

(1959) 11 MP CK 0026
In the Madhya Pradesh High Court
Case No : Civil Revision No. 42 of 1959

Nathuram Kashiram

APPELLANT

Vs

State Government of Madhya Pradesh

RESPONDENT

Date of Decision : 17-11-1959

Acts Referred:

Court Fees Act, 1870 — Section 7(4)
Specific Relief Act, 1963 — Section 42

Citation : AIR 1962 MP 367 : (1961) ILR (MP) 427 : (1962) JLJ 281 : (1962) 7 MPLJ 128

Hon'ble Judges : N.M. Golwalker, J

Bench : Single Bench

Advocate : S.C. Dube, for the Appellant; H.L. Khaskalam, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

N.M. Golwalker, J.

This is a revision petition by the plaintiff against the finding recorded by the Court of 1st Civil Judge, Harda, in civil suit No. 15-B of 1958 whereby the plaintiff was ordered to pay ad valorem court-fees or Rs. 9075/-. The plaintiff-applicant challenges, the finding in this revision petition.

The order in this civil revision will also govern the disposal of civil revision No. 41 of 1959 which arises out of a similar suit but involving an amount of Rs. 6300/- only and relating to separate surety bond.

The plaintiff had stood surety for one jagatram who had taken certain forest contract from the defendant State. The said contractor having committed defaults in observing the terms and conditions of the forest, lease the State Government proceeded to recover Rs. 9075/- from the plaintiff-surety. The plaintiff filed a suit against the State Government challenging the right of the State Government to recover the amount from him. His contention was that as

the State Government had allowed the contractor to commit breaches of the contract he was discharged from suretyship. The relief that he had claimed in the suit, was a declaration that he was not liable to the State Government, and for issue of an injunction restraining the State Government from recovering the amount. The learned Judge of the lower Court found that the claim in suit Was governed by Section 7(4)(c) of the Court-fees Act and hence ad valorem court-fee on Rs. 9075/- was liable to be paid. This revision petition, in my opinion can be disposed of on only one point. The plaintiff himself in para 9 of his plaint has valued the claim at Rs. 9075/-and he had not specified whether that valuation was only for purposes of jurisdiction. In the said paragraph the plaintiff has not separately valued the claim for purposes of court-fee and jurisdiction. The para as worded, therefore, would Indicate "that the claim both for purposes of court-fee and jurisdiction was valued at Rs. 9075/-." Hence on the -plaintiff's own valuation the plaintiff would be liable to pay ad valorem court-fee on Rs. 9075/-.

Even if we were to give the benefit of loose drafting of the plaint to assume that the said valuation of Rs. 9075/- was only for purposes of jurisdiction even then the plaintiff cannot escape the liability to pay ad valorem court-fee. For, in my opinion, the valuation for purposes of court-fee would be the same as that for purposes of jurisdiction. The plaintiff could not legally ask for a simple declaration that he was not liable to the State Government on any account without, specifying the extent of the liability. There cannot be such a suit by a person if he were merely to claim that he was not liable to the defendant in suit The general consensus of opinion in the. Indian High Courts seems to be that a declaration which affects only the pecuniary relationship between the plaintiff and a defendant does not" come within the purview of Section 42 of the Specific Relief Act and a. suit for such a declaration is not maintainable. I am fortified in this view by a ruling reported in Calcutta Jute Manufacturing Company, Limited v. United Commercial Bank Limited 99 Cal LJ 19, wherein the entire case-law on the subject has been gone into. That being the position the plaintiff has got to specify in the suit that he was challenging his liability for a certain amount and if he were to do so it would mean that he is avoiding the liability to that extent, necessarily requiring an adjudication whether that amount is or" is not due. Therefore, in my opinion, "it is not a case where the claim is incapable of any valuation or liable to be arbitrarily valued. The claim in such a suit being capable of definite valuation it cannot be urged that to the plaintiff it has got a different value which he can put down in the plaint either for purposes of court-fee or for purposes of jurisdiction. When he seeks to avoid that liability for a definite amount, value to him must be the same which he seeks to avoid.

Under these circumstances I do not feel disposed to take a different view from that taken by the, lower Court. The revision petition, therefore, is dismissed. However under the circumstances 1 make no order for costs.