(1960) 08 BOM CK 0003

In the Bombay High Court

Case No : Civil Revision Application No. 700 of 1958

Shankarlal Jivanram Agrawal APPELLANT

Vs

State of Bombay RESPONDENT

Date of Decision : 16-08-1960

Acts Referred:

Court Fees Act, 1870 — Article 11 , 12
Succession Act, 1925 — Section 374, 376, 376(1)

Citation : AIR 1961 Bom 104 : (1960) 62 BOMLR 1024 : (1961) ILR (Bom) 92

Hon'ble Judges : Chainani, C.J;Tarkunde, J

Bench : Division Bench

Advocate : B.G. Pradhan, for the Appellant; V.H. Gumaste, Asstt. Govt. Pleader, for the Respondent

Judgement

Chainani, C.J.—The petitioner had made an application to the joint Civil Judge, Junior Division, Dhulia, for the issue of a succession certificate in respect of the debts due to his mother of the value of Rs. 11,886/-. The certificate was issued to him on 28-10-57. The court-fee stamp payable on the certificate was calculated according to Articles 11 and 12 in the First Schedule of the Court-fees Act, 1870. On 9-10-1957 the petitioner made an application for extension of the certificate already issued to him to debts of the value of about Rs. 35,180/-. The certificate was accordingly extended on 26-11-1957. The question then arose about the payment of additional court fees. The petitioner contended that the court-fees should be calculated without taking into consideration the debts for which the certificate had been already granted. This argument was not accepted. The learned Judge has pointed out in his judgment that a new certificate had not been issued to the petitioner, but that the original certificate had been extended. He, therefore, called upon the petitioner to pay the court-fees on the basis as if the original certificate included the debts, in respect of which the extension had been granted. The effect of the order was that the petitioner was required to pay one and a half times the court-fee which would have been payable on these additional debts if they had been included in his first application. This order is being challenged in this revision application.

2. The question turns on the interpretation of Articles 11 and 12 in the First Schedule to the Court-fees Act. Article 12 states that the fee leviable on a certificate issued under Part X of the Indian Succession Act shall be the fee leviable in the case of a probate on the amount or value of any debt or security specified in the certificate u/s 374 of the Act, and one and a half times this fee on the amount or value of any debt or security to which the certificate is extended u/s 376 of the Act. Article 11 prescribes the rates of court-fee payable in a case of probate. Under this article, no fee is payable if the value of the property, in respect of which the probate is granted, is Rs. 1,000/-, or less. If it exceeds Rs. 1,000/- but does not exceed Rs. 10,000/-, the fee payable is 2 1/2 per cent. If it exceeds Rs. 10,000/- but does not exceed Rs. 50,000/-, the fee is 3 1/4 per cent. If the value of the property exceeds Rs. 50,000/-, but does not exceed Rs. 1 lakh, the fee is 5 per cent. Higher rates of court-fee are prescribed if the value of the property exceeds Rs. 1 lakh. It has been held by this Court in In Re: Sunderji Laljee Khakhar, , that the word "any" in the expression "any debt or security" used in Article 12 of Schedule I of the Court-fees Act means all the debts and securities specified in the certificate, and not each individual item of debt or security mentioned in it, and that the court-fee payable on a succession certificate should be computed on the total amount of value of debts and securities mentioned in the certificate. The succession certificate is issued u/s 374 of the Succession Act. Sub-section (1) of Section 37G states that

"a District Judge may, on the application or the holder of a certificate..... extend the certificate to any debt or security not originally specified? therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein".

After the extension, therefore, the certificate is to, be regarded as if it had been issued in respect of all the debts specified in it, both originally and subsequently after the extension was granted. It is, obvious, therefore, that the court-fee payable on an extension of a certificate cannot be less than what would have been payable if all the debts had been originally specified in the certificate. It might in many cases be less if we were to accept the argument advanced by Mr. Pradhan. As I have pointed out, no court-fee is payable when the amount of value of the property, in respect of which, the certificate is granted, is less than Rs. 1,000/-. It, there-lore, the deceased has left debts, each of which is of less than Rs. 1,000/- but the total amount of which is say Rs. 1 lakh, it would be possible to avoid the payment of court-fees by first asking for a certificate for one debt only and thereafter making successive applications for extension in respect of the other debts. To take another example, suppose the total value of the debts of the deceased, which are to be collected, exceeds Rs. 1 lakh. If a certificate is originally applied for in respect of all the debts, the court-fee payable would be 2% per cent. on the first Rs. 10,000/-, 3 1/4 per cent, on the next Rs. 40,000/- and 5 per cent, on the next Rs. 50,000/-. If the court-fee on an extension is to be calculated without taking into consideration the total value of the debts, a party may, by first making an application for Rs. 10,000/- and thereafter making successive applications for extension of the certificate, each confined to debts not exceeding Rs. 10,000/-never pay court-fee exceeding 3 1/4 per cent. i.e. one and a half times 2 1/2 per cent. He would in that case pay very much less than what he would have paid if all the debts had been specified in the original certificate. We do not think that the Legislature could have contemplated evasion of duty in this manner. We are accordingly of the opinion that even when an extension is granted, the court-fee on the extended certificate should be calculated after taking into consideration all the debts specified in the certificate, and not only the debts to which the certificate is extended. The view taken by the learned Civil Judge is, in our opinion correct.

3. Rule discharged. No order as to costs.

4. Rule discharged.