
(2000) 08 BOM CK 0071

In the Bombay High Court

Case No : Civil Revision Application No. 551 of 2000

Pushparaj Surajprasad Modh

APPELLANT

Vs

Sayyad Altaf Sayyad Wazir and others

RESPONDENT

Date of Decision : 18-08-2000

Acts Referred:

Bombay Court Fees Act, 1959 — Section 6
Constitution of India, 1950 — Article 21
Maharashtra Suits Valuation (Determination of Value of Land for Jurisdictional Purposes) Rules, 1983 — Rule 2
Specific Relief Act, 1963 — Section 37, 38

Citation : (2000) 4 ALLMR 831 : (2000) 4 BomCR 624 : (2000) 4 MhLj 492

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : H.D. Dangre, R.S. Parsodkar, for the Appellant;

Judgement

A.M. Khanwilkar, J.—Rule. By consent, rule made returnable forthwith. Heard both sides.

2. Briefly stated, the respondent Nos. 1 to 7 instituted suit before the Court of 6th Joint Civil Judge (Junior Division), Nagpur, bearing R.C.S. No. 102 of 2000, praying for declaration that they are the owners in respect of the suit land and for mandatory injunction. A preliminary objection was raised before the trial Court, at the instance of the applicant herein. The trial Court, by order dated 17th February, 2000 held that the plaintiffs ought to revalue the suit as per section 6(iv)(d) of the Bombay Court Fees Act, 1959 and affix the necessary Court fees on or before 24-2-2000. The Counsel for the respondents states that the respondents have complied with these directions. On the other hand, the learned Counsel for the applicant disputes this position. It is, however, not necessary to examine this aspect of the matter.

3. The respondents later on filed review petition before the trial Court which has been decided by the impugned order dated April 6, 2000, vide order below Exh.

31. The applicants, besides resisting the review petition on merits, also opposed the same being barred by limitation. The trial Court, by the order passed on the same day, has, however, condoned the delay for the reasons recorded in the order below Exh. 33. The trial Court, although accepted the fact that the respondents were aware about the factum of order having been passed on 17th February 2000, however, held that since the contents of the judgment were not made available to the respondents, they could not present the review petition within limitation. There is no dispute that the delay is only of the six days in presenting the review petition. Since the said delay has been condoned by the trial Court, though for reason, which, in my view, cannot be said to be a sufficient cause for the simple reason that the fact that the respondents were aware of and had full knowledge about the order having been pronounced on 17th February, 2000, is not in dispute. On these facts, the limitation would start running from the date of knowledge of the passing of the order. Nevertheless, since the trial Court has condoned the delay, which was only of six days, I would prefer to decide the matter on merits.

4. In so far as the question regarding proper valuation of the suit is concerned, the learned Counsel for the applicant-original defendant submits that the present suit being for declaration and mandatory injunction, was referable to one u/s 6(iv)(d) of the Bombay Court Fees Act, 1959 and ought to have been valued as 1/2 of ad-valorem fees; since besides the declaration, consequential relief of injunction has been prayed for, in view of the third proviso to sub-clause (d) of section 6(iv) of the Act. In so far as computation for ad-valorem fees is concerned, the learned Counsel relies on Article 1 to Schedule I of the Act.

5. On the other hand, the learned Counsel for the respondent, besides supporting the view taken by the trial Court in the impugned order dated 6th April, 2000, has contended that since the suit was for declaration and mandatory injunction, for the purpose of valuation and determination of Court fees, reference will have to be made not only to sub-clause (d) of Clause (iv) of section 6 of the Act ; but also to Clause (v) of section 6 of the Act and in which case, the Court fees will have to be determined in the context of Rule 2 of the Maharashtra Suits Valuation (Determination of Value of Land for Jurisdictional Purposes) Rules, 1983. This argument is on the premise that sub-clause (d) of Clause (iv) of section 6 of the Act specifically refers to the ad-valorem fee as would be leviable for a suit for possession, for which purpose reference will have to be made to Clause (v) of section 6 of the Act.

6. I have considered the rival submissions. I am inclined to accept the stand taken by the applicant that the suit, as presented in this case, shall have to be valued on the basis of sub-clause (d) of Clause (iv) of section 6 of the Bombay Court Fees Act, 1959 read with Article 1 to Schedule I of the Act.

7. On the other hand, if the stand taken by the respondents is accepted, it would virtually make the provisions of Clause (iv) of section 6 of the Act redundant, inasmuch as, in that case, for every suit for declaration, the valuation will have

to be done on the basis as if that suit is one for relief of possession. This contention, therefore, will have to be stated to be rejected.

8. In my view, Clause (iv) and Clause (v) would operate and apply to totally different situations. The purpose of Clause (iv) is only to levy Court fees in relation to the suit for declaration and consequential relief on the basis of such declaration. On the other hand, Clause (v) would operate only in respect of the suits which are based on title and simpliciter for the relief of possession. The purpose of both the clauses are totally different and Clause (v) cannot be made applicable to the present case.

9. As aforesaid, the suit, as presented by the respondent for declaration and mandatory injunction, would be governed by sub-clause (d) of Clause (iv) of section 6 of the Act, read with Article 21 of schedule I of the Act and the Court fees will have to be fixed on the basis of valuation done on that basis.

10. The revision application, therefore, succeeds on the above terms. The respondents shall revalue the suit and pay the deficit Court fees as aforesaid within three weeks from today.

11. Revision application succeed.