(1956) 11 CAL CK 0001

In the Calcutta High Court

Case No : Civil Revision Case No. 2889 of 1954

N. Dutt Majumdar APPELLANT

Vs

Corporation of Calcutta RESPONDENT

Date of Decision : 22-11-1956

Acts Referred:
Bengal General Clauses Act, 1899 — Section 25

Citation : 61 CWN 205

Hon'ble Judges : P.N. Mookerjee, J;P.K. Sarkar, J

Bench : Division Bench

Advocate : N. Dutta Majumdar in person, for the Appellant; Sunil Kumar Basu, for the Respondent

Judgement

P.N. Mookerjee, J.—This arises out of a proceeding for municipal assessment of premises No. 101-A, Ballygunge Place. The old annual valuation of this premises was Rs. 7311-. With effect from third quarter 1950-51, this valuation was increased by the Corporation to Rs. 1,405/-. The owner''s objection against that assessment was disposed of by the Corporation on the 19th November, 1952, and the valuation was fixed at Rs. 1,271/-. Against that fixation, an appeal was taken under the provisions of sec. 183 of the Calcutta Municipal Act, 1951. to the Court of Small Causes at Sealdah, on 2nd January. 1953. On his memorandum of appeal, the appellant paid a Court fee of Re. 1/- only. The learned Small Cause Court Judge by his order, dated 14th January, 1953, directed the appellant to pay court fee on the difference between the old or previous valuation and the new valuation, fixed by the Corporation of Calcutta in terms of sec. 165 of the Calcutta Municipal Act. 1951''. Against that order the appellant moved this Court and obtained Civil Rule No. 138 of 1953. That Rule came up for hearing on 22nd July, 1954, before Das Gupta and Debabrata Mookerjee, JJ. The Rule was made absolute, the order of the learned Small Cause Court Judge was set aside and this Court directed the petitioner to state the valuation which he wanted to be substituted for the valuation appealed against and to pay the Court fees in accordance with certain directions, given in the said judgment. The relevant directions were that the Court fees were to be paid according to the notification published u/s 529 of the old Calcutta Municipal Act of 1923 and that the said notification was to be claimed to be the corresponding notification under the new Act (Sec. 577) of 1951 under sec. 25 or the Bengal General Clauses Act. [Judgment in Civil Rule No. 138 of 1953 since reported in Sm. Bela Rani Chatterjee Vs. Bhupal Chandra Chatterjee,

2. When the matter went back to the learned Small Cause Court Judge, the appellant stated the valuation and paid additional Court fees, the calculation being made so far as the valuation is concerned in terms of the notification under sec.529 of the old Calcutta Municipal Act of 1923, treated as the corresponding notification under sec. 577 of the new Act on the basis of consolidated rate as fixed under the new Act. Under the old Act, the consolidated rate of the premises in question was to be 22 per cent of the annual valuation. Under the new Act, the corresponding rate would be 15 per cent of the said valuation. The appellant made his calculation of the consolidated rate for one year as required under the notification, referred to above, in terms of the new Act; that is, 15 per cent on the difference between the two valuations, namely Rs. 540/-, his figure for that purpose being Rs. 81/-. He paid in all ad valorem Court fees on this figure of Rs. 81/-. The learned Small Cause Court. Judge refused to accept that valuation or the amount of Court fees, paid thereupon by the appellant, and directed him to calculate the relevant consolidated rate for one year under the old Act of 1923 at the rate of 22 per cent, giving the figure of Rs. 119/-and Court fee was assessed and demanded ad valorem on that valuation. Against this order the present Rule was obtained by the appellant petitioner.

3. It has been contended on his behalf that as, under the decision of this Court in the Civil Rule, referred to above, the assessment of Court fee was to be made on a notification which, though issued under the old Act, was to be treated as a notification under the new Act, all calculations for purposes of the appeal which was filed under the new Act should be in accordance with the provisions of the said new Act. In our opinion, this contention ought to succeed. It is true that the new assessment will have effect from third quarter 1950-51; that is, a part of the period will be covered by the old Act, But, at the same time, it is to be remembered that the appellant''s objections were decided by the Corporation under the new Act (sec. 183) and what is more important is that this Court in the previous proceeding directed Court fees to be assessed and calculated under the notification issued under the old Act but treated as one under the new Act. It is clear that what was contemplated was that the proceeding was to be entirely one under the new Act and, accordingly, all calculations also should be made on that basis.

4. In this view, we make the Rule absolute, set aside the order of the learned Small Cause Court Judge and direct that the Court fees paid by the appellant on his memorandum of appeal on the valuation or Rs. 81/- calculated at 15 per cent of the difference of the two annual values, amounting to Rs. 540/- be accepted

as sufficient. In view of the circumstances of this case and the nature of the question involved, we direct the parties to bear their own costs in this Court.

P.K. Sarkar, J.

I agree.

