THE INDIAN LAW REPORTS

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APPELLATE CIVIL

Before Bhandari, C. J. and Falshaw, J.

S. ATMA SINGH,—*Appellant.*

versus

SHRI MOHAN LAL AND OTHERS,—*Respondents.*

1954

Nov., 3rd

Regular First Appeal No. 29-D of 1953.

Court Fees Act (VII of 1870)—Schedule I, Article I, Code of Civil Procedure (V of 1908)—Order VII, rule 11—Subject matter in dispute in appeal, meaning of—Trial Court holding plaint to be insufficiently stamped—Plaintiff asked to make good the deficiency in Court Fee—Deficiency not made good and plaint rejected under Order VII, rule 11, Code of Civil Procedure— Appeal against the order rejecting the plaint—Court Fee payable in appeal when no dispute as to the value of the property in suit—Whether Court fee to be paid on the amount of stamp demanded or on the amount of stamp in dispute.

Held, that where the value of the property in suit is not disputed an appeal against an order rejecting a plaint under Order VII, rule 11, Code of Civil Procedure should be valued for the purposes of Court Fee on the amount of stamp in dispute between the parties and *ad valorem* Court fee is payable on the difference between the Court fee paid and the Court fee held by the Trial Court to be due.

Regular 1st Appeal from the order of Shri B. L. Malhotra, Sub-Judge, 1st Class, Delhi, dated 6th February, 1953, rejecting the plaint under Order 7, Rule 11, C.P.C., for failing to make up the deficiency in Court fee.

GURBACHAN SINGH, for Appellant.

A. R. WHIG and M. R. CHHABRA, for Respondent.

JUDGMENT

Falshaw, J. FALSHAW, J. This is an appeal against the order of a Sub-Judge at Delhi rejecting under Order VII, Rule 11, Civil Procedure Code, the plaint of the appellant, who had instituted a suit challenging by way of pre-emption the sale by Mohan Lal defendant No. 1 of 60,000 square yards of land at Sadhora Kalan for Rs. 3,60,000 in favour of a body known as the Western Punjab Jain Rehabilitation Association of which the president, secretary and members of the managing committee were impleaded as defendants. The plaintiff valued his suit at Rs. 2,000 under section 7(v) (b) of the Court-fees Act, i.e., on ten times the land-revenue of the land in suit and paid a court-fee of Rs. 206-4-0. The vendee-defendants challenged this valuation and maintained that an *ad valorem* court-fee on the market value of the land, i.e., purchase-price was payable under section 5(d) of the Act. By an order dated the 21st of January, 1953, the lower Court upheld the contention of the vendees and allowed the plaintiff a week to make up the deficiency of court-fee, and after this period had been extended up to the 6th of February, rejected the plaint on the latter date as the deficiency was not made good.

In his appeal the appellant has placed the same valuation as before and paid the same court-fee of Rs. 206-4-0. The preliminary objection has been raised on behalf of the respondents that the appeal should also be rejected as insufficiently valued. On this point reliance is placed on certain decisions of the Nagpur, Madras and Patna High Courts. The first of these cases is a decision by a Full Bench in *Apparao Sheshrao*

Deshmukh v. *Mt. Bhagubai* (1), The only question considered by the three learned Judges was what was the proper court-fee on an appeal filed against the order of the Court rejecting the plaint under Order VII, rule 11, Civil Procedure Code, after the plaintiff had failed to make good the deficiency in court-fee held to be due by the trial Court. The matter was decided by them in the following passage:—

> "We have no doubt in our mind that under Schedule 1, Article 1 of the Court-fees Act the court-fee must always be *ad-valorem* on the subject-matter in dispute unless it is incapable of valuation. In other words, the court-fee has always to be *ad vaolrem* unless for the special reasons given in Schedule 1, Article 17, the appeal can be brought on a fixed fee. In the present case, therefore, the question resolves itself into this:
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> 'Has the *ad valorem* court-fee to be paid on the full value of the claim or the difference between the court-fee paid and the court-fee demanded ?'
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> In our opinion the latter is the amount on which court-fee can be demanded. It is well-known that the Court-fees Act is a fiscal measure, and like all fiscal measures, must be strictly construed. Schedule 1, Article 1 itself requires that attention should be paid to the subject matter of the dispute. In our opinion the

(1) A.I.R. 1949 Nag. 1.

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subject-matter in dispute in so far as the appellant is concerned is the extra court-fee demanded of him by the Court. The whole of the claim which he prefers in the Court below is never dismissed when the plaint is rejected. This is clear from the definition of decree given in section 2(2), Civil Procedure Code, read with Order 7, rule 13 of the Code. For the purposes of Civil Procedure Code the rejection of a plaint is deemed to be a decree because the definition given in section 2 includes the rejection of a plaint, but that does not mean that the rejection of a plaint is a conclusive determination of the rigrts of the parties. Under Order 7, rule 13 the aggrieved party can file another plaint on the same cause of action after paying the court-fee demanded. This shows that there is no conclusive determination of the rights of the parties when the rejection of the plaint takes place. After the rejection of the plaint the unsuccessful plaintiff has two courses open to him. He can accept the decision of the trial Court and present a fresh plaint, or he can appeal against the order which amounts to a decree. In the second case the dispute involves only the demand for the extra court-fee and with the other alternative open to him it is not right to say that the dispute covers the entire controversy in the suit about which no decision has really taken place. This view has been forcefully expressed by Abdur Rahman, J., in *Kallappa* v. *Kandaswami* (1), where he approves of the decision of Niyogi A.J.C.

(1) I.L.R. 1938 Mad. 981.

To the same effect are the observations of the other learned Judge of the Madras Bench, Venkatasubba, Rao, J. We may also point out that a similar view has found acceptance in the Patna High Court in *Gorakh Sahu* v. *Sheo Nandan Singh* (1). In the Madras case to which we have referred, there is a reference to an earlier unreported case of Schwabe, C.J., and we adopt the observations of that eminent Judge here as our own. This is what Schwabe, C.J., said in the unreported case.

'I think that the subject-matter in dispute, meaning the subject-matter in dispute in appeal, has the simple meaning applicable to this case, namely, the amount of stamp in dispute between the parties.' "

There were two cases referred to in this Judgment. In the Madras case in the lower appellate Court the Plaintiff had paid Rs. 100 as court-fee on his memorandum of appeal and the District Judge held that the correct fee payable was Rs. 412-7-0 and dismissed the appeal when the plaintiff failed to make good the deficit. He filed a second appeal in the High Court which he valued at Rs. 312-7-0, i.e., the difference between the court-fee paid by him in the first appeal and the amount held to be due by the District Judge and paid an *ad valorem* court-fee of Rs. 35-15-0. A learned Single Judge of the Madras High Court who dealt with the second appeal held that the proper fee payable was Rs. 412-7-0 and dismissed the appeal when the appellant had failed to deposit the balance. In a Letters Patent Appeal Venkatasubba Rao and Abdur Rahman, JJ., who wrote concurring Judgments held that the appellant had valued his second appeal in the High Court correctly,

(1) I.L.R. 18 Pat. 323

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taking the view that the subject-matter of the appeal in the High Court was the difference between the Court-fee paid by the appellant in the court of first appeal and the court-fee which was demanded from him there. In the Patna case James and Rowland, JJ., held that in cases where the only point raised was the question whether the plaint or memorandum of appeal was sufficiently stamped the reasonable method of assessing valuation of court-fee was that it should be paid *ad valorem* on the difference between the value of the stamp on the plaint and the amount of court-fee demanded by the Subordinate Judge.

On the whole I am of the opinion that the view taken by the learned Judges of these different High Courts is both reasonable and sound, and also fair from the point of view of the plaintiff who wishes to appeal against an order of this kind, particularly in a case like the present one in which the value of the property in suit is not disputed at all and the question which arises is simply which one out of two alternative taxing methods is applicable. My attention has, however, been drawn to certain remarks made by me in the case *Lakshmi Narain* v. *Bharat Singh* (1), That was a case in which a plaintiff brought a suit for dissolution of partnership and rendition of accounts in which the plaintiff had valued the relief claimed by him at Rs. 130 and paid court-fee accordingly under section 7(iv) (f) although the plaintiff had himself mentioned in the plaint that the sum he expected to be found due to him on rendition of accounts was in the neighbourhood of Rs. 1,25,000. The trial Court held that in view of the plaintiff's own assertion in the plaint the suit must be valued for jurisdictional purposes at Rs. 1,25,000 and that the plaintiff must pay an *ad valorem* court-fee on that

(1) 54 P.L.R. 96.

amount. The plaintiff filed a first appeal in the High Court and also a revision petition as an alternative. Khosla, J., and I held that the plaintiff was entitled to place his own valuation on the suit for purposes of court-fee and that although the jurisdictional value fixed by the trial Court could not be altered in appeal or revision, it was clear that under rule 4 of the rules framed by the Lahore High Court under section 9 of the Suits Valuation Act, it was possible that there could be a departure from the normal rule that the valuation of a suit must be the same for both jurisdiction and court-fee. In the appeal a similar preliminary objection had been raised that the court-fee paid on the memorandum of appeal was insufficient and I dealt with this point in the following passage:—

> "The preliminary objection regarding court-fee on the appeal also seems to me to be one on which it is not possible to give any proper decision without deciding the main question in issue. There are undoubtedly a number of authorities of other High Courts regarding the amount of court-fee which is payable on an appeal against an order rejecting the plaint under order 7, rule 11, Civil Procedure Code, one view that of the Nagpur and Madras High Courts being that the court-fee payable is *ad valorem* on the difference between the court-fee originally paid by the plaintiff and the amount of court-fee demanded from him by the trial court. Another view is that on such an appeal the full court-fee demanded by the trial Court is payable. It seems to me, however, that on this point a more reasonable and sounder view has been taken by a Division Bench in *Avarta Lal Kumar* v. *Sisir Kumar Basu*

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(1), which relates to a suit in which the plaintiff had valued his suit for purposes of court-fee at Rs. 60 and the trial Court had held that he must pay court-fee on a sum exceeding Rs. 9,000, His plaint was rejected when he failed to make good the deficiency and he had filed an appeal in the court of the District Judge valued in the same manner as his plaint. His appeal had been summarily rejected by the District Judge as the memorandum of appeal was insufficiently stamped, and it was held by the High Court that the appellate Court was bound to go into the question as to the true value of the properties, and that without coming to a finding on this question it could not hold that the appeal was insufficiently stamped. It seems to me that in any case the objections regarding the court-fee and jurisdiction do not apply in the case of the revision petition, for which there is no statutory period of limitation, and although the practice of the Court is not to admit revision petitions filed after the ordinary period of limitation for appeals, this is obviously a case in which there were good reasons for filing the revision petition at a very late stage and, therefore, its merits should be adjudicated upon."

In order to explain the letter part of these remarks I may mention that in the first place the plaintiff in that case had filed an appeal in the Court of the Senior Sub-Judge, where it remained pending for a long time before the appeal was returned on the

(1) A.I.R. 1926 Cal. 427

ground that it lay to the High Court, and the revision petition was filed against the order of the Senior Sub-Judge returning the appeal.

Inspite of these remarks in that particular case I can only say that on a further consideration of the matter I am now of the opinion that the view taken by the learned Judges of the Madras, Patna and Nagpur High Courts regarding the principles on which an appeal against an order rejecting a plaint under Order VII, Rule 11, Civil Procedure Code should be valued for purposes of court-fee is really the only sound method which has been envolved, and I do not think, it is asking too much of a plaintiff in these circumstances that he should pay an *ad valorem* court-fee on the difference between the court-fee paid by him and the court-fee held by th trial court to be due. The court-fee paid by the plaintiff in this case is Rs. 206-4-0 and the court fee which would be due on the market-value of the property, Rs. 360,000 amounts to Rs. 4,500. The plaintiff in the present appeal should, therefore, pay an *ad valorem* court-fee on the difference between these two sums which amounts to Rs. 4,293-12-0.

The question which then arises is whether the appellant should now be allowed time to make up the deficiency which amounts to about Rs. 225. This course is opposed on behalf of the respondents on the ground that the period of limitation for the appeal has long since expired and, therefore, a valuable right has accrued to them. It is, however, clear that the point involved is not free from difficulty, and that the only decision of this Court which appears to exist on the point is rather in favour of the plaintiff. In the circumstances I consider that it is a suitable case for allowing the plaintiff-appellant time to make good

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the deficiency in court-fee on the appeal and I would accordingly allow him one month for this purpose conditional on the payment of Rs. 50 as costs.

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BHANDARI, C.J.—I agree.

FULL BENCH

Before Bhandari, C. J., Falshaw and Bishan Narain, JJ.

THE DOMINION OF INDIA,—*Defendant-Appellant.*

versus

FIRM AMIN CHAND-BHOLA NATH,—*Plaintiff-Respondent.*

Regular First Appeal No. 97 of 1949.

1956

May, 2nd

Indian Limitation Act (IX of 1908)—Article 31—Suit by consignee against carrier for compensation for part of the goods not delivered—Starting point for limitation of—Article 31—Scope of—"when the goods ought to be delivered"—Meaning of—Reasonable time—How to be determined—Limitation—When starts against a party—Cause of action when accrues against a carrier—Terminus a quo *under Article 31 in case of non-delivery or late delivery of an entire consignment or a part of it—What is—Provisions of the Limitation Act—How to be construed—Interpretation of Statutes—Doctrine of* stare decisis—*How far applicable.*

Held, that the limitation for a suit by the consignee against the carrier for compensation for a part of the goods not delivered starts on the expiry of the time fixed between the parties and in the absence of any such agreement the limitaton starts on the expiry of reasonable time which is to be decided according to the circumstances of each case.

Held, that the first column of Article 31 lays down the scope of this Article. It applies to cases in which goods are delivered to carriers to be carried and delivered at a destination. The goods are delivered for this purpose to the carrier under an agreement. This agreement may fix a