
(1964) 03 CAL CK 0034
In the Calcutta High Court

State of West Bengal

APPELLANT

Vs

Messrs. B. Chakraborty and Co. (P) Ltd.

RESPONDENT

Date of Decision : 06-03-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 149
Court Fees Act, 1870 — Section 4, 6(2)

Citation : 68 CWN 536

Hon'ble Judges : D. Basu, J; Banerjee, J

Bench : Division Bench

Advocate : N.C. Chakravarti and Nani Gopal Das, for the Appellant;

Final Decision : Allowed

Judgement

Banerjee, J.—When a Government is a litigant, it must, like any other litigant, conform to the substantive and procedural laws of the country and must not aspire to be treated as a favoured litigant. The proposition is so elementary that it does not ordinarily require re-statement. We are, however, compelled to remind the learned Government Pleader of this rudimentary proposition because of the attitude taken up by him in justification of a prayer for extension of time to put in deficit Court-fees on a memorandum of appeal.

2. On February 3, 1964, the petitioner State Government, as appellant, presented a memorandum of First Appeal in this Court. The appeal was valued of Rs.25,354/- and ad valorem Court-fee of Rs.1380/- was payable on the Memorandum of Appeal. The Memorandum was, however, presented with a Court-fee stamp of Rs.5/- only.

3. Along with the memorandum of appeal there was an application filed, which was not supported by an affidavit as required under clause (5) of Rule 18 in Chapter V of the Appellate Side Rules, in which it was inter alia stated:

1. That the requisite Court fee of the above appeal amounts to Rs.1380/-.

2. That the requisition for the amount of the requisite Court fee was duly made to the office of the Accountant General, West Bengal, but the cheque for the amount has not yet been received x

3. In the circumstances your petitioner is obliged to file the same with a Court fee stamp of Rs. 5/-.

That your petitioner expects to be able to file the deficit Court fee within 6 weeks from date.

4. On February 8, 1964, the Stamp Reporter examined the memorandum of appeal and recorded the following note thereon:

Stamp not sufficient (as per valuation). The requisite fee being Rs. 1380/-, the memo is insufficiently stamped by Rs.1375/-. An application has, however, been filed herewith praying for payment of the balance within 6 weeks (i.e., within 16.3.64) from the date of presentation of the appeal. This should now be put up for orders.

5. Thereafter, the Stamp Reporter took 12 more days to put up the following note before the Registrar:

Please see Stamp reporter's Report dated 8.2.64.

The requisite fee being Rs.1380/-, the memo is insufficiently stamped by Rs.1375/-. An application has, however, been filed herewith praying for payment of the balance within 6 weeks (i.e., within 16.3.64) from the date of presentation of the appeal.

As extension of time has been sought for on a ground other than that of mistake as to the amount of Court-fee payable, this may be laid before the Division Bench for the orders (vide Rule 18(3) of Chap. V of the A.S. Rules).

Lay before the Registrar for favour of an order.

6. On February 21, 1964, the Registrar passed the following order on the Stamp Reporter's report:

In view of the report of the Stamp Reporter above, let this matter be laid before the Division Bench under Rule 18(3), Ch. V of the A.S. Rules for orders.

7. On the same day, the deficit Court-fee of Rs.1375/- was put in and that fact was noted by the Stamp Reporter on the Memorandum of Appeal, 11 days later, on March 3, 1964.

8. The last date for presentation of the appeal, however, expired in the meantime, on February 11, 1964.

9. When the matter came up before us, on February 25, 1964, we could not take notice of the statement in the application, which was not supported by an affidavit according to Rule 18, clause (5) in Chapter V of the Appellate Side

Rules. We, therefore, granted time to the appellant to file an application, supported by an affidavit, therein stating the circumstances leading to the filing of the appeal with deficit Court-fees. That application has now been filed and reveals the following facts:

(a) The certified copies of the judgment and decree of the trial Court, although received from the third Court of the Subordinate Judge at Midnapore on December 4, 1963 took about one month's time to reach the office of the Legal Remembrancer and was received by him on January 3, 1964.

(b) Thereafter, the Legal Remembrancer sought the opinion of the Government Pleader at High Court as to the advisability of filing an appeal against the decree. On which date the papers were received by the Government Pleader does not appear.

(c) The learned Government Pleader took some time to arrive at his opinion that an appeal should be filed and forwarded his opinion to the Legal Remembrancer on January 22, 1964.

(d) The Legal Remembrancer passed his final orders, on January 24, 1964, to the effect that an appeal should be filed.

(e) The learned Government Pleader took further time to draw up the memorandum of appeal and presented the appeal, with a Court-fee stamp of Rs.5/- only (wrongly stated as Rs.7/- in paragraph 1 of the petition), on February 3, 1964.

10. The reason why the memorandum of appeal was not filed with the requisite amount of Court-fee is stated in the petition in the following language:

8. That requisition for money to purchase Court-fee for the purpose of filing appeals and revision cases has got to be made to the Legal Remembrancer, West Bengal only after it is finally decided by the Legal Remembrancer that an appeal or revision case should be filed, that thereafter the requisition for money is by the Government Pleader, High Court, made to the Legal Remembrancer, who passes the same and signs the pay order.

9. That on receipt of the signed pay order, a Bill has got to be made to the Accountant General, West Bengal who, if the bill is not in any wise defective, makes payment to the Legal Remembrancer by cheque drawn in favour of the Collector of Stamp Revenue, Calcutta.

10. That the office of the Legal Remembrancer has to meet the day to day expenses on the following heads:

(a) All Civil & Criminal Cases in the Appellate Side, High Court.

(b) All Civil & Criminal Cases in the Original Side, High Court.

(c) All Cases in the Courts of the Presidency Magistrate, Calcutta.

- (d) All cases Civil & Criminal in City Civil & Sessions Court, Calcutta.
- (e) All cases in the Court of the Presidency Magistrate Court at Calcutta.
- (f) All cases in Court of the Commissioner of Workmen's Compensation.
- (g) All cases in the Court of the Competent Authority.
- (h) All cases before the Industrial Tribunal.

11. That in the aforesaid circumstances, it is almost impossible to know with certainty as to what amount or amounts might be suddenly required for immediate expenditure on any of the aforesaid heads till the office of the Legal Remembrancer is closed for the day. Accordingly it has been the prevailing practice that whenever Court-fees for heavy amounts are required an appeal is filed with a nominal Court-fee with an application for extension of time to pay the deficit Court-fees since partition of Bengal in 1947; no objection to these applications has been taken and without exception the Registrar, Appellate Side, High Court was pleased to allow reasonable time to pay deficit Court-fees: As stated above in the present case after applying for time on 3.2.64 to pay the deficit Court-fee the petitioner has already paid the Court-fee on 27.2.64 within the time prayed for in the present application which has come up for hearing before your Lordships.

12. That it may be stated that since 1947, every year approximately 20 to 25 first appeals have been filed and during these 16 years more or less in more than 80 per cent appeals such applications as the present one were filed for extending the time to pay deficit Court-fees and uniformly these applications were allowed.

13. That in the circumstances set forth above the petitioner bona fide believes that in the present case such extension would be allowed.

14. That petitioner also submits that under the law the petitioner is entitled to have an extension of time to pay the deficit Court-fee.

11. Since the learned Government Pleader cared to take up the position that the petitioner State Government was "entitled" under the law to have an extension of time to pay the deficit Court-fee, we have to examine the law on the point. We have already discussed the law on this point in our order, bearing this date, in S.A.T. No. 3467 of 1963 and need not repeat the same. Suffice it for the present purpose to refer to the provisions of Sections 4 and 6(2) of the Court-Fees Act, Section 149 of the CPC and to Rule 18 of Chapter V of the Appellate Side Rules. The provisions above referred to lay down the proposition of law that a Court has jurisdiction to extend time to put in deficit Court-fees on memoranda of appeal filed with short Court-fees. The exercise of this jurisdiction, however, is a matter of discretion and must be judicially exercised in proper cases (Vide (1) Khatumannessa Bibi v. Durjodhone Roy Chowdhury, 38 CWN 650 and (2) In the matter of Souresh Chandra Sarkar Vs. Gosta Behari Dutt .

12. In the instant case, the main reason put forward by the learned Government

Pleader is that due to delay caused by the domestic procedure followed in the office of the Legal Remembrancer, he could not procure funds for filing the appeal with proper Court-fees. If the office procedure is cumbersome, one has to be careful and to see that the domestic procedure does not make it impossible for the State Government to follow the procedure laid down by law in the matter of filing of appeals. The attitude taken up by the learned Government Pleader puts a wrong emphasis on the domestic procedure and makes light of the procedure laid down by statutes and the rules of this Court regarding filing of appeals. No Government has the right generally to the memoranda of appeals with deficit Court-fees and then to ask for extension of time to put in the deficit Court-fees, on the theory that the same was the prevailing practice in its office. If that has become the prevailing practice in the office of the Legal Remembrancer or of the Government Pleader, as it is alleged, the sooner the practice goes the better for all concerned.

13. Moreover, in the instant case it does not appear why the requisition for funds to buy Court-fees could not be made by the Legal Remembrancer, when he directed the filing of the appeal on January 25, 1964 or shortly thereafter. It does not also appear when the Accountant General, West Bengal supplied funds for purchase of the Court-fee stamps for the filing of the appeal.

14. In our opinion, in the matter of filing of this appeal, the entire thing was mismanaged. The invocation made to the office procedure does not wipe out the blameworthiness for the mismanagement. If the State Government, by its domestic procedure, makes it impossible for the Government Pleader to procure funds for purchasing Court-fees for the filing of the appeals, it should not be allowed to rely upon that impracticable procedure in justification of its laches. The appeal was filed with deficit Court-fees not because of any mistake in the matter of calculation of Court-fees. The appeal was deliberately filed with short Court-fees, in the belief that extension of time to put in the deficit Court-fees would be allowed as a matter of course. Now, as pointed out in (1) Khatumannessa Bibi's case (supra), inability to raise funds for purchasing Court-fees is not a ground which would entitle a Court to exercise its jurisdiction u/s 149 of the CPC and permit payment of deficit Court-fees, unless, as further pointed out in (2) Sourish Chandra Sarkar's case (supra), there was exceptional justification for such inability. In this case the inability was not due to lack of funds but due to office procedure and, what was worse, due to procrastination in the matter of drawing money for the purchase of the Court-fee stamps. This is surely not a ground for exercise of our discretion u/s 149 of the CPC in favour of the State Government.

15. However, in this case we do not take a very serious view of the matter, because it is alleged that the State Government succeeded in following a thoughtless procedure in the matter of filing appeals with deficit Court-fees for a considerable time in the past. Let this one be the last.

16. With these observations we allow the application and direct that the deficit

Court-fees, filed out of time, be accepted.

17. Let a copy of this order be at once sent to Mr. A. N. Chakravarty, Legal Remembrancer, Government of West Bengal, so that he may take note of our observations and try to make proper arrangements in his office.

D. Basu, J.

18. I agree.