

(1955) 09 BOM CK 0074
In the Bombay High Court
Case No : Civil Reference No. 8 of 1955

Taxing Officer, High Court

APPELLANT

Vs

Jamnadas Dharamdas and Others

RESPONDENT

Date of Decision : 12-09-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(2), 35
Constitution of India, 1950 — Article 227
Court Fees Act, 1870 — Article 1, 4, 7(1)
Displaced Persons (Debts Adjustment) Act, 1951 — Section 10, 11, 13, 17, 2(12)

Citation : AIR 1956 Bom 563 : (1956) 58 BOMLR 139 : (1956) ILR (Bom) 211

Hon'ble Judges : Shah, J

Bench : Single Bench

Advocate : V.S. Desai, Addl. Assist. Government Pleader, for the Appellant; R. Jethmalani, B.K. Hirani, L.G. Mulchandani, R.L. Mulchandani, V.N. Chhatrapati, H.M. Chhatrapati and C.S. Trivedi, for the Respondent

Judgement

1. This Reference has been made by the Taxing Officer to resolve a dispute as to the proper court-fees payable on memoranda of appeals filed against "decrees" passed in proceedings under the Displaced Persons (Debts Adjustment) Act, 1851. The decrees sought to be challenged in appeals to this Court were passed either u/s 10 or u/s 13, Displaced Persons (Debts Adjustment) Act.

It was urged on behalf of the appellants that the appeals are not required to be stamped ad valorem under Schedule I, Article 1 Court-fees Act and that the demands made by the Registrar of this Court for payment of Court-fee ad valorem on the value of the subject-matter is unjustified. The matter was referred to the Taxing Officer and he has made this reference.

2. In order to appreciate the contentions which have been raised, it is necessary to refer to relevant provisions of the Displaced Persons (Debts Adjustment) Act (No. 70 of 1951). Sub-section (8) of Section 2 defines a "displaced creditor" and Sub-section (9) of that section defines a "displaced debtor". Subsection (12)

defines a "tribunal" as being any civil Court specified u/s 4 having authority to exercise jurisdiction under the Act.

Section 3 provides that the provisions of the Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent herewith contained in any other law for the time being in force, or in any decree or order of a Court, or in any contract between the parties. Section 4 authorises the State Government to specify any civil Court or class of civil Courts as the tribunal or tribunals having authority to exercise jurisdiction under the Act and also authorises the State Government to define the areas in which and the extent to which such jurisdiction may be exercised.

By Section 5, a displaced debtor is given the right to make an application for adjustment of his debts to the Tribunal within the local limits of whose jurisdiction he actually resides. Sub-section (2) of Section 5 provides what an application made by a displaced debtor shall contain, By Sub-section (1) of Section 9 it is provided that if there is a dispute as to whether the applicant is a displaced person or as to the existence of the amount of the debt due to any creditor or the assets of any displaced debtor, the Tribunal shall decide the matter after taking such evidence as may be adduced by the parties concerned and shall pass a decree in relation thereto as it thinks fit.

By Sub-section (2) of Section 8, it is provided that if there is no dispute or if the respondents do not appear or have no objection to the application being granted, the Tribunal may, after considering the evidence placed before it, pass a decree in relation thereto as it thinks fit. It is evident from the terms of Section 9 that the Tribunal is entitled in cases where there is a dispute as also in cases where there is no dispute to pass a decree in favour of a displaced debtor who has applied for adjustment of his debts.

Section 10 provides for adjudication of claims made by displaced persons against displaced debtors. By Section 11 it is provided that where an application is made u/s 10 the Tribunal shall require the displaced debtor to show cause against the application or to make an application u/s 6. u/s 13, a displaced creditor may make an application claiming a debt from any other person who is not a displaced person, and by Section 14 it is provided that, the Tribunal may, after taking such evidence as may be produced before it, pass a decree in relation thereto as it thinks fit.

It appears that Section 9 authorises the Tribunal to pass a decree for adjustment of debts of a displaced debtor; Section 10 provides for adjudication of claims by displaced creditors against displaced debtors and for passing decrees thereon, and Section 13 provides machinery for adjudication of claims by displaced creditors against non-displaced debtors. Section 21 authorises the Tribunal, on the application of a displaced debtor, to bring a decree passed by a Civil Court in accord with the provisions of the Act. That provision is in substance a corollary to Section 3 of the Act.

By Section 35, all proceedings under the Act, save as otherwise expressly provided in the Act or in any rules made thereunder, shall be regulated by the provisions contained in the Code of Civil Procedure. Section 27 provides that the Tribunal passing a decree on the application of a displaced person, shall prepare a complete schedule of the creditors and of the assets and liabilities of the displaced person.

Decrees and orders passed by the Tribunal are by Section 28 of the Act made executable by the Civil Court which is specified as the Tribunal in the same manner as it could have done if they were decrees or orders passed by it as a Civil Court. Chapter III, which includes Sections 29 to 39, provides inter alia for machinery for adjustment and scaling down of debts. It also provides for cessor of interest, exemption from arrest of displaced person and exemption from attachment of certain property of a displaced person.

The Chapter also provides for making orders for payment of the amount directed to be paid by instalments and for variation of maintenance allowances and extension of the period of limitation in certain matters. Chapter IV deals with appeals and enables appeals to be filed against final decrees or orders of the Tribunal and orders made in the course of execution of decrees or orders of the Tribunal, which if passed in the course of execution of decrees or orders of a civil Court are appealable under the Code of Civil Procedure.

3. The adjudication by the Tribunal whether it is on an application u/s 5 by a displaced person or on an application u/s 13 by a displaced creditor against a non-displaced person is called a decree. A decree passed by the Tribunal is made executable by Section 28 by the Civil Court which for purposes of the trial of the application is a Tribunal, as if it is a decree or order passed by it in its ordinary jurisdiction and the decree is made appealable to the High Court within whose jurisdiction the Tribunal functions.

The question which is to be determined in this reference is whether on a memorandum of appeal u/s 40 the appellant is required to pay court-fee ad valorem on the value of the subject-matter under Schedule 1, Article 1, Court-fees Act or a fixed fee under Schedule II, Article 11, Court-fees Act or any court-fee at all. It is the contention of the learned Assistant Government Pleader that court-fee on the memo of appeal is payable on the value of the subject-matter of the appeal under Schedule I, Article 1.

It is contended by Mr. Jethmalani on behalf of the appellants that no court-fee at all is payable, because the provisions of the Court-fees Act do not apply to appeals filed under the Displaced persons (Debts Adjustment) Act. In the alternative it is contended by Mr. Jethmalani that if the provisions of the Court-fees Act do apply a fixed court-fee under Schedule II, Article 11, Court-fees Act will be payable on the memo of appeal.

4. It is urged by the learned Assistant Government Pleader that the Legislature has called adjudications to be made by the Tribunal, decrees, that the decrees

are made executable by the Civil Court and appealable to the High Court, and the decrees are in their nature final decisions so far as the Tribunal is concerned and relate to Civil disputes between the parties.

He further submits that the adjudications under the Displaced Persons (Debts Adjustment) Act, are not only called decrees, but are enforceable as decrees and are made appealable as decrees and therefore all the normal indicia of a decree so called in the CPC are present, and, therefore, the Court-fee payable on the memo of appeal against such a decree must be ad valorem on the value of the subject-matter under Schedule I, Article 1, Court-fees Act.

Schedule I, Article 1, Court-fees Act provides for payment of court-fee on a plaint, written statement, pleading, a set-off or a counter-claim or memorandum of appeal, not otherwise provided for in the Act, or on cross-objections on the value of the subject-matter of the appeal. Schedule II, Article 11, provides for payment of fixed court-fee on a memorandum of appeal when the appeal is not from a decree or an order having the force of a decree.

If the appeal is from a decree, evidently Schedule II Article 11, does not apply. But the expression "decree" has not been defined in the Court-fees Act. The expression "decree" as used in the Court-fees Act appears to have the same connotation as that expression has in the Code of Civil Procedure. The Court-fees Act is intended to be a complementary piece of legislation to the CPC dealing with payment of court-fees in matters which are tried by the civil Courts.

If the expression "decree" has the same connotation as that expression has in the CPC it would be difficult to regard an adjudication made by a Tribunal appointed under the Displaced Persons (Debts Adjustment) Act as a decree within the meaning of the Court-fees Act, even though it is so called under the Displaced Persons (Debts Adjustment) Act.

In order that an adjudication should amount to a decree under the Code of Civil Procedure, it must be a formal expression of an adjudication conclusively determining the rights of the parties with regard to all or any of the matters in controversy in the suit. The proceedings to be initiated by displaced persons for adjustment of their debts or by displaced creditors or displaced debtors are by applications.

Such applications cannot be regarded as plaints in civil suits and are not required by law to bear ad valorem court-fee under Schedule I, Article 1, Court-fees Act. It is true that the provisions of the CPC are made applicable to the proceedings which are commenced by application. But the proceedings under the Act cannot be called suits strictly so called.

Again the Tribunal in dealing with an application u/s 5, Displaced Persons (Debts Adjustment) Act is not merely deciding a claim made by a debtor, but is dealing with an application for adjustment of his debts. In deciding the application, the Tribunal is required first to ascertain the extent of liability, then to ascertain his

paying capacity and then to scale down the debts so as to adjust the quantum of liability by relating it to the paying capacity of the debtor and then to make payable the amount which may be declared to be due by the debtor by instalments having regard to his present means, chances of future income, and the domestic obligations.

From the scheme of the Displaced Persons (Debts Adjustment) Act, it is evident that the Tribunal has to decide several questions beside the question of liability of a displaced debtor. The Act also makes agreement relating to adjustment of debts between the displaced debtor and creditors holding more than two-thirds of the value of the debts binding upon other creditors, if the terms of the agreement are just and fair.

In substance the Act has devised machinery for making an award adjusting liabilities of a debtor and to provide for scaling down his debts and for satisfaction of his liabilities. Even if the Legislature has chosen to call such an award a decree, it cannot amount to a decree within the meaning of Sub-section (2) of the CPC and in any judgment the award cannot be regarded as a decree within the meaning of Schedule II, Article 11, Court-fees Act.

It was held in "Upadhyaya Thakur v. Persidh Singh" 23 Cal 723 (A) that where proceedings are commenced for settlement of rents under the Benar "Tenancy Act, and an appeal is preferred from an adjudication made thereunder, the appeal is not governed by Schedule I, Article 1, Court-fees Act. On p. 729, the Full Bench observed that

"the proceedings for settlement of rents cannot be regarded as a suit. The proceedings are, u/s 104(2) and the Government Rules, initiated, not by a plaint; but by an application, and this application is not subject to an ad valorem court-fee duty, as suits for money are subject under the provisions of Section 7(1), Court-fees Act, but according to a notification of the Government of India, No. 5086 S. R. published at p. 157, Part IA of the "Calcutta Gazette of 17-10-1894 to a Court-fee of 8 annas.

If then, the case is not a suit at its initiation, and need not be commenced by a plaint, why should it be a suit and why should a memorandum of appeal be required to be presented in it at a later stage?..... None of the rules framed by Government under the Tenancy Act lays down that such a proceeding shall be a suit. Rule 30 (b) merely prescribes that the proceeding shall be dealt with as a suit, that is to say, in respect of its "procedure", which is all that the provisions of Section 139, Clause (1), allow Government to regulate by means of a rule...

For the same reason Section 17 of the Act is also inapplicable; so that neither one fee of Rs. 10 nor as many fees of Rs. 10/- as there are tenant-defendants in the proceeding, should be paid on the applicants' memorandum of appeal to the Special Judge. We can find no Article of the Court-fees Act expressly applicable to the applicants' memorandum of appeal to the Special Judge.

But, if the proceeding be not a suit, then the memorandum of appeal is nothing more or less than an application, and, consequently subject to One fee of eight annas only under Article (1) Clause (b), (2) Schedule II, Court-fees Act".

Undoubtedly when an application is made by a displaced creditor against a non-displaced debtor, the trial of the proceedings assumes the form of the trial of a suit, and there will be no question of adjustment of debts.

But if the adjudications made on an application for adjustment of debts by a displaced creditor are called decrees, and the same expression is used to designate adjudication of the Tribunal when a claim is made by a displaced creditor against a non-displaced debtor, I see no reason for making a distinction in the matter of court-fee payable on appeals against an adjudication made u/s 9 and adjudication u/s 13 of the Act.

5. Mr. Jethmalani submitted that appeals u/s 40, Displaced persons (Debts Adjustment) Act are not governed by the provisions of the Court-fees Act, and in support of that contention he pointed out the provisions of Section 4, Court-fees Act.

Now, Section 4, Court-fees Act is a charging section in respect of documents filed in High Courts, and in so far as that provision is relevant for considering the present Reference, it provides that no document of any of the kinds specified in the First or Second Schedule to the Act annexed as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence, or in the exercise of its jurisdiction as a Court of Reference or Revision.

Mr. Jethmalani urges that by Section 4, the civil Court which is competent to entertain and adjudicate upon the application is called a Tribunal and it is not called a Court. He urges further that even though the Tribunal is subject to the superintendence of the High Court, it is not a Court subject to the superintendence of the High Court, and there being no provision in the Court-fees Act, which renders documents, filed in the High Court in the exercise of its appellate jurisdiction over Tribunals, subject to its superintendence, no court-fee at all is payable.

Mr. Jethmalani has in support of that contention brought to my notice two decisions, one, a decision of the Nagpur High Court reported in "Moreshwar v. Commissioner, Raipur" AIR 1941 Nag 129 (B), and, the other, a decision of the Allahabad High Court in "Abdul Rahman v. Abdul Rahman" AIR 1925 All 380 (C).

Before I refer to the decisions in detail, it may be pertinent to observe that power to adjudicate upon applications which can be initiated under the Act is conferred upon the civil Courts and the Civil Courts are called Tribunals for the purpose of the Act when exercising the special powers conferred upon them.

Section 4 of the Act makes it abundantly clear that only a civil Court or class of civil Courts may be invested with jurisdiction there under the Act.

The provisions of the CPC regulate the procedure in the applications and the decrees passed by the Tribunals" are made executable by the Court in its jurisdiction u/s 28 and they are appealable u/s 40. For all practical purposes, the Tribunal is a Civil Court, though for distinguishing it when exercising the special powers conferred upon it by the Act, it is called a Tribunal.

It is clear from the scheme of the Act that displaced persons who are intended to be specially dealt with, were to be given certain benefits not available to other litigants. But the disputes contemplated to be dealt with under the Act are civil disputes, and are not disputes concerning rights and obligations, specially created thereby. In my view therefore the Tribunal is a Court within the meaning of the Court-fees Act and u/s 4, fourth paragraph a Court subject to the superintendence of the High Court.

6. In AIR 1941 Nag 129 (B), a District Judge, acting u/s 14, C. P. Local Fund Audit Act, 1933, was held not to be acting as a Court but as a special Tribunal in much the same way as it did under the Workmen's Compensation Act. It was held that an appeal from the decision of the District Judge to the High Court was not from a Court but from a special Tribunal and on an appeal filed from the decision of the District Judge to the High Court, no court-fee at all was payable.

The dispute which was intended to be decided by the District Judge was substantially not a dispute relating to a civil matter, and, in any event, the District Judge was a special Tribunal and was held not to be a Court and the District Court not being a Court, evidently, Section 4, Court-fees Act was held not applicable to an appeal from the decision. That case can have no application to the scheme of the Displaced Persons (Debts Adjustment) Act.

The Full Bench decision in Abdul Rahman Vs. Abdul Rahman can also have no application to the present appeals. That was a case in which an appeal was filed against an order of a Commissioner on an election petition decided under the U. P. Municipalities Act 2 of 1916 to the High Court, and it was held that the Commissioner on an election petition being a special Tribunal, no appeal lay to the High Court.

We are not concerned in this case with the question whether an appeal does or does not lie to the High Court, against the decisions of the Tribunals under the Displaced Persons (Debts Adjustment) Act. We are concerned with the question whether the Court which is designated as a Tribunal under the Displaced Persons (Debts Adjustment) Act is a Court subject to the superintendence of the High Court within the meaning of Section 4, Court-fees Act.

7. In my view, the appeals are governed by) the provisions of Schedule II, Article 11, Court-fees Act and are chargeable with court-fee accordingly.

8. Answer accordingly.