

(2014) 11 MP CK 0062

In the Madhya Pradesh High Court

Case No : Review Petition Nos. 124 and 306/2012

R.P. Gupta

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Constitution of India, 1950 — Article 136
Court Fees Act, 1870 — Section 4, 5, 7(iv)(b), 7(v)
Motor Vehicles Act, 1988 — Section 149(2), 173(1)
Civil Procedure Code, 1908 (CPC) — Section 2(2)

Citation : (2014) 11 MP CK 0062

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Rajendra Tiwari , Senior Advocate, R.K. Sanghi, R.P. Gupta and Kapil Patwardhan, Advocate for the Appellant; R.D. Jain, Advocate General and R.P. Tiwari, Government Advocate, Advocate for the Respondent

Judgement

Sanjay Yadav, J.—Difference of opinion as to whether an order dated 18.11.2011 passed in W.P. No. 14740/2008 : Ashok Kumar vs State of M.P. and others and the batch of writ petitions, viz. W.P. No. 1796/2007, 3437/2007, 3804/2007, 3822/2007, 8611/2008 and 14738/2008 could be reviewed for the reasons mentioned in Review Petitions : R.P. No. 124/2012 and R.P. 306/2012, has paved the path for laying the matter before this Court for an opinion as to "whether in the facts and circumstances of the case, the review petitions are to be allowed or dismissed".

2. The writ petition called in question the validity of provisions of the Court Fee (M.P. Amendment) Act, 2008 in so far as it substitutes Article 11a(i) in the second schedule appended to the Court Fee Act, 1870, stipulating -

"(ii) In article 11, for clause (a) and entry relating thereto, the following clause and entries relating thereto shall be substituted, namely :

(a) when presented to the High Court-

The grounds for challenges were -

(i) discrimination : as only the claimant is required to pay the ad-valorem Court fee on the enhanced amount of compensation whereas the Insurance Company and the owner file an appeal or fixed Court fee.

(ii) That prescription of ad-valorem Court fee without upper limit is arbitrary.

(iii) That the excessive levy in the form of Court fee at the rate of 10% of the enhanced amount claimed in appeal would amount to denial of access to justice.

(iv) that such an amendment cannot be introduced by the State Legislature with a view to cut short the litigation.

3. State of Madhya Pradesh justified their action stating that it is neither discriminatory nor arbitrary and the ad valorem Court fees is required to be paid only on enhanced amount claimed in appeal and in case an appeal directed against rejection of the entire claim by the Claims Tribunal, no ad valorem fees is required to be paid. It was further contended that if the claimant is unable to pay the Court fee on account of indigency, he can always seek the leave to file an appeal as an indigent person under Order 44 of the Code of Civil Procedure, 1908. As to the contention regarding fixation of upper limit of the Court fees it is urged that the same does not arise in the facts and circumstances of the case. It was further contended that the legislature in order to curb the tendency for inflated claim in appeals arising from motor accident claim cases, it become imperative to amend the Court Fees Act so far it related to the additional claim of compensation in appeal.

4. The Division Bench while taking into consideration the statement of objects and reasons which ushered the amendment in the Stamp Act and the problem experienced to be alleviated. And, taking into consideration the increasing expenditure, the State had to incur expenditure towards maintenance of judicial establishment and the implementation of recommendations of Justice Shetty Commission. And, considering that as regard to laws relating to economic activities the Court shall feel more inclined to give judicial deference, as compared to other areas where fundamental rights are involved, negated the claim by holding that the amendment is neither discriminatory nor arbitrary, nor does it create any impediment in access to justice.

5. The Division Bench held :

9. In the backdrop of well settled legal position, we may advert to the facts of the case. Prior to coming into force of Act No. 6 of 2008, an appeal could be filed by the claimant seeking enhancement of the amount of compensation on fixed court fee. In other words, a claimant was exempted from payment of court fee on ad valorem basis. By the impugned amendment, the aforesaid exemption has been withdrawn and only those claimants, who have received compensation, have been made liable to pay ad valorem court fee like other litigants. Article 11 (1) (i) of the Act as amended by Act No. 6 of the 2008 has been assailed on the

ground that the same is discriminatory. In order to substantiate the plea of discrimination, it has to be shown that similarly situated persons are being subjected to different treatment. In the instant case, the insurance company, owner of the vehicle and the claimant cannot be said to be similarly situated persons. Under Section 149(2) of the Motor Vehicle Act, 1988 (in short "the 1988 Act"), the insurance company can contest the claim on limited grounds mentioned therein, except in those few cases where the MACT grants permission to the Insurance Company to take other defences. Naturally the scope of appeal also becomes limited to such grounds of defence. Further, the Legislature will be deemed to have knowledge, experience or statistics that insurance companies have law departments in which the awards passed by the tribunals are scrutinised and thereafter a decision is taken when to file or not to file an appeal. Whereas the appeals by the claimants seeking enhancement of compensation that are filed in large numbers and in an indiscriminate manner which gives rise to the suspicion, if not interference, that there is an increase in the tendency of litigants to gamble in litigation. Similarly, if the owner of the vehicle wants to file an appeal against the award passed by the tribunal he is required to deposit at least a sum of Rs. 25,000/ along with the memorandum of appeal as required by Proviso to Section 173(1) of the 1988 Act. The owner as well as the insurer are saddled with the liability to pay the amount of compensation whereas the in case of claimant, the amount of compensation is awarded by the tribunal. For the aforementioned reasons, we have no hesitation to hold that the petitioner has not been able to substantiate the plea of discrimination. Accordingly, the plea cannot be upheld.

10. The next contention raised on behalf of the petitioner is that requirement of payment of ad valorem court fee without upper limit is arbitrary and discriminatory, because in respect of plaint, written statement, set off, counter claim and memorandum of appeal presented in civil or revenue court, upper limit of Rs. 1.5 lacs as court fee has been prescribed. Thus, if a claimant seeks enhancement of amount of compensation by Rs. 1.5 Lacs he would have to pay Rs. 1.5 Lacs as court fee. In the writ petitions under consideration, on facts, the aforesaid issue does not arise. It is well settled that Courts do not decide academic questions which do not arise on the facts of the case. [See: *Basant Kumar Vs. State of Rajasthan and Others*,]. Besides that it has been urged on behalf of the State that the decision in the case of *Adhunik Grah Nirman Sahakari Samiti Ltd.* (supra) is distinguishable. It was argued that the Supreme Court in that case was faced with the proceeding for grant of probate and letters of Administration, which being contentions was to be registered as a suit. In the aforesaid context, it was held that if in respect of all other suits upper limit of Rs. 15,000/ on the court fee is fixed there is no logical justification for excluding the proceeding for grant of probate and letters of administration, which are registered as suits, without fixing upper limit for court fee. It is further submitted on behalf of the respondents that an appeal filed against the award passed by the MACT cannot be equated with the regular appeals against decrees filed either

under the Code of Civil Procedure or under other enactments. Be that as it may, we leave the issue to be dealt with in an appropriate case.

11. Now we may deal with the submission made on behalf of the petitioner that prescription of ad valorem court fee at the rate of 10% would amount to denial to access to justice. We are not impressed by the aforesaid submission for the simple reason that if a claimant has no means to pay the ad-valorem court fee he can always sue as an indigent person under Order 44 of the Code of Civil Procedure. Accordingly, the aforesaid contention also does not deserve acceptance.

12. Before parting with the case, we may restate the well settled legal principle that the right to file an appeal vests in the suitor on the day when an action is initiated. The said right is a substantive right and cannot be taken away or even curtailed by an enactment which is not retrospective unless it says so expressly or by necessary intendment. [See. E.V. Balakrishnan v. Mahalkshmi Anmal and Another, AIR 1960 SC 980 and Ramesh Singh and another Vs. Cinta Devi and others,]. Thus, in view of the aforesaid enunciation of law, the appeals which are filed in respect of the claims instituted before the Motor Accident Claims Tribunal before 2.4.2008, fixed court fee would be payable whereas in respect of the appeal against the awards in respect of claims filed on or after 2.4.2008 ad valorem court fee as provided under the Act No. 6 of 2008 would be payable."

6. Petition for Special Leave to Appeal (Civil) No. 3623/2012 preferred against the judgment came to be dismissed on 10.2.2012. However, liberty was granted to the petitioner "if he so desires, to file an appropriate review petition before the High Court in W.P. No. 8611/2008 dated 18.11.2011 and to raise all such contention which are available to him including the contention raised in this special leave petition".

7. Armed with the liberty above, Review Petition viz. R.P. 124/2012 and R.P. No. 306/2012 came to be filed on the grounds that:

(i) No notice of hearing was given to the counsel for the petitioner who is an outstation counsel.

(ii) That the decision by the Supreme Court in Diwan Bros. Vs. Central Bank of India, Bombay and Others, , has not been taken notice of; therefore, the order passed in Writ Petition suffers from error apparent on the face of record.

(iii) The amendment in the Court Fees Act if allowed to stand would drive away prospective litigants which amount to denial of access to justice. And, the legislature has been unmindful of this aspect. The legislation, thus, suffers from non-application of mind.

(iv) The provisions of amendment are arbitrary and discriminatory.

(v) That it is beyond the legislative powers of the State Legislature to amend the schedule.

8. As regard to grounds (iii), (iv) and (v), it is fairly submitted by learned Senior Counsel that these grounds would be available only in case the writ petitions are heard on merit. Rightly so, because the ground for challenging the vires of a statute in a writ petition arises in case the Review Petition is allowed and the Writ Petitions are heard on merit.

9. As regard to contention that no notice of hearing was given to the Counsel for the petition in Writ Petition 8611/2008. It is borne out from the record of said writ petition that it was filed as Public Interest Litigation :W.P. No. 2797/2008 at Gwalior Bench of this Court; wherein on 30.6.2008 in presence of the counsel the matter was tagged with Writ Petition No. 3083/2008 (Indore Bench) and transmitted to Principal Seat at Jabalpur. Thereafter SPC was issued on 14.8.2008 for appearance of the petitioner after it was re registered as W.P. No. 8611/2008, no material is brought on record to substantiate that the petitioner and his Counsel took any steps to mark their presence in the matter. Furthermore, with the passage of time few more writ petitions came to be filed on the same issue which was registered as W.P. No. 14738/2008. These writ petitions were tagged with the petitions filed earlier, viz. W.P. No. 3437/2007, 3872/2007 and 1796/2007 that Writ Petition 8611/2008 was tagged by order dated 24.8.2011 and was directed to be analogously heard in the second week of September 2011. That, on 12.9.2011 on the requests made by the Counsels in the clubbed petition, the matter was posted on 22.7.2011 whereafter on 15.11.2011. The arguments were heard on 17.11.2011 and the final orders were passed on 18.11.2011. Thus, though it may be true that neither petitioner nor his Counsel in W.P. No. 8611/2008 were present on 17.11.2011, but in absence of any diligency and the interest shown by the petitioner on his counsel since 14.8.2008, no prejudice can be said to have been caused in the Public Interest Litigation which was clubbed with other similar writ petition; wherein learned counsel from both the sides had elaborately addressed the Court as will be evident from the submission recorded in the order passed on 18.11.2011.

10. When faced with these situation the petitioner withdrawn the ground as a ground for review petition.

11. The only ground which remains on which the Review is sought is ground No. (ii), i.e., the decision in Diwan Brothers (supra) having a binding force being law of the land has not been taken note of.

12. Before dwelling upon the submissions as to whether the decision in decision in Diwan Brother (supra) is a declaration of law qua the issue raised in writ petition as non-noticing whereof would materially effect the order, opportune it would be first examine the stage of a Review Petition.

13. Trite it is that a review is not an appeal in disguise.

14. In Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, it has been observed by their Lordships "11.....A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only

for patent error."

15. It has been held in *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, , that the "Error must be apparent or mere looking of the record without any long drawn process of reasoning" (paragraph 8 and 9 of Report).

16. In *Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi*, , it has been held that "It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The moral principle is that a judgment pronounced by the Court is final, and departure from that principles justified only when circumstances of a substantial and compelling character make it necessary to do so." And further holding that "it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility" *Sow Chandra Kante and Another Vs. Sheikh Habib*, ." If the view adopted by the Court in the original judgment is a possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of record.

17. Recently in *Kamlesh Verma Vs. Mayawati and Others*, , it is held by their Lordships:

"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1 When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason

The words "any other sufficient reason" has been interpreted in *Chhajju Ram vs. Neki* , AIR 1922 PC 112 and approved by this Court in *Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulse Athanasius & Ors.*, AIR 1952 SC 526, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India (UOI) Vs. Sandur Manganese and Iron Ores Ltd. and Others*,

20.2 When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

18. Thus, unless as observed by His Lordship in *Northern India Caterers* (supra) "16..... the first judicial view is manifestly distorted, "A plea for review" is like asking for moon".

19. In the realm of these principle the plea that a non consideration of judgment in *Diwan Brothers* (supra) would render the decision in Writ Petition No. 8611/2008 vulnerable is now examined.

20. In nutshell the case of *Diwan Brothers* (supra) was that appellant filed claim against the respondent Bank for 2.5 lakhs by way of refund of security deposit and a sum of Rs. 55,000/ as commission to them. The tribunal appointed under the Displaced Persons (Debts Adjustment) Act, 1951 dismissed the claim. The appellants then filed an appeal before the Allahabad High Court with a nominal court fee of Rs. 5 but the Stamp Reporter of the High Court was of the opinion that the appellants should have paid ad valorem court fee on the total claim preferred by the appellants before the tribunal which had been disallowed. The matter was taken by the Taxing Officer, who, in view of the substantial importance of the point raised, made a reference to the Taxing Judge for deciding the court fee payable on the memorandum of appeal in the instant case. The plea of the appellants was that as the decision of the tribunal did not amount to a decree as contemplated by Section 2(2) of the Code of Civil Procedure, 1908, ad valorem court fees were not payable and the appellants were entitled to pay court fees as prescribed in Schedule II, Article 11 of the Court Fees Act. The stand taken by the revenue was that as the present appeal was against a decree, the case of the appellants squarely fell within the ambit of Section 4 of the Court Fees Act and, therefore, ad valorem court fees were payable under Schedule I, Article 1 of the Court Fees Act. The matter was taken up by the Taxing Judge who agreed with the Stamp Reporter and came to the conclusion that the appellants should pay ad valorem court fees under Schedule I, Article 1 of the

Court Fees Act.

21. It was in this factual background the issue which cropped up for consideration was as to the interpretation scope and ambit of Schedule II, Article 11 of the Court Fees Act as applicable to appeals preferred against the orders or decree passed by the Tribunal constituted under the Act, as there were serious divergence of judicial opinion on the question as to whether in appeals like the present, Schedule I, Article 1 or Schedule II, Article 11 of the Court Fees Act would apply (paragraph 2 : Diwan Brothers (supra)). Their Lordships were pleased to hold:

30. On a consideration of the facts, circumstances and the law on the subject we are clearly of the view that the memorandum of appeal in the instant case falls within the ambit of Sch. II, Art. 11, and the view of the Taxing Judge that ad valorem court fee was payable under Sch. I, Art. 1, of the Court Fees Act was legally erroneous....."

22. Following observations in Diwan Brothers (supra) is worth taking note of in the context of the submissions made on behalf of the petitioners

"31. Before concluding we must notice an argument advanced by the learned counsel for the respondents. It was submitted that under Section 5 of the Court Fees Act a decision of the Taxing Judge as designated by the Chief Justice is final and cannot be reopened in any Court. It was submitted by Mr. Dikshit that in view of this provision the appeal to this Court by special leave was not maintainable. We are, however, unable to agree with this contention. Even though an order of the Taxing Judge may be final under s. 5 of the Court Fees Act, the power of this Court under Art. 136 granted by the Constitution will override any stamp of finality given by a statute or Act passed by Parliament. The finality which may attach under s. 5 of the Court Fees Act cannot derogate from the power conferred by the Constitution itself on the Supreme Court. Reliance, however, seems to have been placed on a decision of this Court in S. Rm. Ar. S. Sp. Sathappa Chettiar v. S. Rm. Ar. Ramanathan Chettiar and particularly on the following observations made by this Court:

"In our opinion, the decision of the Division Bench of the Madras High Court that the memorandum of appeal should be taxed for the purposes of Court fee under s. 7(iv)(b) of the Act is final under the provisions of s. 5 of this Act. That is why we have not allowed the merits of this order to be questioned in the present appeal. We must, therefore, deal with the appellant's contention on the basis that the court fees on his memorandum of appeal must be levied under s. 7(iv) (b) of the Act."

These observations prima facie seem to support the contention of the respondents but on a closer scrutiny of the entire decision it seems to us that this Court was not at all called upon to decide the question of the effect of s. 5 of the Court Fees Act as overriding the provision of Art. 136 of the Constitution. The observations relied upon by the respondents are prefaced by the observations of

Gajendragadkar, J., who spoke for the Court, where he has clearly mentioned that the Court was not called upon to consider this point, thus:

"We are, however, not called upon to consider the point as to whether s. 7(v) would apply to the present suit or whether the present suit would fall under s. 7(iv)(b)."

Further more, it appears that as the appellant before the Supreme Court was satisfied with the observations made by the Court, he did not press for a decision on the question of court fees and confined his arguments only to the question as to whether the court fees should be levied under s. 7(iv)(b) of the Court Fees Act. In these circumstances, therefore, the identical question raised before us was neither argued nor decided in the case referred to above by the respondents. For these reasons the contention raised by the respondents on this score must be overruled."

23. The question which were raised in the writ petitions; W.P. No. 14740/2008 : Ashok Kumar vs State of M.P. and others and the batch of writ petitions, viz. W.P. No. 1796/2007, 3437/2007, 3804/2007, 3822/2007, 8611/2008 and 14738/2008 at the cost of repetitions were:

(i) discrimination : as only the claimant is required to pay the ad-valorem Court fee on the enhanced amount of compensation whereas the Insurance Company and the owner file an appeal or fixed Court fee.

(ii) That prescription of ad-valorem Court fee without upper limit is arbitrary.

(iii) That the excessive levy in the form of Court fee at the rate of 10% of the enhanced amount claimed in appeal would amount to denial of access to justice.

(iv) that such an amendment cannot be introduced by the State Legislature with a view to cut short the litigation.

24. Petitioners having failed to establish that the issue raised in the Diwan Brothers (supra) being similar to that in the batch of writ petitions decided on 18.11.2011, the review whereof is being sought fails to point out any distortion in the decision under Review.

25. Besides the petitioners fairly submit that the judgment in Diwan Brothers (supra) was not brought to the notice of the Division Bench hearing the batch of writ petitions. This is another reason as to why no indulgence is warranted.

26. For these reasons both the Review Petitions fail and are dismissed. However, there shall be no costs.