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(1961) 04 BOM CK 0001

In the Bombay High Court

Case No : Civil Revision Application No. 441 of 1961 (In Fist Appeal Stamp No. 14192 of 1960)

Mishrilal Tarachand Lodha APPELLANT

Vs

State of Maharastra and Others RESPONDENT

Date of Decision : 12-04-1961

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 34
Court Fees Act, 1870 — Article 17(6)

Citation : AIR 1962 Bom 52 : (1961) 63 BOMLR 689

Hon'ble Judges : Patel, J

Bench : Single Bench

Advocate : M.L. Pendse, for the Appellant; C.C. Vaidya, Asst. Govt. Pleader, for the Respondent

Judgement

(1) This revisional application is against an order made by the Taxing Officer directing the petitioner to pay additional court-fee under the following circumstances:

(2) Opponent No. 2 instituted Special Suit No. 5 of 1957 in the Court of the Civil Judge, S. D., at Ahmednagar, to recover a n amount lent to the petitioner. The suit was for an amount of Rs. 13,205/- which included interest upto the date of suit at the rate of 9 per cent per annum. On 18th July 1960 the claim was decreed in a suit of Rs. 13,033-8-6 with future interest from this date of suit till realization at 4 per cent per annum on a sum of Rs. 10,120/-. The appellant-petitioner appealed to this Court and valued the appeal at Rs. 13,033-8-6 and paid court-fee on that amount. The office raised a dispute and the matter was thereafter referred to the Taxing Officer. The Taxing Officer held that interest on Rs. 10,120/- at the rate of 4 per cent per annum upto the date of decree would come to Rs. 1033-40 nP. He therefore held that the total subject-matter of appeal would be Rs. 14036-80 nP and directed the appellant to pay a sum of Rs. 70/- as additional court-fee. Under Sc. 5(2) of the Court-fees Act, as now amended by the Bombay State, a revisional application lies against the order of

the Taxing Officer which is now placed before me for final hearing.

(3) It is contended by Mr. Pendse and I think rightly - that awarding of future interest pendente lite is within the discretion of the Court u/s 34 of the CPC as much as costs and therefore as in the case of costs no court-fees is payable. The Court may or may not award it as it may or may not award costs. Admittedly no court-fee is required to be paid on the amount of costs which is determined before the appeal is filed, as amount of costs does not from part of the subject-matter of appeal (See Doorga Das v. Ramanath, 8 Moo Ind App 262 (PC). The question whether interest should be awarded or not would be open to review in appeal by the Court inasmuch as appeal is rehearing of the suit, without, I should think, a ground being taken regarding interest. It would also appear that the decree of costs and future interests must fall to the ground if the judgment of the trial court is reversed on the merits. The subject-matter in appeal is the real matter in dispute between the parties and not something which must stand or fall with the decision on it. In other words it must mean the right which is in dispute between the parties. This view is supported by decisions in Mithoo Lal Vs. Mt. Chameli and Another and AIR 1937 3 (Oudh) . This view also finds support from the observations of the Calcutta High Court in the case of Dwarka Nath v. Debendra Nath, ILR 33 Cal. 1232, where it was said in a slightly different context as follows:

"There is no analogy between interest awarded u/s 209 of the Code and mesne profits claimed and awarded under Ss. 211 and 212. Interest may be awarded u/s 209 as an "Inducement to prompt satisfaction of the decree and as a penalty for non-compliance with it. Such interest is no part of the claim or relief granted as in the case of the mesne profits."

(4) On behalf of the State following cases have been relied upon by Mr. Vaidya: Rahman v. Balchand, AIR 1937 Nag. 6; Babu Balmakund Gupta Vs. Secretary of State and Another, , Damodar Pershad Vs. Hardeo Pershad , Jagarnath Prasad and Others Vs. Bhala Prasad Singh and Others, ; Bhag Shah v. Labha Mal, AIR 1933 Lah 941 and Gobardhan Das v. Narendra Bahadur, AIR 1919 Oud 305. In all abuse cases it was held that interest pendente lite should be included in the claim for appeal. All these cases arose out of appeals in mortgage suits where the preliminary decree directs interest to be paid on the mortgage amount from the date of suit till the date of the preliminary decree, which amount after calculation has to be mentioned as payable by the mortgagor within the time specified therein. In those cases the amount due from the mortgagor is specifically mentioned in the decree and it is that decree which forms the subject-matter of challenge in appeal. It is well established that upto the date the relationship of mortgagor and mortgagee continues, i.e., date fixed for redemption in the decree, the Court is bound to award interest to the mortgagee at the contract rate. See Order 34, Rule 11 and AIR 1927 1 (Privy Council) . It is only under special circumstances that the Court may refuse to award interest to him. Under these circumstances it may as well as be said that the interest

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included in the preliminary decree terms part of the relief to which the plaintiff was entitled as a matter of right. I am not, however, deciding that question, as it does not arise here. It is sufficient to say that they do not afford any analogy for deciding the present case.

(5) Mr. Vaidya has laid stress upon the observations of the learned Judge in Damodar Pershad Vs. Hardeo Pershad which are to the following effect:

"Otherwise, if the appeal had related to the pendente lite interest only, we should be forced to hold that there was no ''subject-matter in dispute'' in the appellate Court, and such a conclusion seems absurd."

Now, it is true that apparently there seems to be some difficulty as observed by the learned Judge. But then in a regular appeal no court-fee is payable on the amount of costs; but if an appeal is directed only against costs then certainly court-fee is payable on the amount sought to be challenged in appeal. There is no reason why the same principle should not be followed in the case of interest, where interest only is the subject-matter of appeal and not the original right between the parties. In such cases as regards future interest which amount cannot be valued, the principle of Bhawani Prasad v. Kutub-un-Nissa Bidi, ILR 27 All 559, may apply.

(6) Mr. Vaidya has also invited my attention to the case of Venkatathirisami v. Appaswami, ILR 56 Mad 886: AIR 1933 Mad 401 and also to Maharaja. Suteesch under Roy v. Ganeshchunder, 8 Moo Ind App 164 (PC). In the Madras case the words "subject-matter in dispute on appeal to his Majesty in Council" occurring in S. 110 of the CPC were construed for the purposes of an appeal to the Privy Council. In the latter case, somewhat similar words occurring in the Order in Council of 10th April 1838 were interpreted. The scope and purpose of that statute is different from the one in question. In the present case I have to interpret the terms of a taxing statute which must be construed strictly. It may be that for the purposes of an appeal to the Privy Council, in the larger context even interest could be considered as part of the subject-matter in appeal. Same considerations do not necessarily apply for the purpose of computing court-fees in an appeal.

(7) The Taxing Officer has also referred to the practice of including interest pendente lite in the claim for appeal for computing Court-fees. I do not remember during my practice at the Bar for nearly about 23 years to have paid court-fees on such interest. I also doubt very much if any of the senior gentlemen at the bar had paid it. In view of what I have stated to be the position in law, however, the practice one way or the other cannot be useful for determination of the present question.

(8) It is contended by the learned Asstt. Govt. Pleader that in any case if the amount of interest cannot be determined, clause (6) of Art. 17 Schedule II must apply. It is, however, not possible to accept the contention made by Mr. Vaidya. The discussion above shows that court-fee is not payable no because the amount

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is not ascertainable but because it is not a matter of right that the plaintiff can claim it but is a matter of discretion in the Court whether to grant interest or not. This contention therefore must also be rejected.

(9) I accordingly set aside the order made by the Taxing Officer and hold that the amount of court-fee already paid is a proper court-fee. No order as to costs.

(10) Order accordingly.

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