

(1997) 11 MP CK 0021
In the Madhya Pradesh High Court
Case No : C.R. No. 2268 of 1995

Surya Kant Raja Ram Gupta

APPELLANT

Vs

Rajaram Corn Products Ltd. and Another

RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Court Fees Act, 1870 — Section 7

Citation : (1999) 1 MPLJ 160

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : Ravish Agrawal, for the Appellant; S.L. Saxena, General, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

Plaintiff, being aggrieved by the order dated 29-11-1995 passed by the Second Additional District Judge, Rajnandgaon in Civil Suit No. 4-A of 1995, whereby the plaintiff has been held to be liable to pay Court fee on the valuation of the suit, i.e., Rs. 20,73,577.55 u/s 7(iv)(c) of the Court Fees Act, has preferred this Civil Revision u/s 115 of the Code of Civil Procedure.

According to the plaintiff, presently he is the sole proprietor of the Rajaram Maize Products. According to the plaintiff, earlier, the aforesaid firm was a partnership firm and was registered in accordance with the provisions of the Indian Partnership Act and it had five partners which included the plaintiff. According to him dispute arose between the partners and accordingly a meeting of all the partners was held on 26-11-1992 and in the presence of the partners decision was taken to entrust Rajaram Maize Products to the plaintiff exclusively. Case of the plaintiff further is that after the entrustment of the aforesaid firm in his exclusive name he is running the firm and according to the document dated 26-11-1992 all the dues and liabilities have been paid.

Plaintiff has further averred that defendant No. 2 Subodh Kumar Gupta is plaintiff's eldest brother and he is the managing director of the defendant No. 1 Rajaram Corn Product Ltd. According to the plaintiff Rajaram Gupta, father of the plaintiff and defendant No. 2 is the Chairman of the Company; defendant No. 1. Earlier plaintiff and defendant No. 2 were the partners of Rajaram Maize Products. It is allegation of the plaintiff that defendant No. 1, i.e. Rajaram Corn Product Ltd. had an open and current account with Rajaram Maize Products. Defendant No. 1 has its units at Chandigarh and Bangalore. Rajaram Maize Products used to supply goods to defendant No. 1 at its both units and payments used to be made by them. Allegation of the plaintiff further is that on 31-3-1992 a sum of Rs. 12,53,865.00 was to be paid by Chandigarh unit of defendant No. 1 to Rajaram Maize Products. Similarly Bangalore unit of defendant No. 1 owed a sum of Rs. 8,27,014.46 to the plaintiff firm. Total sum according to the plaintiff thus, due against defendant No. 1 is Rs. 20,80,880.20. It is the assertion of the plaintiff that after 31-3-1992 defendant No. 1 sent bills for travelling of defendant No. 2 for participating in the meeting of the plaintiff's firm and other travelling bills, and the plaintiff got the amount of travelling bills deposited in the account of defendant No. 1. According to the plaintiff further adjustments were made in the accounts of defendant No. 1 and the plaintiff's firm and ultimately on 31-3-1993 a sum of Rs. 20,80,835.80 is outstanding against the two units of defendant No. 1. Case of the plaintiff further is that accounts Officer of defendant No. 2 by his letter dated 30-5-1991 informed that according to the direction of Rajaram Gupta, out of the dues of the plaintiff's firm outstanding with defendant No. 1 a sum of Rs. 18,30,000/- be treated as advance payment for share capital. Plaintiff was further informed by defendant No. 2 that the Company defendant No. 1, has allotted share of the aforesaid amount. It is the allegation of the plaintiff that the plaintiff's firm does not carry on the business of purchase and sale of shares and it has not given any application to defendant No. 1 for purchase of shares. It is the allegation of the plaintiff that allotment of shares, for the amount to be recovered by the plaintiff from defendant No. 1 is illegal and void. Plaintiff has further stated that stand of defendant No. 1 that in view of the allotment of the shares to the plaintiff's firm, defendant No. 1 is not liable to pay the said amount is absolutely illegal. In the aforesaid premises the plaintiff prayed for the relief that defendant No. 1 had no legal right to transfer share of the value of Rs. 18,30,000/- in the account of the plaintiff's firm and the plaintiff is entitled to receive the aforesaid amount from defendant No. 1. Plaintiff further prayed that he is entitled to receive sum of Rs. 2,43,577.55 from defendant No. 1. Besides the aforesaid relief plaintiff prayed for grant of interest at the rate of 18% per annum. Reliefs sought for by the plaintiff in the plaint deserves to be reproduced. It reads as follows :-

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Section 7(iv)(c) of the Court Fees Act reads as follows :

"7. Computation of fees payable in certain suits. - The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :

(i) xx xx (ii) xx xx (iii) xx xx (iv) in suits :-

(a) xx xx (b) xx xx (c) For a declaratory decree and consequential relief : to obtain a declaratory decree or order, where consequential relief is prayed;"

Stand of the plaintiff before the trial Court was that he shall be liable to pay Court-fee in accordance with Article 17(iii) of Schedule II of the Court Fees Act which reads as follows :

"17. Plaint or memorandum of appeal. - Thirty rupees in each of the following suits :-

(i) xx xx (ii) xx xx (iii) To obtain a declaratory decree where no consequential relief is prayed."

Shri Agrawal, however, appearing on behalf of the plaintiff submits that neither Section 7(iv)(c) of the Court Fees Act nor Article 17(iii) of Schedule II of the Court Fees Act applies in the facts of the present case. His stand is that the suit falls u/s 7(iv)(f) of the Court Fees Act. Section 7(iv)(f) of the Court Fees Act reads as follows :

"7. Computation of fees payable in certain suits. - The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :

(i) xx xx (ii) xx xx (iii) xx xx (iv) in suits :-

(a) xx xx (b) xx xx (c) xx xx (d) xx xx (e) xx xx (f) For Accounts :

for accounts;

According to the amount at which the relief sought is valued in the plaint or

memorandum of appeal, with a minimum fee of twenty rupees.

In all such suits the plaintiff shall state the amount at which he values the relief sought;"

As the matter pertains to payment of Court fee I thought it expedient to hear the Advocate General in the matter. Shri S. L. Saxena, Advocate General appeared on behalf of the State. Shri Jaiswal has appeared on behalf of the non-applicants. It is the stand of the Advocate General that the reliefs sought for by the plaintiff is for a declaration that allotment of shares in favour of the plaintiff is null and void and consequential relief sought is that the plaintiff is entitled to receive the said amount. According to his submission the relief sought for plainly attracts the provisions of Section 7(iv)(c) of the Court Fees Act.

As stated earlier, it is the submission of Shri Agrawal that the relief sought for by the plaintiff is covered u/s 7(iv)(f) of the Act. To drive home his point that in sum and substance the relief sought for by the plaintiff is for accounts and accordingly the provisions of Section 7(iv)(f) of the Court Fees Act is attracted. Shri Agrawal has taken me through the various paragraphs of the plaint. It is his submission that in artistic pleadings should not stand in the way of the Court in looking at the substance of relief asked for. In support of his submission Shri Agrawal has placed reliance on a judgment of the Supreme Court in the case of Shamsheer Singh Vs. Rajinder Prasad and Others, and my attention has been drawn to the following passage from the paragraph 4 of the judgment which reads as follows :-

"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."

There is no difficulty in accepting the submission of Shri Agrawal that to understand the relief asked for, the Court is not precluded from seeing the substance of statement made in the plaint and the relief but in the present case on facts. I find that the gravamen of the plaintiff's case is that share was allotted to the plaintiff's firm without any request and the decision to allot share be declared illegal and void and the amount refunded to the plaintiff. Thus, the authority relied on by the learned counsel is of no assistance. Yet another decision on which Shri Agrawal placed reliance is the judgment of the Supreme Court in the case of Kesharichand Jaisukhal Vs. The Shillong Banking Corporation, ; and my attention has been drawn to the following paragraphs of the said judgment:-

"The next point in issue is whether the proceedings are governed by Article 85 of the Indian Limitation Act, 1908 and if so whether the suit is barred by limitation.

The argument before us proceeded on the footing that an application u/s 45(D) of the Banking Companies Act is governed by the Indian Limitation Act, and we must decide this case on that footing. But we express no opinion one way or the other on the question of applicability of the Indian Limitation Act to an application u/s 45(D). Now, Article 85 of the Indian Limitation Act, 1908 provides that the period of limitation for the balance due on a mutual open and current account, where there have been reciprocal demands between the parties is three years from the close of the year in which the last item admitted or proved is entered in the account, such year to be computed as in the account. It is not disputed that the account between the parties was at all times an open and current one. The dispute is whether it was mutual during the relevant period.

(10) Now, in the leading case of *Hirada Basappa v. G. Muddappa*, 6 Mad. H.C. 142 at p. 144., Holloway, Acting C.J., observed :-

"To be mutual there must be transactions on each side creating independent obligations on the other and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations."

I am of the opinion that this authority is of no assistance for the determination of the question involved in the case. Lastly, Shri Agrawal has placed reliance on a judgment of the Supreme Court in the case *The Vishnu Pratap Sugar Works (P) Ltd. Vs. The Chief Inspector of Stamps, U.P.*, ; and my attention has been drawn to the following paragraph :

"It is true that for purposes of the Court Fees Act, it is the substance and not the form which has to be considered while deciding which particular provision of the Act applies. It cannot however, be gainsaid that the actual relief prayed for in the plaint was an injunction restraining the State and its authorities to realise from the appellant-company the aforesaid cess and the purchase tax. It is clear from the plaint when read as a whole that though the appellant-company alleged that the Acts were void and that therefore the State of U.P. or its authorities had no power to realise the said tax and the said cess. It may be that while deciding whether to grant the injunction or not, the court might have to consider the question as to the validity or otherwise of the said Acts. But that must happen in almost every case where an injunction prayed for. If for the mere reason that the Court might have to go into such a question, a prayer for injunction were to be treated as one for a declaratory decree of which the consequential relief is injunction all suits where injunction is prayed for would have to be treated as falling under Clause (a) of sub-section (iv) of Section 7 and in that view Cl. (b) of sub-section (iv-B) of Section 7 would be superfluous. The contention urged by Mr. Bishan Narain, therefore, cannot be accepted."

As stated earlier the plaintiff's relief is founded on the ground that the action of the defendant in allotment of shares is null and void and as a consequence thereof the plaintiff is entitled to a decree for the said amount. Here in the

present case specific relief has been sought for i.e. for decree of the amount adjusted towards the shares. In that view of the matter the authority relied on is clearly distinguishable.

As pointed out by the learned Advocate General plaintiff is required to pay Court-fee on the amount which he seeks to recover. In support of the aforesaid submission he has relied on a Division Bench judgment of this Court in the case of *Badrilal v. State of M.P* 1963 MPLJ 717; wherein it has been held as follows :-

"It is obvious that, in each of the two cases before us, the plaintiff seeks to avoid his liability under a deed executed by himself which but for the suit, would be enforced against him. In this situation, his contention that the claim made from him cannot really be grounded on the deed is not material for valuing the relief claimed by him. We are, therefore, of opinion that the value of the relief of injunction claimed in each case is the amount, the liability for which he seeks to avoid."

To impress upon me that the suit filed by the plaintiff is not a suit for accounts, as contended by Shri Agrawal for the plaintiff, the Advocate General as also Shri Jaiswal contend that in a suit for accounts relief for specific amount cannot be prayed as the amount which would be found due is still to be decided. In support of his submission he has placed reliance on a judgment of the Supreme Court in the case of *Commercial Aviation and Travel Company and Others Vs. Vimla Pannalal*, ; and my attention has been drawn to following paragraph :-

"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 cannot 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 cannot be valued on such hope, surmise or conjecture."

In the present case I have found that the plaintiff has prayed for a decree for the amount which has been adjusted in the plaintiff's account in the form of share, after declaring the said action to be null and void. This plainly brings the case of the plaintiff u/s 7(iv)(c) of the Court Fees Act. I do not find any error in the order impugned.

In the result, I do not find any merit in this civil revision and it is dismissed accordingly with cost. Hearing fee Rs. 1,000/-.