
(1962) 05 GUJ CK 0005

In the Gujarat High Court

Case No : Civil Revision Application No's. 680 and 777 of 1961

Mahendra Ratilal Patel and Another

APPELLANT

Vs

Patel Nagindas Keshavlal and Others

RESPONDENT

Date of Decision : 01-05-1962

Acts Referred:

Bombay Court Fees Act, 1959 — Section 36, 49, 5, 6

Citation : AIR 1963 Guj 40 : (1963) GLR 317

Hon'ble Judges : N.M. Miabhoy, J;A.R. Bakshi, J

Bench : Division Bench

Advocate : B.R. Sompura, Asstt. Govt. Pleader, C.K. Patel, for C.K. Shah, for the Appellant; K.H. Kaji, for S.B. Vakil, for the Respondent

Final Decision : Dismissed

Judgement

Bakshi, J.—This revision application u/s 5 (2) of the Bombay Court-fees Act, 1959 raises a controversial question of some Importance regarding the computation for the purpose of Court-fees of a claim In an appeal filed after the Bombay Court-fees Act, 1959 came Into force, against a decree passed in a suit Instituted at a time when the Court-Fees Act, 1870 was in operation. The claim in the plaint was computed and valued according to the Court-fees Act, 1870 (hereinafter called the old Act) which was then in force and Court-fees were paid at the rate then prevailing. On 1st August 1959 the Bombay Court-Fees Act, 1959 (hereinafter called the new Act) came into force and a decree in the suit out of which the present matter arises was passed thereafter. When an appeal against that decree was preferred in the High Court, the Officer raised an objection to the computation made by the appellants who are the petitioners in the present matter and asked the petitioners to compute their claim in appeal according to the Bombay Court-Fees Act, 1959. It is an admitted position that the new Act, by its provisions including Section 6 has made substantial changes regarding the method of computation of claims in suits. If the new Act applied. It is obvious that the petitioners cannot prosecute their appeal on payment of fees

calculated on a computation made under the old Act and the net result of the application of the new Act would be (1) that the petitioners would have to compute their claim according to the provisions of the new Act and (2) pay Court-fees on the value so computed at the increased rate prescribed therein.

2. The petitioners contend that the new Act is not retrospective in effect and that they have a vested right to continue the suit to the stage of its final determination on the same terms as prevailing at the date of the suit. According to them, the first proviso to Section 49 saves their vested right which remains unaffected by the second proviso in that section. The learned Government Pleader on the other hand contends that the Act is retrospective in effect and such legislative intent to apply the Act to all documents presented after the passing of the Act is writ large on the words used in the various provisions of the Act. According to the learned Government Pleader, Sections 5, 6 and the second proviso to Section 49 make it abundantly clear that all documents filed after the new Act came into operation must be stamped with court-fees chargeable under the new Act and the word "rate" occurring in the second proviso to Section 49 is used in its wider sense so as to include both the processes of computation and calculation of proper fees chargeable under the new Act.

3. It is no doubt true that a right of appeal is a vested right available to a suitor as from the date when the suit is instituted. It is well settled that the legal pursuit of a remedy viz. a suit, an appeal and a second appeal are steps in a series of proceedings all connected by an intrinsic unity and the right of appeal is a substantive right and not a matter of mere procedure. Such a right accrues to the litigant as on and from the date his suit commences. Irrespective of the date of its exercise and is throughout the career of the suit governed by the law in force when the action was first brought. Equally well settled is the rule that a vested right of appeal can be affected or impaired by a subsequent enactment, if it provides so expressly or by necessary intendment. A provision impairing or disadvantageously affecting vested rights is ordinarily not given retrospective effect unless the legislative intent to do so is manifest from the provisions of the Act. The question therefore which arises for consideration is whether any such provision showing expressly or by necessary intendment that the new Act is applicable in respect of actions instituted before the date of the new Act is found or manifest in the provisions of the new Act. For this purpose it would be necessary to examine its relevant provisions.

4. Section 5 of the new Act provides that no document of any of the kinds specified as chargeable in the first or second schedule of the Act shall be filed, exhibited or recorded in any Court of Justice, unless in respect of such document there has been paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document. Section 6 provides for computation of fees payable in certain suits mentioned therein. Section 36 of the Act provides that-

"All fees shall be charged and collected under this Act at the rate in force on the

date on which the document chargeable to court-fee is or was presented."

This section is a new section which has been added in the new Act. Section 49 provides for the repeal of certain laws including the Court-fees Act of 1870. This section obliterates and replaces the old Act of 1870 subject of course to the saving clause contained In the first proviso to the section which is as under:--

"Provided that such repeal shall not affect the previous operation of any of the laws so repealed and anything done or any action taken (including any appointment, notification, order, rule, form, application, reference, notice, report or certificate made or Issued) under any such law shall, In so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provision of this Act and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under this Act." There is also a second proviso contained in Section 49 Which runs as under:--

"Provided further that all the fees shall be charged and collected under this Act at the rate in force on the date on which the document chargeable to court-fee is or was presented."

The argument of the petitioners is that the first proviso to Section 49 saves their vested right of appeal including the right to continue their appeal on the same terms as obtained at the time of filing the suit and that therefore they would not be obliged to compute their claim u/s 6 or any other provision of the new Act. The first proviso to Section 49, according to the petitioners, saves their vested right throughout the career of the suit including appeals and second appeals and that the second proviso to Section 49 provides for an exception to the first proviso and purports to take away out of the effect of the first proviso only those matters mentioned therein.

According to the petitioners, the second proviso merely relates to rates of calculation which have to be calculated according to the law in force on the date of the presentation of the document as prescribed in the new Act, but it does not apply to the matter of computation of claims as provided in Section 6 or any other provisions of the new Act. On this argument, the new rates prescribed in The Act would be the rates on which the calculation of court-fees has to be made under the new Act, but the original valuation placed on the plaint at the time of Its institution will be the valuation on which the calculation of court-fees under the new Act has to be made. The petitioners contend that the calculation of rates is entirely a different matter from the method of computation or valuation of the claim on which such rates are to be charged. For this contention the petitioners have strongly relied on two decisions of the Bombay High Court wherein a similar contention was accepted. These two decisions no doubt recognise the distinction between computation of claims and the rate for the purpose of calculation of court-fees thereon for the purpose of appreciating the effect of the second proviso to Section 49 and no doubt decide that the method of computation for

the purpose of charging court-fees remains unaffected by the provisions of the new Act. The relevant observations in *Shantabai Mathuradas v. Municipal Corporation, Greater Bombay*, 63 Bom LR 667 are at page 672 : --

"In the first place we must point out that while the court-fees Act provides for the computation of the claim and the rate of court-fees, which will be chargeable on the computed claim, this section only refers to the rates to be charged on the date of the presentation of the document and does not refer to the computation of the claim . Assuming therefore, that the language of this section is capable of being construed as affecting the vested rights under the old Act, the said rights under this provision will be only affected so far as the rates charged are concerned and not so far as the computation of the claim . We do not, however, think that the provision of this section by itself is sufficient to Indicate a necessary intention to affect the vested rights even in the matter of the rates charged. The reference to the date of the presentation of the document, undoubtedly, avails the learned "Government Pleader to raise the argument, which he has raised. The said reference, however, to the date is capable of being explained by referring to two other sections, which occur in the said Chapter."

Again at page 674 it has been observed:--

"As we have already painted out earlier, the previous operation of the law brought into existence two rights: (1) to have the claim computed in the manner provided under the old Act and (2) to have the cause litigated on the payment of fees at such rates as were prescribed under the old Act. By the provisions enacted in Section 49 what the Legislature has intended Is that the previous operation of the repealed law is saved except that the previous repeated law shall not be applied so far as the rates of court-tees are concerned: which rates will have hereafter to be paid under the new Act and not under the old."

In the second decision reported in *The Central Provinces Syndicate (Private) Ltd. Vs. Commissioner of Income Tax, Nagpur* , it has been observed at pages 853 and 854 (of Bom LR): (at pp. 120, 121 of AIK):

"The next question then is whether on the view that we have taken of the retrospective effect of the new Act, Article 16 of the First Schedule of the Court-fees Act is applicable to the petitions before us. In order to decide that question, what we have to consider is whether that article provides only an enhanced rate of court-fee or also affects the right relating computation. If the new provision does not affect, in any way, the right of computation, but only prescribes a rate, it will certainly be applicable to the present petitions. If, on the other hand, the new provision has the effect of obliging the assesses to have the claim computed in a manner different from that in which he was entitled to have it computed under the old Act and make the rate dependent on the said computation, the question will have to be further considered whether Article 16 in the new Act can apply to the present applications either wholly or at any rate to the extent of the rate prescribed thereunder"

"In our opinion, the new provision does affect the vested right relating to computation under the old Court-fees Act. The right to pay a fixed court-fee without reference to any computation of the claim on an arbitrary basis was a right vested in the litigant under the old Court-fees Act. The provision of Article 16 which requires the claim to be computed on a certain arbitrary basis prescribes a new rule for computation under the new Act. It changes the classification of the Item and shifts it from the schedule of fixed fees to the Schedule of ad valorem fees. It is not a mere matter of enhancing the existing rate of fees but it involves a change in the basis of the imposition. The change in the law introduced by the new Act relates to computation of the claim because the fee payable is made dependent on the computation. Such a change which introduces a new method of computation where none existed before is as much a change relating to computation as when an existing rule of computation is replaced by another. A change of such a nature in the law brought about by the new Act is not made retrospective under the new Act. According to us, therefore, Article 16, in so far as it prescribes a new method of computation of the claims in applications by the assessee u/s 65 of the Income Tax Act, cannot apply to the present applications."

5. The second decision related to an application by an assessee to the High Court u/s 66 of the Income Tax Act of 1923 filed after the new Act came into force in respect of proceedings which had commenced before the date of the new Act. It was held that the new Act did not apply to such an application but the old Act would continue to apply to such applications for the purpose of court-fees and that such applications would be governed by the old Act. A similar question arose for consideration before a Full Bench of this Court in the case of C.N. Bros. and Others Vs. Commissioner of Income Tax, Ahmedabad, . this Full Bench decision is clearly contrary to the second decision of the High Court of Bombay referred to above wherein also the same question that arose before the full Bench was decided in a different manner by the Bombay High Court. But it is said on behalf of the petitioners that the Full Bench decision of this Court relates only to the question of rates: It would therefore be necessary to examine the Full Bench decision in some detail, the petitioner in that case filed an application to the High Court u/s 66(2) of the Income Tax Act for directions to the tribunal to raise and refer to the High Court certain questions of law arising out of the tribunal's order. At the time of filing the application the petitioner paid fixed court-fees and contended that the Bombay Court-fees Act, 1959 was not retrospective and did not apply to a petition under Section 66 of the Income Tax Act which related to assessment years prior to 1st August 1959 when the Bombay Court-fees Act came into force. According to the petitioner in the Full Bench case, his application was governed by the Court-fees Act of 1870. After discussing the relevant provisions of the new Act, it was decided that the petitioner was liable to pay court-fees under entry 16, Schedule 1 of the new Act on the basis of the amount of tax in dispute and directed the petitioner to pay proper court-fees thereon. While discussing Section 49 the learned Chief Justice observed at page 237 (of

Guj LR) : (at p. 147 of AIR) as under:

"To turn to Section 49. We are only concerned with Sub-Section (1) of that section and a good deal of argument has been advanced before us on the meaning and effect of the language in which that sub-section has been enacted. It will be seen that Sub-section (1) contains the repeal clause. Then there are two provisos. The first proviso no doubt spoken of by the Legislature as such, really is the saving clause, and of that there can be no doubt. Nor has any attempt been made before us by Mr. Mehta to ask us to read Sub-section (1) and the first proviso to that sub-section as anything other than a repealing clause and a saving clause. Then comes the second proviso which, in language of abundant clarity, states that all fees shall be charged and collected under the Act at the rate in force on the date on which the document chargeable to court-fees is presented. To continue with the argument of counsel under the present head. The argument was sought to be stressed in the form of an interrogation: is there anything in Section 49 which brings the present petition within the operation of the Act? And in support of the argument reliance has been placed on the words "previous operation" in the first proviso and the words "charged and collected under this Act" in the second proviso. It is said that there is no indication whatever in the first proviso either express or implied, to any retrospective operation. As to the second proviso it is said that it merely repeats the provisions contained in Section 36 and the proviso should therefore not be read as providing for any retrospective operation. The second proviso, it is further urged, cannot create a new charge. We put it to learned counsel if he could attribute any meaning and any operation to the second proviso to Section 49. A rather feeble attempt was made when it was said that it must be read as something inserted *ex abundanti cautela*."

It will be seen from the above that two arguments were urged before the Full Bench: (1) There was nothing in Section 49 which would bring the application within the operation of the new Act and (2) that the second proviso to Section 49 could not create a new charge which was provided for in entry 16 of Schedule 1 of the new Act. None of these arguments were accepted by the Full Bench. Again at page 234, it was observed:

"Section 5 which comes into operation on the same day rules in express terms that no document specified as chargeable in the first or the second schedule to the Act shall be received in any Court unless the court-fee as indicated in any of the Schedules to the Act has been paid. The first proviso to Section 49 (1) is in language usually employed in enacting a saving after a repeal. It is, as we have already mentioned, no more and no less than a saving clause. The second proviso, which is a vital clause, lays down a rule of considerable importance and in our opinion a rule which it is not possible for the Court to ignore. In words of amplitude and clarity it enacts that all fees shall be charged under the Act at the rate in force on the date on which the document subject to court-fee is presented.

In the course of his arguments, Mr. Mehta suggested that the second proviso

must be read with Sub-section (1) and cannot be read with the first proviso. The suggestion, in our opinion, is untenable. The repeal clause contained in Sub-section (1) and the two provisos must be read as a whole enactment. Sub-section (1) gives the repeal clause and the first proviso is the saving clause, the second proviso must be read with all that precedes it and if anything, in particular with the first proviso. But for the saving clause, the whole Court-fees Act of 1870 in so far as it relates to entries 2 and 66/2 in the seventh Schedule to the Constitution would have stood wholly repealed. The effect of the saving clause is to save the previous operation of the repealed law and anything done or any action taken under it, for instance, by a notification, order, rule, form etc., in so far as it is not inconsistent with the provisions of the new Act. The second proviso, operating on the first proviso, rules in effect that notwithstanding the saving clause, notwithstanding any previous operation of the repealed law saved by it when question arises as to charging of fees, the fee will be charged under the Act at the rate in force at the date on which the document is presented. And if we may say so, the Legislature has stated in the second proviso that repeal or no repeal, partial repeal or total repeal, when it comes to payment of fees after the coming into force of the operation of the Act, the fees to be charged shall be at the rate in force on the date when the document is presented. The only answer which Mr. Mehta has to the difficulty in the way of his client in the matter of the application of the second proviso to Section 49, is that we should have regard to the words "document chargeable" in the second proviso. The suggestion is that before inviting the application of the second proviso, it must be established that the document is chargeable to court-fees under the Act. And the further suggestion is that the petition is not a document which is chargeable to court-fees under the Act. This, in our opinion, is arguing in a circle. The question here is one simply of retrospective operation or prospective application and we have to examine the language of the second proviso and see for ourselves whether after enacting the saving clause the Legislature has by this proviso ruled that retrospective operation is to be given to the provision relating to the fees chargeable under the Act. Then it is said that there can be no proviso to a proviso and the second proviso must, therefore, be read as applicable only to the provision contained in Sub-section (1) which is the repeal clause. Now, If we try to read the second proviso only with the repeal clause in Section 49 (1), it will not give any complete meaning. Of course, as we have already said, we have to read the second proviso with all that has been before, including Sub-section (1) which is the repeal clause. Another argument of Mr. Mehta on this aspect of the matter is that the second proviso, if it is to be read in the manner suggested by the other side, will take away the entire operation of the first proviso. We do not agree. The first proviso does not deal merely with the charging of fees at the rate in force on the date on which the document is presented. It deals with much more than that. Therefore it would not be correct to say that reading of the second proviso in a manner different from that suggested by Mr. Mehta would render the first proviso nugatory."

This discussion shows that the second proviso to Section 49 is a vital clause and lays down a rule of importance and that the second proviso provides that all court-fees shall be charged under the new Act at a rate in force on the date of the presentation of the document and that retrospective operation is to be given to the new Act in respect of fees chargeable under the Act. The Full Bench did not make any distinction between computation and calculation of fees. In fact, such an argument was not addressed to the Court. But in spite of the new entry No. 16 in schedule 1 of the new Act involving both computation as well as calculation at a higher rate, the new entry was held to be applicable. It must also be said that the Full Bench considered the second proviso to Section 49 as a vital and substantive rule of importance. The entire tenor of the Full Bench decision was that the Act was retrospective in respect of the charge of fees and that it was the new Act which applied in respect of applications presented after the date of the Act, arising out of proceedings commenced when the old Act was in force. If such an application was saved by the first proviso to Section 49 and remained unaffected by the second proviso to that section, it would be taken out altogether and the Act then would not apply at all but it would be the old Act which would continue to apply. The Full Bench did not hold like that but said that it was the new Act which would be applicable to such cases. If the new Act applied to such cases, it would be difficult to hold consistently with the decision of the Full Bench that the applications or matters presented after the date of the new Act would be chargeable under the new Act but yet would escape the operation of any of the provisions of the new Act relating to computation of claim for purposes of court-fees. The effect of the Full Bench decision when applied logically and consistently would be that it would be the new Act which will govern when deciding a question regarding the proper fees to be charged on a document presented after the new Act came into force.

6. It will be seen that Section 5 of the new Act is a charging section and provides that the documents shall be chargeable as provided in the first and the second Schedules of the Act. The first Schedule of the new Act prescribes ad valorem fees; whereas the second Schedule prescribes fixed fees, and the first column of the Schedules prescribes the category or the nature of the suit chargeable to court-fees and the third column of the Schedules gives the rate for the purpose of calculation of court-fees on the value of a suit or the amount of fixed fees. In order to apply the Schedules it must first be determined in what category the suit falls and what would be its value. It is only then that the calculation as provided in the third column of the Schedules would be possible. Even under the old Act, computation was first to be made u/s 7 and this was so even in respect of money suits to which Section 7 (1) of the old Act applied. It was only after such a computation was made that the columns of the first Schedule would be made applicable. This is also the position under the new Act. Thus the whole process of charging fees necessarily involved and includes the computation of a claim and ascertain of its value and thereafter calculation of the fees on the value so computed. The method of computation is an integral and inseparable part of

the process of charging proper fees on a document. If a document is to be made chargeable under the new Act it must necessarily involve the whole and indivisible process of computation as well as calculation.

7. Section 5 of the new Act forms part of Chapter in under the heading "Computation of Fees". Section 6 of the new Act provides for computation of fees payable under "this Act". The second proviso to Section 49 of the new Act provides that all the fees shall be charged and collected under "this Act" at the rate in force on the date on which the document chargeable to court-fee is presented. Of course, the words, "at the rate" occur in the second proviso but the emphasis is also on the words "shall be charged and collected under this Act", from the whole scheme of the new Act and reading Sections 5, 6 and 49 of the Act together, it does not appear that the emphasis in the second proviso to Section 49 is merely on the word "rate" and that the use of the word "rate" in that proviso can only mean that part of the process involved in the charging of court-fees which would merely involve a calculation of the amount of court-fees the point of importance for levy of court-fees is the date on which the document is presented and this is made deal by the words used in Section 5 and second proviso to Section 49. It would therefore be difficult to restrict the operation of Section 5 and the second proviso to Section 49 to the method of calculation only and exclude the method of computation from the operation of those sections.

8. In our judgment a narrow meaning should not be given to the word "rate" used in the second proviso to Section 49. While giving effect to the second proviso which, as aforesaid, is a vital rule of Importance, we care not ignore the preceding words "all the fees shall be charged and collected under this Act". The word "rate" has not been defined in the new Act. It must be read in the context of the whole section. The word "rate" occurring in the latter portion of the second proviso must be construed and given effect to in the context of the words of the whole proviso which provides for charging of fees on the basis of the value of a claim to be fixed under the new Act. This appears to be clear from the words "under this Act" used in the second proviso to Section 49 which In unambiguous words provides that all the fees shall be charged and collected under "this Act". There is, as we have already stated, a continuous Interrelation between the method of valuation which is computation and the method of calculation both of which are inextricably linked up in the whole process employed in charging proper court-fees. We have therefore, while giving effect to the second proviso to Section 49, to bear in mind that the new Act provides for the computation of claims which enables the litigant to value his claim for the purpose of charging court-fees and it is in the context of such value computed under the provisions of the new Act that the word "rate" used in the second proviso to Section 49 has to be construed and given effect to. One has to look to the setting in which the words appear in order to understand the sense in which they are used and one has also to look to the context in which those words have been used in the section. While using the word "rate" in the second proviso to Section 49, the words contained in the whole proviso must have been before the mind of the

Legislature and the word "rate" must have been intended to be read with reference to the whole process of charging court-fees including both computation as well as calculation.

9. As a result of the aforesaid discussion, it appears to us clearly established that -

(1) The second proviso to Section 49 is a vital rule of importance which must be given effect to.

(2) That the combined effect of Sections 5, 6 and 49 when read together, would be that all documents presented after the Act are to be charged under the new Act.

(3) That the process of charging proper fees is an indivisible and an integrated process involving both computation of a claim and calculation of fees on the value so computed.

(4) That the scheme of the Act and the Schedules annexed to it necessarily involve both the processes of computation as well as calculation which are inextricably linked up with one another.

(5) That such an intention is expressed in the sections referred to above and the legislative intent to apply the new Act to such documents appears to be clear and manifest from the aforesaid provisions.

(6) That the word "rate" as used in the second proviso to Section 49 has reference to the entire process of charging of proper fees under the new Act.

(7) That the Full Bench decision reported in 2 Guj. LR 227 : C.N. Bros. and Others Vs. Commissioner of Income Tax, Ahmedabad, proceeds on the implicit acceptance of the aforesaid principles.

(8) For the reasons already stated we are unable, with great respect, to accept the view propounded in the two aforesaid decisions of the High Court of Bombay, that the new Act applies only as regards the method of calculation and not with respect to computation of claims for the purpose of charging court-fees.

10. For all these reasons we hold that computation of the claim involved in an appeal presented after the new Act came into force should be made in accordance with the provisions of the new Act, although the suit in respect of which the appeal has been filed was instituted at a time when the Court-fees Act, 1870 was in force. This revision application will therefore have to be dismissed. This decision will also govern Civil Revision Application No. 777 of 1961 which will, for the reasons already stated, be allowed. The computation will therefore be made by the appellants according to the provisions of the new Act. No order as to costs.