

(1976) 09 AHC CK 0014
In the Allahabad High Court
Case No : F.A. No. 129 of 1976

National Insurance Company Ltd.

APPELLANT

Vs

Vinod Kumar Bansal and Another

RESPONDENT

Date of Decision : 06-09-1976

Acts Referred:

Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 21
Court Fees Act, 1870 — Section 4(1)
Suits Valuation Act, 1887 — Section 4, 7, 8

Citation : (1977) AWC 51

Hon'ble Judges : R.B. Misra, J;J.M.L. Sinha, J

Bench : Division Bench

Advocate : J.N. Chatterji, for the Appellant; L.P. Naithani and H.S. Bisht, for the Respondent

Judgement

J.M.L. Sinha, J.—The Plaintiff Respondent No. 1 filed a suit for the following reliefs:

(a) That it be declared that the charge-sheet served on him on 21-10-72 and 22-1-73 and the disciplinary proceedings initiated against him were void, illegal, without jurisdiction and liable to be quashed.

(valued at Rs. 2,000/-)

(b) A permanent injunction be issued restraining the Defendants from holding any enquiry against the Plaintiff.

(valued at Rs. 2,000/-)

(c) A mandatory injunction be issued directing the Defendant to quash the enquiry proceedings and to refer the dispute to the arbitrators.

(valued at Rs. 2,000/-)

(d) It be declared that the order of suspension dated 12-10-1972 is illegal and void.

(e) It be declared that the order dated 20th November, 1973 terminating his services was illegal and he continued to be in the service of Defendant No. 1. In the alternative a mandatory injunction be granted quashing the order dated 20-11-1973 and re-instating him as Branch Manager of Defendant No. 1 at Dehra Dun with retrospective effect.

(valued at Rs. 1,000/-)

(f) A decree for the recovery of Rs. 4,900/- being the arrears of salary for the period 1st April, 1973 to 30th November, 1973 be passed in his favour against Defendant No. 1.

(valued at Rs. 4,900/-)

(g) Cost of the suit be awarded.

(h) Any other relief which the Court deems fit and proper be also awarded in his favour against the Defendants.

The trial court, decreeing the suit, allowed relief (a) in so far as the charge-sheet dated 21-10-1972 was concerned. Reliefs (d), (e) and (f) were also allowed. In regard to relief (h) the trial court directed that "the Plaintiff can apply for realisation of other dues and salary (after 30-11-1973), to which he is entitled under the law, on payment of requisite court fee on the execution side." Relief (a) in so far as the chargesheet dated 22-1-1973 was concerned, and reliefs (b) and (c) were refused.

2. Feeling aggrieved against the decree passed by the trial court, Defendant No. 3 viz. the National Insurance Co. Ltd. filed the present appeal. The appeal has been valued at Rs. 30,407/- and the split-up thereof given in the grounds of appeal is as follows:

(i) Relief of declaration regarding charge-sheet dated 21-10-1972. - Rs. 2,000.00
(ii) Quashing the enquiry - Rs. 2,000.00 (iii) Holding the order of suspension dated 12-10-1972 illegal - Rs. 1,000.00 (iv) Declaration that the order of termination dated 20-11-1973 is illegal and the Plaintiff be deemed to be in service - Rs. 1,000.00 (v) Salary for April, 1973 and for June, 1973 till 26th March, 1976 (Rs. 4,900/- plus Rs. 19,507) - Rs. 24,407 (Note - The decree was passed by the trial court on 26-3-1976).

Along with the appeal an application was also presented on behalf of the Appellant for stay of the operation of the decree under appeal. The Plaintiff-Respondent No. 1 has filed a counter-affidavit opposing the stay application and one of the grounds taken by him is that the appeal should have been filed in the court of the District Judge, Dehradun and that it does not lie to this Court.

3. The question involved for consideration before us, therefore, is whether the present appeal is maintainable in this Court.

4. In the counter-affidavit filed on behalf of the Plaintiff-Respondent the reliefs

claimed in the suit as well as the valuation, as made in the plaint, have been given and a perusal thereof shows that the suit had been valued at Rs. 12,900/-. The suit was tried by the court of the Civil Judge, Dehradun as already indicated earlier. Section 21 of the Bengal, Agra and Assam Civil Courts Act, states that an appeal from a decree or order of a Civil Judge shall lie-

(a) to the District Judge where the value of the original suit in which the decree or order was made was less than Rs. 20,000/-, and

(b) to the High Court in any other case.

5. Now, in the instant case, the value of the original suit having been less than Rs. 20,000/- and the suit having been decided by the Civil Judge, an appeal should, prima facie, lie to the Distt. Judge. Learned Counsel for the Appellant, however, pointed out that, besides the other reliefs, the trial court also granted a relief to the Plaintiff-Respondent for realisation of his salary subsequent to the passing of the decree on payment of requisite court-fee on the execution side. It was stressed that the Appellant was aggrieved with that part of the order as well and, even taking a very reasonable view of the matter, it was necessary for the Appellant to include the amount of the salary due to the Plaintiff-Respondent as a consequence of the trial court decree, for the period for which the case remained pending. Learned Counsel pointed out that this amount comes to Rs. 19,507/- and, adding that figure to the value of the other reliefs claimed in the appeal, the value of the appeal came to Rs. 30,407/-. It was urged that, since, in view of the aforesaid reason, the appeal had to be valued at Rs. 30,407/-, it had to be necessarily filed in this Court and could not be filed in the court of District Judge. According to the learned Counsel for the Appellant, when a suit is valued at a particular amount in the trial court and decree is granted for a larger amount, it is the amount of the decree which should determine the forum of the appeal and not the valuation of the suit, as mentioned in the plaint.

6. Having given our most careful and anxious consideration to the contentions raised on behalf of the Appellant, we find ourselves unable to accept the same. There is a long chain of decisions, both of this Court and of the other High Courts, lending support to the view that it is the valuation made in the suit which determines the forum of the appeal and that the mere fact that a decree is passed for a higher amount cannot change that forum.

Their Lordships then discussed (in paras 7 to 11) Muhammad Abdul Majid Vs. Ala Bux alias Allan, ; Haji Ishtiaq Ahmad and Others Vs. Abdul Samad ; Smt. Pyara and Others Vs. Shiv Shanker, ; 1957 AWR 450 ; AIR 1918 Mad 998 FB AIR 1959 Raj 101 ;AIR 1960 J. & K. 89 and Tirath Ram Vs. Chaudhry Mal Mangat Ram, and proceeded on to observe:

7. Learned Counsel for the Appellant referred us to the case of Sri Raman Lalji v. Desaraj 7 ALJ 203. In this case the suit was valued at Rs. 1,945/-. The suit was, however, decreed for a larger amount subject to the condition that the Plaintiff made good the deficiency in court fee. It was observed:

So long as there has been no order accepted by the Plaintiff to make good the deficiency, the original value placed by the Plaintiff must be taken as the value of the suit for the purpose of regulating the jurisdiction of the appellate court, but we think that, when there has been such an order accepted by the Plaintiff from that moment the value of the suit must be taken as being in accordance with the fee paid by the Plaintiff. This view was accepted by a Full Bench of the Calcutta High Court in *Ijijatulla v. Chandra Mohan* ILR 1907 Cal. 954.

From the above it would appear that reliance in this case was placed on the Full Bench decision of the Calcutta High Court in *Ijijatulla v. Chandra Mohan* (Supra). This case was considered later on by this Court in the case of *Muhammad Abdul Majid Vs. Ala Bux alias Allan*, and was dissented. It is therefore, no more good law.

8. Reference was next made by the learned Counsel for the Appellant to a Full Bench decision of this Court in *Asharfi Lal v. Firm Thakur Prasad* 1969 AWR 439 and *Ragho Pd. v. Babu Pratap Narain Agarwal* 1976 AWC 377. In both these cases however, the question essentially involved for consideration was the matter of payment of court fee on the memorandum of appeal and not the determination of the forum of the appeal. These two decisions, therefore, do not appear to be relevant to the point involved for determination before us.

9. Reference was next made by the learned Counsel for the Appellant to the case of *S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar*, and it was urged that, according to the rule laid down in this case, the valuation for purposes of jurisdiction and court fee should be the same and, since in the present appeal, the appeal had to be valued on the basis of the order passed by the court below, the value for purposes of jurisdiction would also be the same viz. Rs. 30,407/-. Particular reliance for this argument was placed on the following observation contained in the report of the case:

There can be little doubt that the effect of the provisions of Section 8 is to make the value for the purpose of jurisdiction dependent upon the value as determinable for computation of court fees and that is natural enough. The computation of court fees in suits falling u/s 7(iv) of the Act depends upon the valuation that the Plaintiff makes in respect of his claim. Once the Plaintiff exercises his option and values his claim for the purposes of court fees, that determines the value for jurisdiction. The value for court fees, and the value for jurisdiction must no doubt be the same in such cases, but it is the value for court fees stated by the Plaintiff that is of primary importance. It is from this value that the value for jurisdiction must be determined. The result is that it is the amount at which the Plaintiff has valued the relief sought for the purposes of court fees that determines the value for jurisdiction in the suit and not vice versa.

The first thing worthy of notice in the above case is that the matter which was really involved for consideration was the amount of court fee payable on the plaint. That apart, all that was said in the above case was that the valuation for

purposes of court fee and jurisdiction in regard to the cases specified in Section 8 of the Suits Valuation Act shall be the same. The court, however, proceeded to say that it is the valuation stated by the Plaintiff which is of primary importance and it is from that value that the value for jurisdiction is determined. In the instant case the suit had been valued for purposes of court fees as well as jurisdiction at Rs. 12,900. The valuation was thus in accordance with the principle enunciated in the aforesaid case, and we do not find anything in the observation made by the Supreme Court in the above case to indicate that anything other than the valuation made in the case can determine the forum of the appeal.

10. Yet another thing worthy of notice is that Section 8 of the Suits Valuation Act does not apply to the instant case. Section 8 reads as follows:

"Section 8. Where in suit other than those referred to in Section 4, court fees are payable ad valorem under the Court Fees Act 1870 as in force for the time being in the Uttar Pradesh, the value as determinable for computation of court fees and the value for purposes of jurisdiction shall be the same." It would thus appear that Section 8 excludes from its scope suits of the nature mentioned in Section 4 of the Act. Section 4 mentions among others, also suits mentioned in paragraph iv(a). Looking to the reliefs claimed in the instant case, it would appear that the suit falls u/s IV(1) of the Court Fees Act. Consequently, Section 21 of the Suits Valuation Act could not apply and for that reason also the observations made by the Supreme Court in the case of Sethappa Chettiar v. Ramanatha Chettiar (Supra) cannot be of any use to the Appellant.

11. Learned Counsel then referred us to the case of Mata Din Vs. A. Narayanan, on page 1955 column 1 making a reference to a rule of the High Court of Punjab it was observed:

This rule is applicable in a case in which the amount decreed is larger than the amount for which the original suit was brought. Now, it is well known that in a suit for accounts, the Plaintiff is not obliged to state the exact amount which would result after the taking of accounts. He may do so if he is able to; but if he is not, he can put a tentative valuation upon his suit for accounts taking care that the valuation is adequate and reasonable in all the circumstances of the case. But the rule also obtains that if the amount which is found is larger than the amount at which he stated his tentative valuation, he must file the appeal against the larger amount and in the forum before which an appeal of that valuation can go. This rule does not apply where the amount decreed is below the valuation in the original Court.

12. We do not think the above observation can be made use of in the instant case for, while making the aforesaid observation the Supreme Court was interpreting a particular rule prevalent in the High Court of Punjab. It could not be brought to our notice that any rule of the same nature has at all been framed by this Court.

13. Consensus of opinion is thus clearly in support of the view that it is the valuation made in the plaint which determines the forum of an appeal and that forum does not change merely because the decree is passed for a higher amount.
14. We, accordingly, find that the present appeal does not lie in this Court and should have been filed in the court of the District Judge, Dehradun.
15. Let the memo of appeal be returned for presentation to the proper court.
16. The stay order dated 22-4-1976 is vacated.