

(1952) 12 CAL CK 0022
In the Calcutta High Court
Case No : Civil Revn. Case No. 913 of 1952

Sm. Subodh Bala Biswas

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 17-12-1952

Acts Referred:

Calcutta High Court Rules, 1914 — Rule 720, 720(2), 720(3)
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : AIR 1953 Cal 702 : 57 CWN 601

Hon'ble Judges : Chakravartti, C.J.;Sinha, J

Bench : Division Bench

Advocate : Apurbadhan Mukherjee and Tarak Nath Roy, for the Appellant;
Jajneswar Majumdar, Asst. Govt. Pleader, for the Respondent

Judgement

Chakravartti, C.J.—The only point of substance in this Rule is the point taken about the order for costs. The petitioner before us is a claimant in a Land Acquisition case. An area of land, belonging to her and measuring 7.92 acres, was requisitioned in 1943 and derequisitioned in 1947. The Collector offered her a compensation of Rs. 410/- on a certain basis, but not being satisfied with the adequacy of the amount, the petitioner asked for and obtained a reference u/s 19 (1Kb) of the Defence of India Act. The arbitrator was the District Judge. The District Judge dealt with the various grounds urged before him, both as respects the adequacy of the compensation awarded for the actual area requisitioned and also as respects a further claim made on the ground of loss sustained because of the abandonment of some neighbouring areas by the cultivators because of the requisition of the aforesaid area of 7.92 acres. The grounds sought to be urged before us as regards the correctness of the arbitrators award are all grounds of fact, the decision of which depends upon evidence.

We are clearly of opinion that on an application under Article 227 of the Constitution it is not open to us, nor can it be proper to embark upon an examination of the evidence and substitute for the decision of the Court or

tribunal below our own decision. As I have had occasion to explain elsewhere the scope of Article 227 of the Constitution is perfectly clear. It is intended to authorise the High Courts to see that the Courts or tribunals which cannot be controlled u/s 115 Civil P. C. are kept in their proper places and that they exercise their jurisdiction in accordance with the provisions of the laws" they administer. If these two conditions are satisfied, namely, if the Court or the tribunal concerned does not exceed -jurisdiction and if it does not depart from the principles that it is enjoined to follow by the statute or other law concerned, there can be no occasion for interference, under Article 227 of the Constitution with the substance of the decision upon a further examination of its merits. The grounds sought to be urged by Mr. Mukherji against the decision of the arbitrator as regards the amount of the compensation cannot therefore be entertained.

2. A point, however, was taken against the arbitrator's award for costs which in my opinion must be accepted as well-founded. As I have stated the amount offered by the Collector as compensation was Rs. 410/-. The amount claimed by the petitioner before the arbitrator was Rs. 14,270/-. By his order, the arbitrator awarded her a further sum of Rs. 605-10 together with Rs. 56-14-3 as costs. Having done that, the arbitrator proceeded to pass a decree for costs in favour of the Government of West Bengal and he did so on a basis which is described by him in the following words:

"Parties to get costs in proportion to their success. Pleader's fees are to be calculated on the same scale as provided in Rule 720(2) of the Civil Rules and Orders".

3. The arbitrator thought that the Rule referred to by him authorised him to pass a decree in favour of the State for pleader's fees, calculated on a sum of Rs. 13,256-6-0 which he arrived at by deducting Rs. 410/- offered by the Collector and the further sum of Rs. 605-10-0 -awarded by himself from the total amount of Rs. 14,272/- claimed by the petitioner. The pleader's fee computed on that basis was Rs. 540-2-0. The arbitrator added to that sum two further amounts as costs of the stamp and demo papers and made an order for a total amount of Rs. 542-7-6 in favour of the State. Next, he set off the costs awarded to the State against the amount awarded to the petitioner and made a final order in favour of the petitioner for Rs. 120-0-9 which was the balance left after the set-off had been carried out.

4. It was contended before us that the order made by the arbitrator as respects the costs to be recovered by the State was not only wrong in principle but also not even authorised by the Rules on which the arbitrator had relied. In my opinion that contention is plainly right and must be given effect to. The set of rules among which Rule 720 occurs are rules regarding fees payable to legal practitioners framed u/s 27 (c) of the Legal Practitioners Act. It would appear that those rules are only intended to fix the scales of fees allowable to pleaders by decrees of Courts and I doubt whether they have any reference at all to the kind of order for costs which the Courts ought or ought not to make in particular

cases. Be that as it may, what the arbitrator has done is to award costs both to the claimant & to the State in proportion to the success of the claimant in the first case and her failure in the second. It is as if in a suit for money, say for Rs. 5000/- a decree was passed for Rs. 2000/- and then the Court made an order for costs in favour of the plaintiff proportionate to Rs. 2000/- and a decree in favour of the defendant proportionate to Rs. 3000/-. It is true that even in the case of a civil suit, if the suit succeeds, the decree drawn up contains a statement of the costs payable to the defendant, but that is only for use in case the decree is reversed on appeal and the defendant is awarded the costs of the civil Court. The decree in the present case makes a certain amount of costs instantly payable to the defendant, although the plaintiff has succeeded, it may be in part. In my view, a decree of that kind is altogether wrong in principle, but the present case need not be decided by reference to any principle of a general character.

5. The arbitrator relies upon Rule 720 and the incorrectness of the view taken by him appears from the terms of that rule itself. The two relevant clauses of that rule are clauses (2) and (3). They are in the following terms:

"(2) In this and in the following rules, cases under Part III of the Land Acquisition Act, I of 1894, shall be deemed to be suits, and the fees allowable therein may be calculated either on the amount of compensation decreed in excess of the sum tendered by the Collector, or on any smaller amount which the Court in its discretion may think proper.

3. In the event of the sum tendered by the Collector being decreed, pleaders' fees may be awarded to Government on the difference between that sum and the sum claimed, or on any smaller amount which the Court in its discretion, may think proper."

6. The scheme of these two clauses of Rule 720 is perfectly clear, but before explaining what that scheme is, I would like to point out that the arbitrator is entirely wrong in relying upon clause (2) of the Rule as applicable to the present case. From the terms of the two clauses which I have just read, it is obvious that costs to be awarded to the State are dealt with, not in Clause (2) but in Clause (3). Clause (2) is concerned only with, the case of the claimant. It contemplates a case where some compensation in excess of the sum, tendered by the Collector has been decreed and it lays down that, in such a case, pleaders' fees may be allowed either on the amount of the compensation decreed in excess of the sum tendered, by the Collector or any smaller amount. The case contemplated, therefore, is one where a claimant has got something in excess of the amount tendered by the Collectors, in other words, where the claim of the claimant has succeeded wholly in part. This, therefore, is a case where if one could draw an analogy from suits, a suit has succeeded and, quite intelligibly the clause makes a provision for costs in the plaintiff's or the claimant's favour. Clause (3) is concerned with the case of the Government and on the basis that Land Acquisition cases are suits, it may be said that it deals with the case of the defendant. The case contemplated by it is a case where the award does not add

anything to the sum tendered by the Collector, in other words, a case where the reference has entirely failed. The case, therefore, is a case where if one can again draw an analogy from suits, a suit has wholly failed and therefore, quite intelligibly, the clause makes a provision for costs to be awarded to the Government which is in the position of a defendant in such proceedings. To sum up, clause (2) deals with the case of a successful plaintiff, although the success may be a partial success, while clause (3) deals with the case of a successful defendant but a defendant who has wholly succeeded. As I have pointed out, clause (2) can have no manner of application in the present case so far as the Government is concerned, because the clause deals solely with the case of the claimant. Clause (3) also cannot apply, because the present case is not one where the sum awarded by the arbitrator is precisely the same which the Collector had tendered. It is a case where the reference has succeeded in part and the arbitrator has awarded a certain sum in excess of that tendered by the Collector. There is thus no reason in principle as to why the Government, being in the position of a defendant should get any costs in such a case, but quite apart from any reason or principle, the terms of clause (3) do not provide for any costs being awarded to the Government in such a case at all.

7. We invited Mr. Majumdar, who appears on behalf of the State, to inform us whether there was any provision contained in any law which authorised the arbitrator to make an order of the kind which he had made. Mr. Majumdar frankly confessed before us that he was unable to refer to any such law.

8. In my opinion, the error committed by the arbitrator with regard to the award of costs is clearly an error which can be corrected under Article 227 of the Constitution. He has applied certain principles which he considered to be warranted by Rule 720, but since no such principles are embodied in those rules, he was in fact applying principles which did not exist. It is quite clear that in exercising his jurisdiction he had misdirected himself, and therefore the case is a fit one which can be properly dealt with under Article 227 of the Constitution so far at least as this point is concerned.

9. For the reasons given above, this Rule is made absolute in part. The order for costs made in favour of the State is set aside. The petitioner will therefore have the sum of Rs. 410/- offered to her by the Collector, the further sum of Rs. 605-10-0 added by the arbitrator and the still further sum of Rs. 56-14-3 awarded to her by way of costs. There will be nothing to set off against it, as the order for costs in favour of the State is being set aside by us.

10. Subject to the modification mentioned above, the order made by the arbitrator is maintained. The Rule is disposed of in the above terms.

11. The petitioner is entitled to the costs of this Rule, which we assess at three gold mohurs.

Sinha, J.

12. I agree.