
(2000) 09 MP CK 0072
In the Madhya Pradesh High Court
Case No : C.R. No. 487 of 2000 (J)

Subash Chand Jain

APPELLANT

Vs

The Chairman, M.P.E.B., Jabalpur and Others

RESPONDENT

Date of Decision : 26-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151
Court Fees Act, 1870 — Section 7(iv)(d)

Citation : (2001) 1 MPJR 22

Hon'ble Judges : Bhawani Singh, C.J.; Dipak Misra, J.; Arun Misra, J

Bench : Full Bench

Advocate : R.K. Samaiya, for the Appellant; M.L. Jaiswal, for the Respondent

Judgement

Bhawani Singh, C.J.

Plaintiff instituted suit against the defendants seeking relief of restraining them not to disconnect the electricity supply to his workshop "Vinay Agro Industries Khurai (Sagar)" pursuant to additional bills served on the plaintiff by the defendants for an amount of Rs. 2,14,747.00. The defendants contested the suit. They preferred an application under Order 7 Rule 11 read with Section 151 Code of Civil Procedure, 1908 alleging that the plaintiff had valued the suit for Rs. 600.00 and paid court fee of Rs. 60.00 though his prayer was against recovery of Rs. 2,14,747.00 on which court fee had not been paid; therefore, the suit was liable to be rejected for arbitrary valuation. The plaintiff submitted that the suit has been filed for permanent injunction not to disconnect the electricity supply and court fee had been paid accordingly. Consequently, the plaint was not defective and the objection was liable to be dismissed.

The objection advanced by the defendants prevailed with the trial Court which held that the plaintiff was liable to pay ad-valorem court fee. This view the trial Court took on the basis of this Court's judgment in Mangilal Jain vs. MPEB, Jabalpur and others (1977-11 Weekly Notes, Note 480). Plaintiff challenged this order through revision petition which appeared before one of us (Brother Dipak

Misra, J.). By order dated May 8, 2000, the case has been referred to larger Bench. After dealing with certain judgments on the question, learned Judge said -

9. It is to be noted that in Mangilal Jain (supra) reliance was placed on the case of Badri Lal (supra) where Sathappa Chettiar (supra) was referred. Thus I find that there is apparent conflict between Mangilal and Jagdish Prasad. It is also noticed the courts below are following Mangilal at times and Jagdish Prasad on certain occasions. In view of this I am of the considered opinion an authoritative pronouncement is called for on this point for better future guidance. As the matter relates to payment of court fees and the whole case relates to that I am inclined to recommend the whole case for reference to the larger bench under 9(1) of the M.P. High Court Rules. The question that requires to be answered is whether Mangilal Jain (supra) lays down the correct law or Jagdish Prasad (supra).

This is how the matter comes before the Full Bench.

Heard Shri R.K.Samaiya, Advocate for the plaintiff, Shri M.L. Jaiswal, Senior Advocate for the defendants and Shri Ravish Agarwal, Senior Advocate on court request. Shri Samaiya, learned counsel for the plaintiff contended that u/s 7 (iv) (d) of the Court Fees Act 1870 (for short the Act of 1870), the plaintiff is free to value the relief of injunction claimed in the suit. He could not be compelled to value the relief for perpetual injunction as Rs. 2,14,747.00 but fixed court fee is required to be paid for relief of injunction valued at Rs. 600.00. Learned counsel places reliance on averments contained in the plaint and single Bench decision of this Court in Jagdish Prasad Vs. MPEB (1987 MPLJ 452). This submission is opposed by learned Senior Counsel appearing against the plaintiff. Certain decisions have been cited in support of the submission.

In S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, , the Apex Court in paragraph 13 said that the question of Court fees must be considered in the light of the allegations made in the plaint and its decision can not be influenced either by the pleas in the written-statement or by the final decision of the suit on the merits. Later decision of Supreme Court reported in. Shamsher Singh Vs. Rajinder Prashad and Others, holds in paragraph 4 of the judgment that:

4. As regards the main question that arises for decision, it appears to us that while the court fee payable on a plaint is certainly to be decided on the basis of the allegations and the prayer in the plaint and the question whether the plaintiff's suit will have to fail for failure to ask for consequential relief is of no concern to the court at that stage, the court in deciding the question of court fee should look into the allegations in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for..."

Thereafter the Apex Court was called upon to consider the question again in Commercial Aviation and Travel Company and Others Vs. Vimla Pannalal, . In

paragraphs 7 to 9, the Court said :

"7 So far as suits coming under S. 7 (iv) of the Court-fees Act are concerned, the Legislature has left the question of valuation of the relief sought in the plaint or memorandum of appeal to the plaintiff. The reason is obvious. The suits which are mentioned u/s 7 (iv) are of such nature that it is difficult to lay down any standard of valuation. Indeed the Legislature has not laid down any standard of valuation in the Court-fees Act. u/s 9 of the Suits Valuation Act, the High Court may, with the previous sanction of the State Government, frame rules for the valuation of suits referred to in Section 7 (iv) of the Court-fees Act. Although the Punjab High Court has framed rules u/s 9 of the Suits Valuation Act which are applicable to the Union Territory of Delhi, such rules do not lay down any standard of valuation with regard to suits coming u/s 7 (iv) of the Court-fees Act. It has already been noticed that under rule (4) (i) of the Punjab High Court Rules, the value of suit for accounts for purposes of Court fee will be as determined by the Court-fees Act, which means that the valuation of the reliefs will have to be made by the plaintiff u/s 7 (iv) (f) of the Court-fees Act.

In a suit for accounts, it is almost impossible for the plaintiff to value the relief correctly. So long as the account is not taken, the plaintiff can not say what amount if at all, would be found due to him on such accounting. The plaintiff may think that a huge amount would be found due to him but upon actual accounting, it may be found that nothing is due to the plaintiff. A suit for accounts is filed with the fond hope that on accounting a substantial amount would be found due to the plaintiff. But the relief can not be valued on such hope, surmise or conjecture.

In this connection, we may refer to the provisions of Order VII, Rules 11 (b) of the Civil P.C. which provides, inter-alia, that the plaint shall be rejected where the relief claimed is under valued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so. It is manifestly clear from the provision of Order VII Rule 11 (b) that a court has to come to a finding that the relief claimed has been under valued, which necessarily means that the court is able to decide and specify proper and correct valuation of the relief and, after determination of the correct value of the relief, requires the plaintiff to correct his valuation within a time to be fixed by the Court. If the plaintiff does not correct the valuation within the time allowed, the plaint is liable to be rejected. The question is whether in a suit for accounts simpliciter, the court can come to a finding as to the proper and correct value of the relief until the final determination is made. In our opinion, ordinarily it is not possible for the court at a preliminary stage to determine the value of relief in a suit for accounts simpliciter. If the Court is itself unable to see what the correct valuation of the relief is, it can not require the plaintiff to correct the valuation that has been made by him. Indeed in a suit for accounts, it is also difficult for the court to come to a finding even as to the approximate correct valuation of the relief. In such a case, the court has no other alternative than to accept

plaintiff's valuation tentatively.

Thereafter in paragraph 21, the Court observed :

21. In making the above observation, this Court has placed reliance upon its earlier decision in Meenakshi Sundaram's case (AIR 1979 SC 898) (supra) which, as noticed above, related to Section 35 (1) of the Tamilnadu Court-fees and Suit Valuation Act. But one significant fact that is to be noticed in the case is that there is an objective standard of valuation that is, the rent of the lease-hold interest. It may be reiterated that when there is an objective standard of valuation to put a valuation on the reliefs ignoring such objective standard, might be a demonstratively an unreasonable valuation and the court would be entitled to interfere with the matter.

In Neelavathi and Others Vs. N. Natarajan and Others, , the Court said in paragraph 6 that:

6. On reading of the plaint as a whole, we are unable to agree with the view taken by the High Court. It is settled law that the question of court fee must be considered in the light of the allegation made in the plaint and its decision can not be influenced either by the pleas in the written statement or by the final decision of the suit on merits. All the material allegations contained in the plaint should be construed and taken as a whole.....

(underlining supplied)

In Tara Devi Vs. Sri Thakur Radha Krishna Maharaj, through Sebaitis Chandeshwar Prasad and Meshwar Prasad and Another, , the court said in paragraph 4 that:

4. The instant SLP has been filed against the said order. We have heard the learned counsel and in our considered opinion we do not find any merit in the arguments made on behalf of the petitioner. It is now well-settled by the decisions of this Court in Sathappa Chettiar vs. Ramanathan Chettiar (supra) and Meenakshi Sundaram Chettair vs. Venkatachalam Chettiar (supra) that in a suit for declaration with consequential relief falling u/s 7(iv) (c) of the Court-fees Act 1870, the plaintiff is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purposes of court fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the Court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively under valued, the court can examine the valuation and can revise the same. The plaintiff has valued the lease hold interest on the basis of the rent. Such a valuation, as has been rightly held by the Courts below, is reasonable and the same is not demonstratively arbitrary nor there has been any deliberate under-estimation of the reliefs.....

(underlining supplied)

In Division Bench judgment of this Court in *Badrilal Bholargam, contractor, Indore vs. State of M.P. and another* (1963 MPLJ 717), it is held that where the relief sought itself has a real money value which can be objectively ascertained, that value is the value of the relief and any other value ascribed to it will be arbitrary and unreasonable. Where a plaintiff is sought to be made liable either under a decree or a deed for a specified amount and he seeks to avoid that liability, the value of the relief is the extent of the loss to which but for the suit, he would be subjected and from which he wants to be relieved. In paragraphs 6 and 7, it is said that:

6. It is plain from the language of the enactment itself that, in suits governed by the various clauses of sub-section (iv) of Section 7, liberty has been given to the plaintiff to value the relief claimed by him for purposes of court fee. In *Sathappa Chettiar vs. Ramanathan Chettiar*, the Supreme Court authoritatively clarified the position and observed :-

"If the scheme laid down for the computation of fees payable in the suits covered by the several sub sections of Section 7 is considered, it would be clear that, in respect of suits falling under sub-section (iv), a departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of court fees." (page 1033).

While the plaintiff is at liberty to value the relief claimed in the suits governed by the various clauses of sub-section 4, including those for a declaration with the consequential relief of injunction, this court has consistently held that he can not be allowed to put on arbitrary value and that, he does so and the court considers that it is too low or unreasonable in that it bears no relations to the right litigated, it may require him to correct the valuation.....

(underlining supplied)

Badrilal Bholaram's case (supra) has been followed by single Bench of this court in *Mangilal Jain's* case (supra) facts of which are similar to the case under consideration. In the opinion of learned single Judge, ad-valorem court fee was payable on the amount of liability sought to be avoided which in the case was Rs. 28,942,21 nps pursuant to the demand bill substantively against the plaintiff towards electric charges failing which supply of electricity was to be cut off and the suit of the plaintiff was for declaration that he had not committed any theft of energy and was not liable to pay the amount and the defendants be restrained from disconnecting the installation.

The opposite view has been taken by learned single, Judge of this Court in *Jagdish Prasad vs. former M.P.E.B., Gwalior* (1987 MPLJ 452) in similar facts. It places reliance on Apex Court decision in *Sathappa Chettier's* case (supra). In paragraphs 10 and 11, learned single Judge holds as under:

10. In *Shamsher Singh* (supra) the decision is only to the effect that for deciding the question of court fees, the court should look into the allegations of the plaint

to see what substantial relief is asked for, it is not in the scope of Section 8 of the S.V. Act, the decision of this Court, but I have no doubt that though some observations therein support Shri Gupta but they are in direct opposition to what is held by their Lordships of the Supreme Court in Sathappa Chettier (supra) and I have doubts if law in that regard has been correctly laid down in that case. Indeed, this might have happened due to the fact that the attention of the Division Bench was not drawn to the decision in Sathappa Chettier (supra) which was not even cited before the Division Bench, but it is not necessary for me to enter into the controversy as those "observations" do not pinch the issue before me. Happily in the later division bench decision in Badrilal vs. State (supra) the Supreme Court decision was noted but it was merely held that although the plaintiff had liberty to put his own valuation u/s 7 (iv) (c) of the C.F. Act the valuation should not be made arbitrarily. True it is that Mangilal Jain's case (supra) provides parallel on facts to the instant case like that of Badrilal vs. State (supra) and both support the contention advanced by Shri K.N. Gupta. According to me, in both cases, the court having been of the view on the allegations made in the plaint in those cases that the relief for declaration was redundant and the "value of consequential relief given in the plaintiff was arbitrary, the decisions are distinguishable on facts. I would not like to say anything more about those decisions though I have grave doubts if such a view could at all be taken. Unfortunately, another learned single Judge of this High court has following Badrilal (supra) also resorted to the test of "real money value" of the relief but such a test I do not read in the decision of the Supreme Court in Sathappa Chettiar (supra) which was considered in Badrilal (supra). I am of the view that such a test would make nugatory the statutory provision enabling the plaintiff to seek declaratory relief and, therefore, such a test, even if accepted, must operate only within defined limits and the least that can be done is that the test is not made applicable blindly to each and every case of a declaration. Access to justice constitutionally under -written by Art. 34A must prevail over the judicial test.

The decision of a learned Single Judge in Babulal Jain (supra) also appears to proceed on the same basis though it does not explicitly speak in terms of the "real money value" test. In this connection, therefore, I have to add further that even the three decisions of this court cited by the other side and discussed in para 7 above do not speak of the said test and yet take a contrary view which accords more with the supreme judicial dicta of Sathappa Chettiar (supra). Indeed, I feel therefore that I must discharge my constitutional duty to speak under compelling necessity the truth that "real money value" test is not sustainable constitutionally inasmuch as it goes against the view expressed by the Apex Court. In Sajhappa Chettiar (supra), their Lordships held in categorical terms: The question of Court-fee must be considered in the light of the allegations made in the plaint and its decision can not be influenced either by the pleas in the written statement or by the final decision of the suit on merits.

In determining the question of court fees no attention has to be paid at all to the

written statement or even to the final decision that may be rendered on merits in the suit, there remains no basis at all for the "real money value" test inasmuch as the test envisages exhypothesi consideration of defence, to counter the allegations made in the plaint for the purpose of determining the "real money value" of the controversy. Not only Article 141, but Article 39A also, as already, alluded, mandates such a view.

The suits which are mentioned u/s 7 (iv) of the Act of 1870 are of such nature where it is difficult to lay down any standard of valuation. This means that the valuation of the reliefs will have to be made by the plaintiff under the entry against which the suit is preferred. Provisions of Order 7 Rule 11B of the C.P.C. provides inter-alia that the plaint shall be rejected where the relief claimed is under-valued and the plaintiff, on being required by the Court to correct the valuation within a time fixed by it, fails to do so. Under this provision, Court has to reach a finding of under-valuation, specify the correct valuation of the relief, determine the same and require the plaintiff to correct the same within the time fixed by the Court. Failure to do so would entail rejection of the plaint. Obviously, the Court would undertake this enquiry in the interest of revenue after realising that the valuation of plaintiff is demonstratively unreasonable and case for interference is made out. Otherwise the plaintiff is free to make his own estimation of the reliefs sought in the plaint and the valuation both for purposes of court fee and jurisdiction has to be ordinarily accepted.

Settled legal position seems to be that plaint has to be read as a whole. Allegations in the plaint including the substantive relief claimed must be -the basis for settling the court fee payable by the plaintiff. Mere astuteness in drafting the plaint would not glaze the jurisdiction of court for looking at the substance of the relief asked for. The nature of suit u/s 7 (iv) is such where the Legislature could not lay down fixed standard thereby leaving it to the plaintiff to mention it. But where he attempts to under-value the plaint and the reliefs, Court has to intervene. While doing so, concept of real money value forms integral part of court enquiry where relief sought has real money value which can be objectively ascertained. Where a plaintiff has been made liable to pay specified amount and asked to pay the same and he claims to avoid it, obviously, he seeks relief to that effect and in case, he avoids payment of court fee by drafting the plaint in such a way that results in under valuation of the plaint and the relief, it will be a case of arbitrary and unreasonable under valuation which court is bound to correct.

Substantial relief asked for in the context of the facts of the case forms basis for settling correct court fee payable in the cases. Consistent view of this Court has been on lines we have taken in this case. There was no occasion for learned single Judge in Jagdish Prasad's case (supra) to chart different track. Assuming learned single Judge had some reservations about the view taken by two Division Benches of this Court, desirable it would have been to seek reference of the matter to larger Bench and we do not find any compelling reason justifying

departure from the settled legal position in this behalf.

Consequently, Jagdish Prasad's case (supra) has not been decided correctly and is, therefore, over ruled and the view taken in Mangilal Jain vs. MPEB, Jabalpur and others (1977-11 Weekly Notes, Note 480) and Badrilal Bholaram vs. State of M.P. and another (1963 MPLJ 717) is approved.

Result of aforesaid discussion is that order of the trial Court dated 23.12.1999 in C.S. No. 45A of 1999 requiring the plaintiff to pay ad-valorem court fee is confirmed. The plaintiff will pay the court fee within a month. Costs on parties.