.43 nP. In the circumstances of this case, there will be no order as to costs.

(8) Revision allowed.