

(2002) 08 DEL CK 0023

In the Delhi High Court

Case No : IA No's. 9781 and 9792/00 in Suit No. 1797/97

Ravinder Kumar Rishi

APPELLANT

Vs

Sushma Rishi

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
Court Fees Act, 1870 — Section 7, 8
Specific Relief Act, 1963 — Section 6
State Financial Corporations Act, 1951 — Section 31(1)

Citation : AIR 2003 Delhi 81 : (2003) 2 CivCC 612 : (2003) 67 DRJ 97 : (2003) 2 RCR(Civil) 127

Hon'ble Judges : Shamik Mukherjee, J

Bench : Single Bench

Advocate : Aman Lekhi, for the Appellant; Neeraj K. Kaul and Viraj Datar, for the Respondent

Final Decision : Allowed

Judgement

S. Mukerjee, J.

I.A. No. 9792/00 in S.No. 1797/97

1. A Very interesting point has arisen for consideration viz whether court fee is payable on a compromise application under order 23 Rule 3 CPC or the compromise decree drawn up pursuant there to whereunder a large amount happened to be paid to the defendant.

2. In the present case a plaint containing the following prayer was registered as a suit:-

"In the facts and circumstances of the case it is respectfully prayed that the Hon'ble Court be pleased to pass a decree that the Defendant deliver to the plaintiff vacant possession of the portion, more fully described in yellow in the site plan annexure herewith, of property bearing municipal number A-54, Kailash

Colony, New Delhi of which portion the plaintiff has been" dispossessed without consent and otherwise in due course of law."

3. The case of the plaintiff in the plaint was that defendant had allegedly trespassed into the suit property on 20.7.1997, and has forcibly dispossessed the plaintiff of two rooms in the suit property. It was the further case of the plaintiff that the cause of action again arose on 8.8.1997 when the defendant upon release on bail in the case FIR No. 285/97, once again barged into the suit property bearing No. A-54, Kailash Colony, New Delhi and forcibly occupied two rooms by wrongfully dispossessing the plaintiff.

4. The defendant filed a written statement wherein she claimed that she has a right to reside in the premises, and also disputing the contentions of the plaintiff.

5. It is the admitted case that the plaint as instituted, was bearing proper court fee. Neither by way of objection in the written statement, nor in any order of the Court, was there even a hint of deficiency of court fee.

6. During the pendency of the suit the parties compromised the matter and a joint application under Order 23 Rule 3 CPC, being I.A. No. 2786/00 was filed, Along with a deed of family settlement dated 28.3.2000, duly executed between various family members, many of whom were not even parties to the pending suit.

7. In the body of the application under Order 23 Rule 3 CPC, it was inter alia mentioned in para 4 thereof, that Rs. 1.25 crores is being paid to the defendant under the settlement so as to provide adequate provision for her and her children. Some part of the said amount was to be paid immediately, while post-dated cheques were to be issued for the balance amount by way of two cheques of Rs. 25 lacs each payable at gaps/ interval of one year in between them.

8. By order dated 31.3.2000 the suit was disposed of and a decree was passed in terms of the said compromise between the parties.

9. At the stage of preparation of the decree, the Registry of this Court has issued communication dated 3.5.2000 demanding the payment of ad-valorem court fee on the amount of Rs. 1.25 crores, as a condition precedent to the preparation of the decree.

10. The plaintiff has filed the present application (IA. No. 7972/00) disputing the said requirement of the registry of this Court, and praying for the said demand to be quashed.

11. Since this matter involved a large amount of revenue, it was considered appropriate to avail the assistance of counsel representing the High Court so as to substantiate the impugned communication issued by the Registry of this Court. Mr. Neerja Kaul and Mr. Viraj Datar Advocates appeared and ably assisted on the various aspects of the matter.

12. Mr. Aman Lekhi learned counsel for the plaintiff very ably put forward his

contentions as under:-

(i) The plaint was for a suit for possession u/s 6 of the Specific Act. Defendant who is the wife of the plaintiff's brother has forcibly occupied a portion. There was no objection regarding inadequacy of Court fee on the plaint;

(ii) During the pendency of those proceedings a family settlement was arrived between various parties, including plaintiff and defendant, and covering other properties as also the rights of maintenance of the children of the defendant;

(iii) In the circumstances learned counsel for the plaintiff contends that even though an amount of Rs. 1.25 crores was agreed to be paid toward maintenance of the children, yet since a settlement under Order 23 Rule 3 CPC would go beyond the scope of the plaint, Therefore in terms of the ratio of the decision of the Supreme Court reported as AIR 1958 SCC 251, the Court fee has to be affixed only on the allegations as contained in the plaint, and nothing beyond that.

(iv) Furthermore according to him since there cannot be more than one plaint, as such once the original plaint has proper court fee, the application under Order 23 Rule 3 CPC can't thereafter be looked at;

(v) He also relies upon the judgment in the case *Bibhuti Bhusan Chatterjee Vs. The State of Bihar*, contending that since the Apex Court held in that case that even orders of criminal courts must bear court fee stamps once Article 9 so prescribes (notwithstanding the policy consideration that in criminal matter the accused gets documents free of charge), equally the converse would follow and since none of the Articles of the Court Fees Act prescribes for payment of court fee on compromise application.

13. A further contention advanced by Shri Aman Lekhi, learned counsel for the plaintiff that court fee being in the nature of a tax demand, has to be strictly interpreted and all ambiguities resolved in favor of the private citizens in such matters.

14. In this connection he relied upon the judgment in case *Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others*, at 199 where the Doctrine of Strike Construction in such matters has been adopted by the Hon'ble Supreme Court. He has also drawn my attention to a case *R. Rukmaji Rao v. Government of Andhra Pradesh and Ors.* AIR 1971 (28) AP 114 and in particular to a para 2 containing the facts and para 7 laying down the ratio of the case. This judgment has been referred to with approval by 8th Edition of *Sanjiv Rao on Court Fees Act* which is an authoritative juristic work on the subject.

15. It is further contended by learned counsel for the plaintiff/applicant that once the Judge concerned concludes the case by decreeing the suit, the Registry of the Court, while performing the administrative function of preparation of the decree, cannot raise any demand for court fee. According to him, if at all, such a

demand could have been stipulated or required, if at all, by the Court which had considered the application under Order 23 Rule 3 of CPC.

16. Learned counsel for the plaintiff railed upon the judgment in case *Durga Devi v. parbati*; AIR 1933 Lah 208 which is followed by learned Single Judge of this Court (Manmohan Sarin, J.) in *Laj Khosla v. Randhir Khosla and Anr.* reported in 76 1988 DLT 953.

17. Shri Neeraj Kau, on the other hand, contended that in this case the written statement had a counter claim, and as per Section 7 of the Court Fees Act, court fee became payable on the amount of Rs. 1.25 Crores received by the defendant in terms of the compromise. He further submits that the judgment of the Karnatka High Curt reported as AIR 1988 Kar 318 lays down the correct position in law, and that the judgment of the Andhra Pradesh High Court is distinguishable, since that case was based upon a concession as would be evidence from a reference to Para 9 at page 116 of the said judgment.

18. He has pointed out three distinctions. Firstly there was no counter claim in that case. Secondly the Memorandum of Compromise was not the basis of the rights and thirdly there was a sale earlier and repayment unlike in the present case.

19. Another submission made by Sh. Neeraj Kaul is that the correct value of the plaint in the suit for possession got revealed only when the family settlement shown the amount of Rs. 1.25 Crores being paid to the defendant. He also contends that the Courts must see through the device and manipulation as otherwise by this process it will be open to parties to first file a mock suit indicating a very nominal value and thereby secure the entertaining of his/her plaint and on taken court fee subsequently file a compromise under Order 23 Rule 3 CPC where under crores of rupees are made to change hands and get sanctioned in the form of a decree. This, according to him, would be going counter to the considerations of public revenue.

20. At the outset it may be appropriate to consider the contention of the plaintiff/applicant, at a simple and practical level. Court fee, simply put, would be a fee for entertaining the adjudication of the plaint (or the counter claim where the same has been filed and registered as such.) Court fee is required to be affixed on the plaint, and Therefore, the obvious corollary would be that it is only the averments and claim made in the plaint which can form the basis of working out the Court fee to be paid, and not anything else. Likewise if there is a counter claim which is treated as such, and which independently requires to be adjudicated, there is a provision for charging Court fee also on the amount of the counter claim as well.

21. The matter may be looked at from another angle also. If a plaint is filed for recovery of One Crore, but decreed only to the extent of Rs. 10 Lacs, can it then be that at the time of preparation of the decree, the Registry would direct refund of the court fee originally paid on the ground that only the amount finally

mentioned in the decree will govern the payment of court fee.

22. It would be absurd for anyone to contend on these lines. Equally it will follow that if the subject matter of the decree is at variance with the subject matter of the plaint, then no additional court fee can be demanded simply on that basis. In fact, except for suits in the nature of rendition of accounts or mesne profits, where it is so prescribed, there is no provision in the Court Fees Act requiring the payment of Court fee on the basis of what is finally decreed by the Court.

23. At this juncture it becomes necessary to discuss the case law cited by learned counsel.

24. In *Durgadevi v. Parvati* reported as AIR 1933 Lah 208, the plaintiff had filed a suit against her sister in the Court to the Sr. Subordinate Judge, Ludhiana for partition of certain property which was alleged to belong to their father which property had allegedly devolved upon the parties equally after the death of their mother. As per the plaint in that case, the Court fee of Rs. 10 was affixed on the averment that the property was joint. On the very first hearing of the case, it was compromised with the plaintiff agreeing to receive Rs. 3,300/- as the value of her share, and suit was decreed in terms of the said compromise.

25. An objection was pointed out to the stamp Auditor and thereupon, the Senior Sub-Judge passed an order directing the plaintiff to make up the deficiency by paying the Court fee on Rs. 3,300/- before execution of the decree or within two months from the order. The plaintiff preferred revision to the High Court, wherein, following an earlier decision in the case of *Jatra Mohan Sen--v. Secy. of State* AIR 1925 Lah 131, it was held that the order of the lower Court was without jurisdiction. It was held that after the concession of the suit, the trial Court was no longer seized of the case and Therefore, had no jurisdiction to require the plaintiff to make up the deficiency in the court fee. There is also an observation in the concluding paragraph of this judgment that on the basis of the averments in the plaint, the Court fee affixed of Rs. 10 is sufficient.

26. This case supports the contention of the learned counsel for the plaintiff on both the aspects viz. that after the decision of the case, even the court which passed the decree, cannot require the plaintiff to make up a deficiency in the Court fee and also holds that the cardinal principle for ascertaining whether Court fee is properly affixed or not, is to be seen in relation to the plaint and its averments when presented and not be subsequent compromises taking place between the parties in terms of which monies changed hands.

27. In the authoritative judgment of the Supreme Court in *Bibhuti Bhushan Chatterjee Vs. The State of Bihar*, where it was held that while interpreting the various Articles of the schedule to the Stamp Act, the plain and clear language of the Articles is to be given effect to, without bothering as to whether the effect of such interpretation is equitable, fair or just.

28. In another Supreme Court decision, reported as *GSFC-Vs-Natson*

Manufacturing Co. 1971 SEC 193 it has been held that Court Fees Act being in the nature of taxing statute must be strictly constructed in favor of the subject litigant. The question which arose in this case was whether an application made by a State Finance Corporation for one or more of the reliefs set out in Section 31(1) of the said Financial Corporation Act, would be subject to ad-valorem Court fee or be affixed Court fee of only 65 Ps. to treating it to be in the nature of an execution proceeding. A number of district Courts held in favor of; ad-valorem Court fee, while one District Judge Broach held that only 65 Ps. is to be affixed. The Corporation as well as the State Government filed separate revision petitions. The High Court held that an application u/s 31(1) should bear the ad-valorem Court fee by treating such an application to be at par with a suit for a mortgage to enforce the mortgage debt to sell the mortgaged property which is treated as money suit within Article 1 of Schedule 1 of the Court Fees Act. Alternatively, it was held that an application u/s 31(1), even if not a plaint within the meaning of Article I, Schedule 1, would still fall within Article VII of Schedule 1 of the Court Fees act which provides for ad-valorem Court fee on an application for obtaining substantive relief which is capable of being valued in terms of money because for intents and purposes, the application is one of the recovery of the outstanding dues of the Corporation. The Supreme Court reversed the decision of the High Court inter-alia by holding that the Court Fees Act is a taxing statute and its provisions had to be construed strictly and in favor of the individual and that the strict legal position as disclosed by the form of the transaction is determinative of its taxability. It was also observed that while dealing with a question of Court, fee, the perspective should be informed by the spirit of Magna-Carat and of equal cases to justice and that putting a heavy price tag on the relief granted by the Courts, is to be regarded as unpalatable. The latter observation would also have bearing to another aspect, viz that what was agreed during the compromise by way of payment of a large amount to the defendant and the children, by way of their maintenance, not only did not require any adjudication or even consideration of the Court, and Therefore the demand by the Registry of this Court would also appear to be unpalatable. In relation to the demand for ad-valorem Court fee by the Registry of this Court in the impugned communication. R. Rukmaji Rao Vs. Government of Andhra Pradesh and Others, was a case specifically dealing with the question relating to whether the Court fee is payable on a memorandum of compromise whereunder the defendant became entitled to receive certain sums of money from the plaintiff in a suit filed by the plaintiff for declaration of title and recovery of possession of immovable property.

29. The matter came up before the AP High Court by way of a Civil Revision Petition by Rukmaji Rao who claimed to be in sole and exclusive possession and enjoyment of a Cinema Hall by the name, Amar Talkies, till disputes arose in 1958. The first defendant contested the suit by claiming that he was the owner of the suit property on the basis of agreement to sale with consideration paid and had been put in possession of the property. Ultimately, the parties entered into a

compromise and filed memorandum on which compromise decree was passed under which petitioners title and possession was upheld but he had to pay Rs. 95,000/- to the first defendant. Certain amount had been deposited in the Court and at the time of withdrawing those amounts, defendant No. 1 was required by the Court to pay Court fee, which had been paid by him under protest. It was held by AP High Court that no Court fee can be charged in relation to a written statement in the absence of any counter claim and that the defendant cannot be called upon to pay Court fees. It was further held that the Court Act is taxing statute and has to be strictly construed and that it is not permissible to strain the words and further that wherever there exists any ambiguity in the language of the charging section of a taxing statute, the benefit should go to the citizen and not to the State. It was categorically held that a memorandum of compromise is neither a written statement of the kind contemplated by Section 8 of the Act nor is it a plaint on which Court fee is to be paid.

30. This Court in a Single Bench decision reported as Laj Khosla Vs. Randhir Khosla and Another, . while dealing with a similar office objection by the Registry of this Court, apart from holding on merits that the relief of injunction claimed was independent of the relief of the declaration, and Therefore exigible to payment of separate Court fee viz what stood affixed as court fee, further held by the relying on the judgment of this Court in Phipson & Co. Ltd. v. Gayce Pvt. Ltd. 1976 PLR 77 that after the judgment had been delivered, the Court has no power to call upon a party or a litigant to pay the deficient Court fee, even where it is found that the plaintiff was entertained on a deficient Court fee by mistake or inadvertence. thus this judgment clearly supports the additional submission of the learned counsel for the plaintiff that even if it were to be held that the written statement is exigible to court fee, still one the case stood finally disposed of, this Court had no power to call for the alleged deficiency of Court fee to be made good. That brings us to the decision of the Karnataka High Court reported as AIR 1988 Kar 318.

It may however, be noted that the judgment of the Karnataka High Court reported as AIR 1988 Kar 318, was a case of direction by the Court, and not a case of Registry making a demand after conclusion of the case. Furthermore it must be noted that the ratio of the case is not the fail decision, but the principle or the reasoning.

On a conspectus of the above decisions, I have no hesitation of holding that the settled legal position is as under:

- (i) No court fee needs be affixed on a written statement of the kind as was filed in the present suit;
- (ii) No ad-valorem court fee needs to be affixed on an application under Order XXIII Rule 3 CPC;
- (iii) The Court Fee Act is a taxing statute provisions where of have to be strictly construed and the benefit of any ambiguity has to be on in favor of the party and to

the State;

(iv) Considerations of fairness, justice et or equitable considerations or general policy perspective of not allowing individuals to avoid the incidence of full court fee by adopting the device of suit initially filed with limited averments and token fee and then followed up by all-encompassing compromise application and decree providing for crores to change hands, has no applicability to the interpretation and enforcement of a taxing statute like the Court Fees Act; AND

(v) In any case, and in the alternative, no demand to make up the deficiency can be raised one the suit has attained finality of disposal.

Resultantly the application in allowed and the communication of the A.O. Judicial (Decrees) of this Court is quashed. Decree be drawn up and furnished to plaintiff/applicant within one month. No order as to costs.