

(2001) 04 DEL CK 0026

In the Delhi High Court

Case No : R.A. No. 1409 of 2000 in FAO (OS) No. 127 of 2000

Shri G.C. Kumar and others

APPELLANT

Vs

Shri Ashok Kumar and others

RESPONDENT

Date of Decision : 11-04-2001

Acts Referred:

Citation : (2001) 4 AD 1001 : AIR 2001 Delhi 338 : (2001) 92 DLT 1 : (2001) 59 DRJ 322

Hon'ble Judges : Mukul Mudgal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. I.C. Kumar, for the Appellant; Mr. Maldeep Sidhu, for the Respondent

Judgement

Devinder Gupta. J.

1. This is an application seeking review of the order passed by us on 6.9.2000. in FAO(OS) No.127/2000.

2. ON 6.9.2000 appeal filed by the appellants against the order 23.3.2000 by learned Single Judge of this Court in I.A.Nos.8038 and 8039 of 1998 in Suit No.588 of 1975 was dismissed holding that there was no illegality and infirmity in the order dated 23.3.2000 passed by learned Single Judge.

3. In order to appreciate the submissions of learned counsel for the parties, it will be necessary to give relevant facts only.

4. Suit No.588 of 1975 was filed in May, 1975 by late Shri Fateh Chand Kumar, the predecessor-in-interest of the appellants for rendition of accounts of the dissolved partnership. IA.707/86 was filed in the said suit by the appellants and respondents 1 and 2 for recording of compromise. Ultimately on 7.5.1996 the suit was disposed of and decree was passed. Appeal against the said judgment and decree (RFA(OS) No.10/1996) is stated to have been filed by the appellants, which is stated to be still pending. Respondents 1 and 2, who are defendants 2

and 3 have also filed an appeal against the judgment and decree (RFA(OS) No.11/1996). It is stated that none of the Dirties appended certified copy of the decree sheet along with their appeal since no decree was drawn by the Court.

5. The reason for not drawing up of the decree appears to be non supply of the requisite court fee stamp. According t the appellants, as per the terms of the compromise and as per the directions of the Court, additional court fee had to be paid by respondents 1 and 2 and since court fee was not being paid by them, decree was not being drawn by the Registry. This led the plaintiffs/appellants filing before learned Single Judge an application (IA.8038/98) seeking direction against respondents 1-2 for paying the requisite court fee so that decree be drawn. Similar request is stated to have been made by defendant no.6 in his application (IA.3039.98). The primary ground on which respondents 1 and 2 opposed the applications was that all parties to the suit had filed appeals against the judgment passed by the Court,which was pending adjudication before a Division Bench. Judgment had varied the terms of the compromise arrived at between the parties and had thereby increased the liability of respondents 1 and 2 against their consent. To the extent to which the judgment had increased their liability against their consent, the same was non-est.

6. Learned Single Judge by the impugned order dismissed the applications. It was observed that questioning the legality of the judgment on the ground that it was not permissible for the Court to vary the consent terms, is a matter, which is to be appropriately agitated before the Division Bench, which is seized of the appeals. Placing reliance upon the decision of Madras High Court in T.E.K. Muhammad Amiruddin Vs. T.E. Muhammad Ibrahim and Others, it was held that no Court can compel any party to pay the additional court fee, even if rightly levied,when he does not want to pay it,for whatever reason. The only course open would be that suit might be dismissed. Accordingly, learned Single Judge further observed that if court fee is to paid, the suit may be dismissed. This order is under challenge at the behest of the appellants. As noticed above. On 6.9.2000 appeal was dismissed in liming observing that there is no illegality and infirmity in the impugned order.

7. This review application was moved on 21.11.2000. We noticed the submissions of the appellants that their prayer was only to draw up decree in terms of the compromise. There was no impediment for the court in drawing up of the decree in terms of the compromise. Even if direction could not be issued against any of the parties to pay additional court fee, there was no legal hurdle in not preparing the decree, which was the Court''s obligation to draw. The only bar of non paying of the court fee would be that the decree when drawn would not become executable till the requisite court fee is paid. Therefore, the observation of learned Single Judge for dismissal of suit for non payment of court fee was bad in law.

8. Notice of the review application was given to learned counsel for the respondents, who has put in appearance but not opposed the review.

9. Learned counsel for the parties were heard in the main appeal also.

10. For the reasons, which we will record shortly. We are of the view that the order dated 6.9.2000 is liable to be recalled since we did not consider the question of the obligation on the part of the Court to draw up decree after the suit had been disposed of. Consequently, the review application is allowed and the order dated 6.9.2000 is recalled.

11. Section 33 of the CPC (for short "the Code") enjoins upon the Court to pronounce judgment after the case has been heard and requires that on such judgment a decree shall follow. It is the decree of the Court, which is appealable u/s 96 of the Code. Decree has been defined in sub-section (2) of Section 2 of the Code as under:-

"decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of plaint and the determination of any question within Section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation; A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

12. Order 20 of the Code deals with the judgments and decree. Rule 6 of order 20 says that the decree shall agree with the judgment; it shall contain the number of the suit, the names and description of the parties, their registered addresses and particulars of the claim and shall specify clearly the relief granted or other determination of the suit. Rule 20 of Order 20 enjoins upon the Court to furnish to the parties on application and at their expense certified copies of the judgment and decree.

13. Rule 6 of Order 20 deals with the contents of the decree. A conjoint reading of Section 33 with Rule 6 of Order 20 makes it clear that on judgment being passed decree automatically follows. Obligation is on the part of the court to draw up decree in terms of various provisions of Order 20 of the Code. Drawing up of decree cannot be withheld. Its certified copy has to be supplied to the parties at their expense so as to enable them to file appeal. What would happen in the eventuality of suit getting disposed of either by way of dismissal or on decree being passed or is partly decreed and it is found that insufficient court fee has been paid by a party. Similarly when a suit for mesne profits or accounts gets decreed and the amount decreed exceeds the amount claimed in the suit. The answer to this question is to be found in Section 11 of the Court Fee Act, which says that in such eventuality decree will be drawn up but the same shall not be executable until the difference between the fee actually paid and the fee,

which would have been payable has been paid to the proper officer, Section 11 of the Court Fee Act reads:-

"Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed- In suits for mesne profits, or for immovable property and mesne profits, or for an account, if the profits or amount decreed are or is, in encases of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such times as the Court shall fix, the suit shall be dismissed.

14. A somewhat similar question had come up before Privy Council for its consideration in AIR 1937 163 (Privy Council) In the said case it was held that non-payment of the balance of court fee merely postpones the dates on which decree can be executed.

15. Learned Single Judge of Gujarat High Court in *Mir Sahebmiya Bahadarmiya Sheikh Vs. State of Gujarat*, considered the question that whether the Court is bound to proceed to draw the decree on the pronouncement of the judgment or whether it can order that the decree shall not be drawn till proper court fee is paid. Reliance was placed upon the decision of Full Bench of Madras High Court in *Velagala Sriramareddi and other v. Karri Sriramareddi* AIR 1941 Madras 929, which had laid down that the Court has no power to order stay of drafting of the decree once judgment is pronounced. The decree must follow the judgments. Full Bench of Madras High Court in its turn adopted the view taken by Division Bench of Patna High Court in *Kedar Nath Goenka v. Chandra Mauleshwar Prasad Singh* AIR 132 Pat 228, which has also expressed the same view that after judgment is pronounced and is signed and sealed, there is no power left with the Court to alter it or add to it or subtract anything from it. Once the judgment is pronounced decree must be prepared in accordance with it. Following the said two decisions, Gujarat High Court also followed the same view in *Mir Sahebmiya's case* (supra). Punjab and Haryana High Court has also in *Vodyawati widow of Ghansham Dass v. Gopi Ram and others* (2000 (1) PLR 181 followed the same view.

16. We are in full agreement with the view taken aforementioned by various High Courts. In view of the various provisions of the Code of Civil Procedure, as noticed above, there is no manner of doubt that once a judgment is delivered and signed, there is no option left with the Court except to draw decree in terms

of the judgment. Drawing up of a decree cannot be postponed. The impugned order of the learned Single Judge to the extent that due to non-payment of the court fee for drawing up of decree suit may dismissed is not in consonance with law for which reference be also made to another decision of Privy Council in Lachmi Narayan Marwary and other v. Balmakund Marwary and another AIR P.C. 198.

17. Consequently, we allow the appeal, set aside the impugned order and direct that decree shall be drawn in terms of the judgment of the Court. Decree will bear an endorsement that the same shall not be executed till difference in Court fee is paid. The questions as to which party would be liable to pay court fee and legality of the judgment and decree that it is beyond the terms of compromise being outside the scope of this appeal are left open.