

**(1977) 11 GUJ CK 0001**  
**In the Gujarat High Court**

State of Gujarat

APPELLANT

Vs

Kantilal Pratapji and Others

RESPONDENT

**Date of Decision :** 18-11-1977

**Acts Referred:**

Bombay Court Fees Act, 1959 — Article 7, 6(iv)(j)

**Citation :** (1978) 19 GLR 417

**Hon'ble Judges :** M.P. Thakkar, J

**Bench :** Single Bench

## **Judgement**

M.P. Thakkar, J.—When the plaintiff claims a declaration that the promissory notes executed by him in favour of the defendant are void, the same having been obtained by fraud or coercion without consideration, is he liable to pay court-fees calculated on the amount expressed on the face of the promissory notes under Article 7 of Schedule I of the Bombay Court-fees Act, 1959 hereinafter referred to as "the Act") or whether he is" liable to pay fixed court-fees at Rs. 30/- u/s 6(iv)(j) of the Act? That is the pivotal question in this revisional application preferred by the State of Gujarat calling into question an order passed by the learned Judge presiding over 8th Court of City Civil Court holding that fixed court-fees at Rs. 30/- "are payable and not ad valorem court-fees on the" basis of the amount expressed on the face of the promissory notes. Reliance has been placed by the learned trial Judge and by the teamed counsel for the opponent-plaintiff on *Inderlal Panwarmal v. Khialdas Shewaram and Ors.* 11 G.L.R. 948, in order to buttress the view which has been taken viz. that court-fees payable are fixed court-fees on the basis of Section 6(iv)(j) and not ad valorem as per Article 7 of the First Schedule of the Act. Now, the ratio of *Inderlal's* case has to be culled out by taking into account the facts of that particular case. In that case the plaintiff claimed a declaration to the effect that (he agreement to sell immovable property at some future date executed by him in favour of one of the defendants was void and inoperative for certain reasons. The question before the Court was whether a declaration sought in respect of such an agreement which did not create any right in favour of the party in whose favour it was executed except

and save the right to seek specific performance of the agreement could be treated as claim for substantive relief which could be valued in terms of money. Divan J. as he then was, emphasized this aspect as is evident from the opening portion of paragraph 15 of the report which may be quoted:

In the instant case, however, I am not concerned with the setting aside of the effect of an" executed agreement Or of a completed sale-deed but with a voidable agreement to convey the shop at a future date.

Divan J, as he then was, has emphasized the aspect that what was being challenged was not a completed transaction or a sale-deed but an executory agreement in relation to a stipulation to convey the property at a future date. It was in view of this circumstance that the Court came to the conclusion that the subject matter was not capable of evaluation in terms of monetary loss or gain. It may be mentioned that incidentally in the agreement of sale the plaintiff had acknowledged the payment of a sum of Rs. 10,000/-. It was argued that if the Court came to the conclusion that the agreement was void and not binding, it would follow that the recital contained therein as regards the payment of Rs. 10,000/- would also become ineffective. The Court took the view that whatever was the incidental or remote consequence of the holding to the effect that the agreement was void, the real question was as to whether an agreement to sell immovable property at a future date was capable of monetary evaluation. It was under these circumstances that the Court held that Section 6(iv)(j) was attracted and not Article 7 of the First Schedule. In the present case e are not concerned with an agreement which would entail the executing of a conveyance in future. The learned trial Judge was, therefore, in error in taking the view that the decision in Inderlal's Case supported the proposition canvassed by the plaintiff that Article 7 of the First Schedule was not attracted. On behalf of the Inspecting Officer reliance was inter alia placed on a decision of S.H. Sheth J. in C.R.A. No. 844 of 1970 rendered on September 21, 1970. S.H. Sheth has drawn a distinction between the challenge to a notice demanding municipal taxes made on the basis of an alleged infirmity in following the procedure for making demand on one hand and a challenge to the substantive liability to pay the taxes claimed under the notice on the other band. The view has been taken that if the impugned notice is challenged only on the basis of a procedural irregularity, ad valorem court-fees would not be payable. This would be so for the very good reason that the liability would remain and what would be quashed would be only the notice which suffered from some procedural irregularity or infirmity. S.H. Sheth J. has taken the view that when the substantive liability to pay the taxes is called into question, ad valorem Court-fees would be payable. This decision would support the point of view propounded by the State. The learned trial Judge has failed to appreciate the real ratio of that decision. In the present case a declaration is sought to the effect that the promissory notes in question a void by reason of the fact that the same have been obtained by fraud or coercion and the same have been executed without consideration. In substance, therefore, (and we are concerned with the substance and not with the form as per the law

declared by the Supreme Court in *The Vishnu Pratap Sugar Works (P) Ltd. Vs. The Chief Inspector of Stamps, U.P.*, the plaintiff wants immunity from the liability to pay the amount expressed on the face of the promissory note. The suit is, therefore, one for substantive relief which is capable of being valued in terms of prevention of monetary loss within the meaning of Article 7 of the First Schedule.

2. Counsel for the opponent-plaintiff placed reliance on *Sanatkumar Bhikabhai Patel and Ors. v. The State of Gujarat and Ors.* 8 G.L.R. 946 and on a decision rendered by Miabhoy, C.J., in Civil Revision Application No. 700 of 1962 (*Prabhudas Bokorlal v. Bhailalbhai and Ors.*) to which a reference has been made in the said judgment. The point of distinction in regard to *Sanatkumar Bhikabhai's* case and Civil Revision Application No. 700 of 1962 is that in those cases the plaintiff was not challenging any conveyance executed by himself. He was challenging a conveyance executed by one of the defendants in favour of some other defendant by challenging a transaction between two of the defendants. From the point of view of the plaintiff, therefore, there was no question of monetary gain or monetary loss to himself. Those decisions, therefore, cannot come to the rescue of the plaintiff.

3. Under the circumstances, the revisional application must succeed. The order passed by the learned Judge, 8th Court, City Civil Court, Ahmedabad, on January 21, 1976 is set aside. It is held that the opponent-plaintiff is liable to pay *ad valorem* court-fees on the basis of the amount expressed on the face of the promissory notes under Article 7 of Schedule 1. Learned counsel for the plaintiff states that the suit has already been withdrawn before the framing of the issues and that the plaintiff is entitled to claim a 2/3rd refund as also to claim that the said amount be adjusted against the liability if any, determined by the Court. The matter will therefore, now go back to the trial Court. The learned trial Judge will make the computation of the amount payable on the aforesaid basis and give credit for 2/3rd of the refund after verifying that the suit has been withdrawn before the framing of the issues. The learned trial Judge will thereafter call upon the opponent-plaintiff to make payment of the deficit after giving adjustment of the Court-fees already paid and the 2/3rd amount of the refund to which, the plaintiff is entitled.

The petition is allowed. Rule is made absolute to the aforesaid extent. There will be no order regarding costs.