

(1997) 09 PAT CK 0037
In the Patna High Court
Case No : Civil Revision No. 911 of 1997

Uday Prakash Dwivedi

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 25-09-1997

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 10, 4, 4, 43, 5
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 103
Court Fees (Bihar Amendment) Act, 1995 — Article 13, 17, 7
Court Fees Act, 1870 — Article 17

Citation : (1997) 2 PLJR 786

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Shashi Shekhar Dwivedi, Ravi Shanker Dwivedi, V.N. Pathak and Sheela Pandey, for the Appellant; Shailesh Kr. Sinha and Kishore Kr. Sinha, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—This civil revision by the Plaintiff is directed against the order dated 3.5.97 passed by the 1st Subordinate Judge, Chapra in Title Suit No. 21 of 1997 asking him to pay ad valorem Court-fee on the plaint.

2. The Petitioner has filed Title Suit No. 21 of 1997 seeking declaration that there was no outstanding dues of the Defendant-Punjab National Bank against him and Certificate Case No. 10 of 1993-94 was fit to be cancelled, and for further declaration that the order dated 7/10.9.96 passed by Defendant No. 3 District Certificate Officer, Chapra was illegal, without jurisdiction and nullity in the eye of law. The Petitioner has paid Court-fee of Rs. 250/- on the plaint. The Saristedar submitted report to the effect that he should pay ad valorem Court-fee. The Petitioner objected to the report stating that the suit has been filed u/s 43 of the Bihar Public Demands Recovery Act (hereinafter called, "the PDR Act") and in terms of Article 17(i) of Schedule-II of the Court-Fees Act, 1870 corresponding to

Article 13(i) of schedule-II of the Court-Fees (Bihar Amendment) Act, 1995 (hereinafter called, "the Court-Fees Act"), he is liable to pay fixed Court-fee of Rs. 250/-. The Court below rejected his contention. It has observed that the Petitioner has not only sought declaration but has also prayed for consequential relief. Therefore, he is liable to pay ad valorem Court-fee u/s 7(iv)(c) of the Court-Fees Act.

3. It is true that the relief has been claimed in the manner as if it was a declaratory suit. But while considering the question of Court-fee, the substance of the case is to be seen and not the form in which relief is claimed. Upon reading of the plaint there does not appear to be any doubt that the suit, in substance, is one for cancellation of the certificate which has been issued against the Petitioner under the provisions of PDR Act and comes within the ambit, of Section 43 of that Act.

4. Before noticing the provisions of Section 43 of the PDR Act it would be apt to quote Article 17(i)/13(i) of Schedule II of the Court-Fees Act as hereunder:

Plaint or memorandum of appeal in each of the following suits:

(i) to alter or set aside a summary decision or order of any of the civil Courts but not established by Letters Patent or of any revenue Court;

(ii)...

The key words of the Article, it would appear, are "summary decision or order". There can not be any dispute that the Certificate Officer appointed under the PDR Act is a revenue Court. In order to find out the nature of the "decision" of the Certificate Officer it would be appropriate to notice the scheme of the said Act, so far as relevant.

5. Section 4 of the PDR Act provides that when the Certificate Officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the prescribed form, stating that the demand is due and shall cause the certificate to be filed in his office. Section 5 contemplates requisition for recovery of any public demand payable to any person other than the Collector. Section 6 provides that on receipt of such requisition the Certificate Officer, if he is satisfied that the demand is recoverable and that recovery is not barred by law, may sign a certificate stating that the demand is due and shall cause the certificate to be filed in his office. Section 7 provides for service of notice along with copy of the certificate on the certificate-debtor. Section 9 provides that the certificate-debtor may within the prescribed period file a petition denying his liability, in whole or in part. Section 10 contemplates hearing and determination of such petitions. It lays down that the Certificate Officer, if necessary, may take evidence and determine whether the certificate-debtor is liable for the whole or any part of the amount for which the certificate was signed, and may set aside, modify or vary the certificate accordingly. Where he is of the opinion that the petition involves a bonafide claim of right to property, he is to refer the petition to the Collector for

orders. If the Collector is also satisfied in this regard, he shall make an application cancelling the certificate. Section 60 provides for appeal. Section 62 provides for revision. These orders are subject to the result of the suit which the Certificate-debtor may institute in the Civil Courts u/s 43. It would be appropriate at this stage to quote Section 43, so far as relevant, as hereunder:

Suit in Civil Court to have certificate cancelled or modified.-The certificate-debtor may, at any time within six months-

- (1) from the service upon him of the notice required by Section 7, or
- (2) if he files, in accordance with Section 9, a petition denying liability from the date of the determination of the petition, or
- (3) if he appeals, in accordance with Section 60, from an order passed u/s 10 from the date of the decision of such appeal,

bring a suit in a Civil Court to have the certificate cancelled or modified and for any further consequential relief to which he may be entitled:

Provided that no such suit shall be entertained -

(a) in any case, if the certificate-debtor has omitted to file, in accordance with Section 9 a petition denying liability, or to State in his petition denying the ground upon which he claims to have the certificate cancelled or modified, and cannot satisfy the Court that there was good reason for the omission, or

(b) ...

6. From the aforementioned provisions it would appear that the signing of the certificate u/s 4 of Section 6 of the Act is on the basis of prima facie ex parte satisfaction of the Certificate Officer. No doubt, Section 10 contemplates determination of the liability in presence of the certificate-debtor/objector when the certificate may be modified, varied or set aside, but this is obviously subject to the result of any suit which may be brought by aggrieved certificate-debtor. In other words the decision of the Certificate Officer u/s 10 is not conclusive of the matter. The order of the appellate authority u/s 60 does not stand on any higher pedestal. It may be noted that for bringing suit u/s 43 the certificate-debtor need not necessarily wait for determination of the objection petition under Sections 9/10 or the result of the appeal u/s 60, he may straightway file a suit upon service of notice u/s 7 after filing objection u/s 9 as laid down in proviso (a).

7. The expression "summary" or "summary decision" has not been defined in the Court-Fees Act. Dwelling upon the meaning of the expression Sir Richard Couch, C.J., in *Maharaja Dhiraj Mahtab Chand Roy Bhadur v. Bacharam Hazra* (1870) 5 Beng LR 162 observed as follows:

It is the decision of a Court which hears and determines the matter, but does not finally conclude the parties, a proceeding, in which the Court makes an order and determines the matter in issue, if I may so describe it, for the present occasion.

In *Dayachand Nemchand v. Hemchand Dharamchand* ILR 4 Bombay 515, a Full Bench of the Bombay High Court observed,

The circumstance that the legislature expressly recognises the right of the party defeated in the proceeding to bring a regular suit to re-agitate the point decided, is a strong indication that the Legislature regarded the decision as summary.

While considering the nature of the order passed under Order XXI Rule 101 of the CPC this Court in *Mathura Pd. Missir v. Sukhdeo Rai* 1976 PLJR 519, held that decision of the executing Court on objection under Rule 100 of Order XXI is summary decision liable to be set aside in a suit under Rule 103 for which a fixed Court fee under Article 17(i) of Schedule II of the Court-Fees Act is payable. I may also refer to the cases of *Joy Durga Dassi and Others Vs. Maharaj Kumar Sourish Chandra Roy Bahadur*, and *Kapoor Chand and Another Vs. The State and Others*, , relied upon by the counsel for the Petitioner, the decision wherein was rendered in the context of the suit under identical provisions of the respective State Public Demand Recovery Act.

8. In the above premises, it has to be held that the order of the Certificate Officer is a "summary decision or order" within the meaning of Article 17(i)/13(i) of the Second Schedule of the Court-Fees Act. That being the position, the Petitioner is liable to pay only fixed Court-fee. The impugned order of the Court below asking him to pay ad valorem Court-fee can not be said to be in accordance with law.

9. In fairness to the counsel for the opposite party I may mention that in support of his contention that ad valorem Court-fee u/s 7(iv)(c) of the Court-Fees Act is payable, he placed reliance on *Kedar Nath Gupta and Another Vs. Dulhin Moti Kuar and Others*, and *Bishwanath Agarwalla v. Nathibai Sharma* 1972 PLJR 460. The decisions aforesaid related to suit for declaration that decree of the Civil Court was nullity and have no application to the case in hand which relates to the "summary decision" of a revenue Court.

10. In the result, the civil revision is allowed, the impugned order is set aside. I will make no order as to cost.