
(1966) 11 BOM CK 0001
In the Bombay High Court
Case No : Civil Reference No. 2 of 1962

Rangnath Lahanu Lambhale	Vs	APPELLANT
Gopal Kashinath Mulay		RESPONDENT

Date of Decision : 15-11-1966

Acts Referred:

Bombay Court Fees Act, 1959 — Section 43

Citation : AIR 1967 Bom 411 : (1967) 69 BOMLR 184 : (1967) MhLj 470

Hon'ble Judges : V.S. Desai, J;K.K. Desai, J

Bench : Division Bench

Advocate : V.H. Gumaste, Govt. Pleader, for the Appellant;

Judgement

V.S. Desai, J.—This is a reference made by the learned District Judge, Ahmednagar, requiring an interpretation of Section 43 of the Bombay Court-fees Act, 1959, Regular Appeal No. 312 of 1960, which was against an order fixing the standard rent, was fixed for final hearing before the learned District Judge on the 4th of October 1961. When the matter was called out, the parties filed a compromise application and the appeal was disposed of in terms of the compromise without any hearing or arguments. The appellant thereafter applied for a refund of the Court-fees u/s 43 of the Bombay Court-fees Act of 1959 and the question before the Court was whether he was entitled to the said refund. Now the material portion of section 43 is as follows:-

"43 (1) When any suit in a court is settled by agreement of parties before any evidence is recorded, or any appeal or cross objection is settled by agreement of parties before it is called on for effective hearing by the Court, half the amount of the fee paid by the plaintiff, appellant, or respondent on the plaint, appeal or cross objection, as the case may be, shall be repaid to him by the Court:

....."

Explanation: For the purposes of this section effective hearing shall exclude the dates when the appeal is merely adjourned without being heard and argued.

2. The appellant contends that in the present case the appeal was settled by agreement of the parties before it was called on for an effective hearing and he is, therefore, entitled to the refund as provided in Section 43. The learned District Judge is inclined to take the view that since the matter was fixed for hearing and the Court was ready to go on with it, it was called on for effective hearing when it reached before the Court and as the settlement arrived at between the parties had been presented to the Court thereafter the provision of section 43 had no application to the case. We are not inclined to agree with the view which the learned District Judge is disposed to take.

3. The requirement of section 43 is that the appeal must be settled by an agreement of the parties before it is called on for an effective hearing. The explanation appended to the section shows that the appeal will not be regarded as being called on for effective hearing if when it is called on, it is merely adjourned without being heard or argued. Effective hearing as contemplated by the section is a hearing relating to the merits of the appeal and consists of the court applying its mind to the merits of the case in the light of the material on record and the arguments advanced on behalf of the parties with a view to arrive at its decision in the appeal. The mere setting up of the appeal for hearing or its being called on before the Court is not sufficient to constitute effective hearing of the appeal. Nor can the appeal be said to have been called on for an effective hearing unless the "calling on" of the appeal is followed by the appeal being heard and argued. What the section means of its proper interpretation is that if the appeal or cross-objections is settled by an agreement of the parties before it commences to be effectively heard, that is, before the court proceeds to apply its mind to the merits of the case in the light of the material on record and the argument which may be advanced before it, the appellant or the respondent as the case may be will be entitled to the benefit of the section. In the present case, as soon as the appeal was called out, the parties instead of entering upon the hearing of the matter on merits presented the court with a settlement which had been arrived at between them. In our opinion, there was no effective hearing of the matter at the stage when the settlement was arrived at by the parties and presented before the Court. It may be pointed out that the settlement which was arrived at between the parties before the matter came for bearing would normally be presented to the Court only on the date on which the appeal was fixed. The mere circumstances, therefore, that a compromise note was not filed before the Court before the date on which it was fixed for hearing will not amount to the settlement having been effected after the case had been called out for effective hearing. The view that we are taking is also taken by one of us in Civil Revision Application No. 550 of 1962 decided on the 18th of October 1965. In our opinion, therefore, on a correct interpretation of the provisions of Section 43, its provisions will have application to a case where parties to an appeal arrive at a settlement and present it to the Court even on the day on which the appeal is fixed for hearing before any actual hearing of the appeal on merits takes place before the Court. The learned District Judge has stated in his

reference that that is also the prevailing practice in the Courts. In our opinion the said practice is correct and in accordance with the provision of section 43.

4. In our opinion, therefore, the appellant is entitled to the refund which he has claimed. We answer the reference accordingly. No order as to costs.

(5) Order accordingly.