(1995) 04 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No''s. 446, 462 and 621 of 1995

Syndicate Bank and Others APPELLANT

Vs

S.S. Printers and Others RESPONDENT

Date of Decision : 25-04-1995

Acts Referred:

Bombay Court Fees Act, 1959 — Article 1, 18, 2

Citation : (1995) 3 BomCR 429 : (1995) 97 BOMLR 269 : (1995) 2 MhLj 198

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Advocate : K.D. Parikh and Virajit V. Tulzapurkar, instructed by Kanga and Co., Janki Rege, instructed by M.S. Bodhanwala and Co. and G.S. Patel, instructed by Little and Co, for the Appellant; P.D. Anklesaria, Govt. Pleader, for the Respondent

Judgement

A.P. Shah, J.—The aforesaid three bank suits are placed before me in view of objection raised by the Prothonotary and Senior Master that the said suits embrace two or more distinct subjects having regard to the provisions of Section 18 of the Bombay Court Fees Act, 1959 ("Act", for short), each such subject is liable to be charged separately and since the ad valorem fee for each subject is much more than Rs. 15,000/-, which is the maximum amount of Court fees payable on the plaint under proviso to Schedule 1, Article 1 of the Act, the plaintiffs are liable to pay Court fee of Rs. 15,000/- on each subject separately.

2. Mr. Tulzapurkar, Ms. Rege and Mr. Patel, learned Advocates appearing for the plaintiffs, submitted that the objection raised by the Prothonotary and Senior Master is completely misconceived. According to the learned Advocates, the suits as framed did not embrace two or more distinct subjects as ruled by the Prothonotary and Senior Master and that the provisions of section 18 were not attracted. It was pointed out that each of the said suit is based upon a single equitable mortgage and, therefore, even though monies have been advanced by the banks under different facilities, the suits cannot be said to involve more than one cause of action or subject. The learned Advocates further urged that in any

event the maximum Court fee payable on any plaint whether involving one or more subjects is Rs. 15,000/- and as the banks have paid the maximum Court fee on each of the said suit, objection raised by the Prothonotary and Senior Master must be rejected. On the other hand, it was urged by the learned Government Pleader that the suits in question involve different causes of action i.e. more than one subject and as such the Court fee is liable to be assessed separately for each subject u/s 18 of the Act. The learned Government Pleader further urged that the expression "Plaint/Memorandum of Appeal" in Schedule 1 of the Act must necessarily mean an instrument relating to one cause of action and if there are several causes of action (subjects) incorporated in the plaint, each separate cause of action i.e. subject, with relief claimed would comprise and be treated as a separate plaint by itself and as such on each cause of action (subject) the maximum Court fee of Rs. 15,000/- will be payable. It was also urged by the learned Government Pleader that unless proviso to Schedule 1, Article 1 is not construed harmoniously with the provisions of section 18, there will be a conflict between the said proviso and section 18. The learned Government pleader thus fully supported the objection taken by the Prothonotary and Senior Master.

3. Before dealing with rival contentions advanced at the bar, it would be proper to give a brief historical survey of Court fees legislation in this State. Prior to the enactment and coming into force of the Bombay Court Fees Act, 1959, Court-fees was a Central subject and in the Central enactment there was always a ceiling on the amount of Court fees payable. The Bombay Court Fees Act, 1959, however, as originally enacted, failed to contain provision imposing such ceiling, but this obviously was an accidental omission and by Act 16 of 1960 enacted within a few months a ceiling was introduced and such ceiling of the amount of Court fees remained operative upto 1974 when by an Amending Act which was published in the Official Gazette on December 12, 1974 the provision containing the ceiling came to be deleted. The said Amending Act was declared unconstitutional and struck down by this Court in Indian Organic Chemicals Ltd. v. Chemtex Fibres Inc.,Bom. L.R. Vol. LXXXIII 406. Thereafter, by Amending Act, of 1984 the provision prescribing ceiling on the Court fees was reinserted on the statute book with effect from March 1, 1984.

4. Section 18 of the Act provides :

" Where a suit embraces two or more distinct subjects the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act."

Article 1, Schedule I, gives the amount of fees chargeable on plaints or memoranda of appeal not otherwise provided for in the Act. Article 1 is as follows :-"Plaint or memorandum of appeal not otherwise provided for this in Act) or of cross-objection presented to any Civil or Revenue Court;" and the proper fee is stated and at the end of Article 1 is the following proviso:

"Provided that the maximum fee leviable on a plaint or memorandum of appeal or of cross objection shall be fifteen thousand rupees."

The question before me is whether this proviso applies to limit the fee chargeable on a plaint or memorandum of appeal of the nature of those mentioned in section 18.

5. The first and the foremost question is what is the scope of section 18. As already indicated the provision fixing the amount of fees chargeable on a plaint or memorandum of appeal is to be found in the first Schedule. Section 18 of the Act makes no provision of this kind for the proper fee to be charged; it merely lays down a general rule that, where a suit embraces two or more distinct subjects, the plaint shall be charged with the aggregate amount of fees to which the plaint or memorandum of appeal in suit embracing separately each of such subjects would be liable under the Act. Section 18 does not deal with the fixation of the amount of the fee, but, on the other hand, expressly refers to other parts of the Act, that is to the schedules, which alone deal with the amount. Thus the general rule in section 18 becomes necessarily governed by rules as to the amount of the fee to be found in the schedules, and among them by the proviso in Article 1, Schedule I, limiting the amount of fee on a plaint or memorandum of appeal of the nature of those referred to in section 18. It clearly appears to me that the proviso at the end of Article 1 of Schedule 1 applies generally and fixes the maximum fee leviable on any plaint or memorandum of appeal at Rs. 15,000/-, whether such plaint or memorandum of appeal contains one or more distinct subjects.

6. The learned Government Pleader, however, strenuously contended that each cause of action i.e. the subject should be treated as a separate plaint itself and, therefore, the maximum limit of Rs. 15,000/- on each plaint should be understood to mean a maximum limit on each cause of action or subject and relief claimed in respect thereof. In other words, according to the learned Government Pleader, the word "plaint" or "memorandum of appeal" should be confined to a plaint or a memorandum of appeal containing only one cause of action or subject. It was also urged that otherwise there would be a conflict between the proviso to Article 1 and the provisions of section 18 of the Act, which refer in terms to aggregate fee and do not prescribe the maximum limit of Rs. 15, 000/-. It is not possible to accede to the contention of the learned Government Pleader. In the first place, I do not find any justification to construe the word "plaint" or "memorandum of appeal" in such artificial manner, for there is intrinsic evidence in the scheme of the Act that a plaint is treated separately from a cause of action. The plaint is defined in section 2(c) to include a written statement pleading a set-off or counter claim. Thus the distinction between the plaint and a cause of action is clearly evident to the mind of the Legislature and, therefore, it is not possible to confine the proviso to a plaint or memorandum of appeal containing one cause of action as suggested by the learned Government Pleader. Secondly I do not find any substance in the apprehension expressed by

the learned Government Pleader that there is a likelihood of conflict between the proviso to Article 1 and Section 18, because the proviso is in no way inconsistent with the application of the general rule contained in Section 18, but which governs its application by fixing the maximum limit of Rs. 15,000/-. The view which I am taking is also supported by an unreported judgment of S.K. Desai, J. in Bank of Baroda v. Jaifabs Rayon Industries Pvt. Ltd. & Ors., dated January 16, 1976 (Suit No. 1096 of 1974). It was held by Justice S.K. Desai that under proviso to Article 1, Schedule 1, maximum fee leviable on a plaint, whether the plaint embraces one cause of action only or it embraces a number of distinct and separate causes of action, is Rs. 15,000/-. I am also supported by a Full Bench Judgment of Allahabad High Court in Raghobir Singh v. Dharam Kuar & another ILR 1881 All 108 where on construction of similar provisions of the central Act, it was held that the proviso prescribing the ceiling applies to the plaint whether it contains one cause of action or number of causes of action. The decision of the Allahabad High Court has been followed by a Division Bench Judgment of Calcutta High Court in Kashi Prosad Singh v. Secretary of State for India in Council ILR Cal 1902 140. The Division Bench of Nagpur High Court has also taken a similar view in C.P. Syndicate v. Sardar Naurangsingh AIR 1950 Nag 189.

7. Turning then to the second question as to whether the suits filed by the banks involve more than one subject, it is clearly seen that all the three suits are based upon a single mortgage through loans have been advanced under different heads or facilities. The learned Government Pleader was unable to show as to how the plaints in these suits can be said to embrace more than one distinct subject. The learned Government Pleader, however, made a faint attempt to draw support for her case from a judgment of Andhra Pradesh High Court in Firm of Koppula V. & Son v. Rayalaseema Bank, Ltd. and another. AIR 1957 A P 1019. In my opinion, the suit which was being considered by a Single Judge of Andhra Pradesh High Court was rather different than the suits in the present case. In the suit before Andhra Pradesh High Court, prayer was for the enforcement of two separate mortgages incorporated in two distinct mortgage deeds, one dated February 18, 1945 and other dated March 31, 1949. The plaintiff in that suit was required to consider his claim by reason of the provisions contained in section 67-A of the Transfer of Property Act where it was held by the Andhra Pradesh High Court that in view of such consolidated suit the plaintiff was required to calculate and pay the court fee as of two separate causes of action. In any event, the question is purely academic in as much as in all the three suits the plaintiff banks have paid the maximum Court fee of Rs. 15,000/-.

8. Ms. Rege for the applicant brought to my notice that the office while dealing with plaints involving more than one subject is assessing the Court fee on an aggregate amount of the claim made under different subjects. If such practice is followed by the office, it is obviously incorrect. On a plain reading of section 18, it is clear that the Court fee is required to be assessed on each subject separately and then the aggregate amount of Court fee is leviable on the plaint, of course subject to the ceiling prescribed in proviso to Article 1, Schedule 1.

9. In view of the foregoing discussion, the objection raised by the Prothonotary and Senior Master is overruled and he is directed to number the suits subject to removal of other objections, if any.

