

(1969) 09 BOM CK 0020
In the Bombay High Court
Case No : O.C.J. Suit No. 800 of 1967

Lalit J. Patel

APPELLANT

Vs

T.R. Bhide

RESPONDENT

Date of Decision : 09-09-1969

Acts Referred:

Arbitration Act, 1940 — Section 23
Bombay City Civil Court Act, 1948 — Section 11

Citation : (1970) 72 BOMLR 366 : (1970) MhLj 459

Hon'ble Judges : Vimadalal, J

Bench : Single Bench

Judgement

Vimadalal, J.—This is an action for dissolution of partnership and for accounts between persons who carried on business as architects and civil engineers in Bombay. Before any evidence was led, the disputes in the suit and counterclaim were referred to the arbitration of an architect named Divecha. It is common ground that during the arbitration proceedings there were negotiations, but there is a dispute between the parties as to whether those negotiations culminated in a concluded compromise in regard to certain matters or not. According to the plaintiff" and defendant No. 2, they did result in a concluded compromise in regard to certain matters which were the subject-matter of the arbitration, whilst according to defendant No. 1 no concluded compromise was arrived at between the parties at all in regard to any of the matters which formed the subject-matter of the arbitration. The plaintiff and defendant No. 2, therefore, took out a notice of motion on January 24, 1969, for the recording of the compromise which according to them was arrived at between the parties in the course of the arbitration proceedings. When, however, I pointed out to their learned Counsel the provisions of Sub-section (2) of Section 23 of the Arbitration Act, the said motion was amended by the addition of prayers for the revocation of the Order of Reference, and for an order that the arbitration agreement ceased to have effect and/or an order superseding the Reference to arbitration. By my Order dated August 21, 1969, I revoked the authority of the arbitrator Mr. Divecha, and made

an order superseding the arbitration, and directed that the rest of the motion be proceeded with. Evidence was thereafter led by both sides on the question as to whether a concluded compromise was arrived at or not, but before the hearing of that part of the motion was concluded, the parties settled the whole suit as well as the counterclaim, and by consent no order was made by me on the rest of the motion, and a consent decree was passed by me in the suit on August 26, 1969. The parties applied at that time for refund of half of the Court-fees paid on the suit as well as the counterclaim but, as I felt some doubt on the point, I adjourned the question of refund of Court-fees for further argument and the same thereafter came up before me yesterday.

2. The application for refund is made u/s 48(1) of the Bombay Court-fees Act, 1959, (Act XXXVI of 1959), the material part of which is in the following terms:-

When any suit in a court is settled by agreement of parties before any evidence is recorded, half the amount of the fee paid by the plaintiff...on the plaint...shall be repaid to him by the court.

The question that arises, therefore, is whether the words "before any evidence is recorded" in the said Section 43(1) should be construed to mean evidence led in the course of the hearing of the suit itself, of whether they should be construed to mean any evidence whatsoever. If the latter construction is to prevail, the parties would not be entitled to refund on the suit or the counterclaim, because evidence was led before me on the notice of motion to prove whether the compromise which was sought to be recorded was arrived at, though no evidence was led on the merits in the suit itself, which it may be stated, had not reached hearing.

3. Reference may be made in this connection to corresponding provisions that are to be found in Section 31(1) of the Indian Court-fees Act, 1870 (as amended by Bombay Act XII of 1954), and in Section 11(1) of the Bombay City Civil Court Act (Bombay Act XL of 1948). In both those statutory provisions it has been laid down that half the amount of the Court-fee paid is to be refunded if the suit is settled by agreement of parties "before issues have been settled or any evidence recorded". It may be noticed that in Section 43 of the Bombay Court-fees Act, 1959, which I am now considering, the words "before issues have been settled or" have been significantly omitted. It may also be mentioned for the sake of recording completely the relevant provisions relating to refund, that both under Sub-section (2) of Section 11 of the Bombay City Civil Court Act, as well as under Sub-section (2) of Section 43 of the Bombay Court-fees Act, 1959, Rules have been framed in regard to refund of Court-fees in cases other than cases of compromise of the suit by agreement of parties. It is not necessary to set them out for the purpose of the present order.

4. Section 31(1) of the Indian Court-fees Act, 1870, was construed by a Division Bench of this Court in the case of State of Bombay Vs. Bai Moti and Others, in which the question of refund of Court-fees arose because the parties to the suit

arrived at a compromise and a consent decree was taken after the issues in the case were settled but before the evidence was recorded. The plaintiffs to that suit applied for refund of half the amount of the Court-fees under the said section and the trial Court granted that application. The State of Bombay applied in revision to the High Court and the High Court set aside the order of the trial Court in regard to refund of Court-fees, taking the view (at p. 667) that under the said Section 31(1), a refund of half the amount of the Court-fees paid by the plaintiff could be allowed, in the case of a regular suit, if the consent decree was taken before the issues were settled, and in the case of a suit of a small cause nature, if the consent decree was taken, before the evidence was recorded. It was observed by Dixit J. in his judgment in the said case (at p. 068) that the framing of issues and the recording of evidence were definite and important stages in the course of a suit, and that was why u/s 31(1), the Legislature has made the settling of issues or the recording of evidence as the point of time before which a consent decree was to be taken if refund was to be obtained. He further observed that if, however, the plaintiff went to trial and evidence was recorded, it could hardly be suggested that the plaintiff would thereafter be entitled to claim a refund of half the amount of Court-fees paid by him, "because in such a case what happens is that all that remains for the Court to do is to give judgment in the case" (at p. 668). Vyas J. in dealing with the same point observed (at p. 670), that there was no doubt that in the context of Section 31(1) the word "evidence" in the phrase "any evidence recorded" meant evidence on merits which was required to be recorded under Order XVIII, and that the evidence which the Court might record under Order XIV, Rule 4 for the purpose of settling issues was not intended to be covered by that phrase as it was included in the stage which was reached when the settlement of issues took place. He also observed, as Dixit J. did, that the stages envisaged by the Legislature when it used the words "before issues were settled" or "any evidence recorded" in Section 31(1) were two distinct stages, as distinguished from overlapping stages. These observations of Vyas J. were strongly relied upon by Mr. Sorabjee on behalf of the plaintiff, but in Bai Moti's case the Court was called upon to construe Section 31 of the Court-fees Act of 1870, and the reasoning which was adopted was that the two disjunctive clauses of that section viz., "before issues have been settled", and "any evidence recorded" could not be construed so as to overlap. That reasoning would have no application to a case like the present one in which the position is that the first disjunctive clause does not occur at all in Section 43(I) of the Bombay Court-fees Act of 1959. It is hard to understand why the Legislature has dropped from the said section the first disjunctive clause which is to be found in Section 31(1) of the Indian Court-fees Act of 1870. In my opinion, Section 43(1) as worded, is certainly defective and contains a lacuna. The whole object of granting refund of Court-fees, if the matter has not proceeded beyond a certain stage, is that if the parties choose to settle the litigation before they have appreciably taken up the time of the Court, they should be granted refund of Court-fees. There are some big cases in which no oral evidence at all is required to be led and which are litigated purely by

arguments based on documents which may go on for quite a few days. It could never have been the intention of the Legislature that if such a suit is settled after a protracted hearing when judgment is about to be delivered, the parties would still be entitled to refund of Court-fees. Yet that would be the result of the absence of the words "before issues have been settled" in Section 43(1) of the Bombay Court-fees Act, 1959. That, however, is beside the point which I am called upon to decide for the purpose of the present Order. I am told by the learned Counsel for the parties that there is no decision on the point, except the decision in *Bed Moti*'s case which has been cited before me, and I am, therefore, left to decide the question as to whether the refund of Court-fees on the suit as well as the counterclaim should be granted in the present case on the plain language of Section 43(1) of the Bombay Court-fees Act of 1959. For that purpose, I must, no doubt, bear in mind the fundamental rule of construction that, in case of doubt or ambiguity, a fiscal statute must be construed in favour of the subject. The words "any suit" which occur at the very outset of the said Section 43(1), in my opinion, control what follows, and the words "before any evidence is recorded" which follow must, therefore, be read as if the words "in such suit" occurred after them. This is the construction which Mr. Sorabjee has pressed upon me, and there is force in the same. I accept that construction of Section 43(1) on a plain reading of that section. Moreover, the contrary view would lead to certain absurd results, and it is another well-known canon of interpretation of statutes that a construction which leads to absurdity should be avoided. The absurdity to which the contrary view would lead to would be that, if evidence is recorded on a motion for contempt taken out by reason of the breach of an undertaking given by the defendant to a suit at an interlocutory stage, the plaintiff would be disentitled to refund of Court-fees even if the suit was settled as soon as it reached final hearing. A Court of law would be most reluctant to give an interpretation to a statute which would lead to such an absurd result. Questions might also arise as to what would happen, if a contrary view were to be taken, in the case of settlement of a suit after evidence was recorded on commission under Order XXVI of the Civil Procedure Code, which has never been tendered as evidence in the case. All these difficulties could be avoided by placing upon Section 43(1) a beneficent construction which is in consonance with the plain language of the section. Moreover, though the reasoning of the Division Bench in *Bai Moti*'s case does not apply to the construction of Section 43(I), as already stated above, the observations of Vyas J. (at p. 670) do lend some support to the view which I am taking. By way of clarification, it must be stated that the word "recorded" in that section leaves no room for doubt that the word "evidence" therein means oral evidence. There is, however, no reason to take the view which Vyas J. has taken that, in order to disentitle a party to an order for refund, the evidence that has been taken at the hearing of a suit should be "on merits", for considerable evidence may sometimes be led on a preliminary issue and the same may take up an appreciable part of the Court's time at the hearing.

5. In the result, I hold that, if a suit is settled between the parties before any oral evidence is recorded at the hearing of the suit itself, whether on merits or on a preliminary issue, the plaintiff is entitled to refund of half the amount of the Court-fees paid by him, and the same rule would apply to a counterclaim as far as a claim for refund by the defendant to a suit is concerned. I, therefore, order that half the amount of the Court-fees paid by the plaintiff, and by defendant No. 2 on his counterclaim, in the present case be refunded to them. As far as the counterclaim of defendant No. 1 is concerned, the same has, however, been dismissed for want of prosecution and he will, therefore, be entitled to refund of two-thirds of the Court-fees paid by him thereon.