
Commissioner of Income Tax was in error in including the licence fee in the amount payable under Section 206C of the Act and the Excise and Taxation Commissioner was not required to deduct 10% of the licence fee from the L-14A licencees like the petitioners and it follows that the petitioners were not liable to deposit that amount.

(11) In the result, the writ petitions are allowed and the impugned notices issued to the petitioners requiring them to deposit 10% of the licence fee as income tax quashed. There is no order as to costs.

J.S.T.

Before V.M. Jain, J.

STATE BANK OF INDIA,—*Petitioner*

versus

BISHNA AND ANOTHER,—*Respondents*

C.R. No. 5266 of 1999

29th February, 2000

Court Fees Act, 1870—Schedule I, Article I—Trial Court decreed the suit of the Bank with costs and future interest @ 6% P.A.—In appeal, Bank claiming future interest @ 15% P.A.—Whether the appellate Court justified in directing the Bank to pay ad valorem court fee on the excess amount claimed—Held, yes.

Held, that the learned Additional District Judge was perfectly justified in directing the plaintiff-appellant—Bank to pay *ad valorem* court fee in the appeal on the difference of the amount claimed in appeal towards interest i.e. on the difference between the amount claimed and the amount awarded by way of interest. Accordingly, the present revision petition fails and is dismissed in limine. It is made clear that the plaintiff—Bank would be required to pay the *ad valorem* court fee on the amount claimed by the bank by way of future/further interest which had been disallowed by the trial court, to be calculated up to the date of filing of the appeal.

(Paras 19 and 20)

IPS Doabia, Advocate, *for the petitioner.*

JUDGMENT

V.M. Jain, J.

(1) This is a revision petition against the order dated 29th January, 1999 passed by the Additional District Judge, Karnal directing the

petitioner—bank to affix the court fee on the amount claimed in the appeal pending before him.

(2) The facts which are relevant for the decision of the present revision petition are that State Bank of India had filed a suit for the recovery of Rs. 1,34,874 against the defendants—respondents alongwith costs and future interest. The said suit was contested by the defendants. The learned trial court vide judgement and decree dated 19th May, 1998 decreed the suit of the plaintiff—bank for the recovery of Rs. 1,34,874 alongwith costs and future interest from the date of the institution of the suit @ 6% per annum on the principal amount due till the realisation of the decretal amount and passed a preliminary decree and the defendants were allowed a period of 6 months to repay the said decretal amount, failing which the plaintiff-bank was held entitled to apply for final decree. Dis-satisfied with the said judgement and decree of the trial court, the plaintiff-bank filed an appeal claiming future interest @ 15% annum instead of 6% per annum as allowed by the trial court. On the said appeal, fixed court fee of Rs. 25 was affixed. The learned Additional District Judge, after hearing both sides, was of the view that court fee is to be affixed on the excess amount claimed and accordingly the plaintiff-bank was given time to affix the court fee on excess amount claimed,—*vide* order dated 29th Januray, 1999. Aggrieved agaisnt the said order, the plaintiff-bank has filed the present revision petition.

(3) Since there is a delay in refiling the petition, an application under Section 151 CPC was filed for condoning the said delay. Another application under Section 149 CPC was also filed for extending the time in making good the definciency in the payment of court fee on the memo of parties.

(4) Counsel for the petitioner has been heard and record perused.

(5) So far as the two applications; one under Section 151 and the other under Section 149 CPC are concerned, both these applications deserve to be accepted inasmuch as there was a shortfall in the Court fee stamps on the memo of parties which has already been made good. Accordingly, the time for payment of court fee is extended and the delay in refiling the revision petition is condoned.

(6) On merits, the learned counsel for the petitioner-bank has submitted that the learned Additional District Judge erred in law in directing the petitioner-bank to pay the court fee on the excess amount claimed by the plaintiff-bank towards future interest. It was submitted that no court fee is payable on the amount claimed by the plaintiff-appellant bank in the appeal filed by the plaintiff bank. Reference was

made to *Mohammad Saeed and another v. Abdul Alim and others* (1) *Banta Singh and others v. Union of India and others* (2).

(7) However, I find no merit in the present revision petition. The two authorities relied upon by the learned counsel for the petitioner would have no application to the facts of the present case. In AIR 1947 Lahore 40 (supra) it was held that on an appeal in a suit on mortgage by an unsuccessful plaintiff the court fee should be the same as that payable on the original suit i.e. on the amount due on the mortgage at the time when the suit was instituted and not on the amount as increased by the accrual of interest up to the time of filing the appeal. The law laid down in this authority would have no application to the present case. The authority 1988 (2) PLR 49 (supra) is altogether on a different point and has absolutely nothing to do with the case in hand.

(8) So far as the question regarding the payment of court fee on the difference between the amount allowed by the trial court and the amount claimed by the plaintiff in appeal (even with regard to the difference in interest) is not *res-integra*.

(9) In *Damodar Pershad v. Hardeo Pershad* (3), it was held by the Allahabad High Court that where the appellant claimed among other sums of amount a definitely ascertainable sum by way of pendente lite interest disallowed by trial court, the same must be held to be part of "amount or value of the subject matter in dispute" and the *ad valorem* court fee was payable under Schedule I Article I of the Court-fees Act, on the sum claimed as pendente lite interest. Similarly, in *Jagarnath Prasad and others v. Bhala Prasad Singh and others* (4), it was held by the Patna High Court that no doubt when a suit is filed, a claim for pendente lite interest is not for an ascertainable sum. But the position is quite different once the suit has been decreed and an appeal is preferred specifically with regard to the pendente lite interest disallowed up to the date of the decree. It was further held that in such a case the claim for pendente lite interest is ascertainable and therefore *ad valorem* court fee must be paid under Schedule I Article I on the amount claimed in appeal as pendente lite interest which was disallowed by the trial court.

(10) *Mishrilal Tarachand Lodha v. State of Maharashtra and others* (5), it was held by the Bombay High Court in para 5 of the

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- (1) AIR 1947 Lahore 40
 - (2) 1988 (2) PLR 49
 - (3) AIR 1931 Allahabad 351
 - (4) AIR 1945 Patna 145
 - (5) AIR 1962 Bombay 52

judgement that in a regular appeal no court fee is payable on the amount of costs but if an appeal is directed only against costs, then certainly court fee is payable on the amount sought to be challenged in appeal. It was further held that there was no reason why the same principle should not be followed in the case of interest where interest only is the subject matter of the appeal and not the original right between the parties. In *Fateh Singh and another v. Mauj Rai and others* (6), it was held by the Lahore High Court that ordinarily no court fee is payable upon costs entered in the decree against which an appeal is presented but where apart from an independently of any other relief which the appellant seeks, he seeks distinct relief on the ground that by the decree under appeal the costs of the parties have not been properly assessed or apportioned the value of such distinct relief should be reckoned as part of the subject matter in dispute for the purpose of the Court fees.

(11) In *Sheikh Rahman v. Balchand and another* (7), it was held by the Nagpur High Court that as a general rule court fee on a plaint are payable on interest claimed up to the date of suit but not beyond and if the suit is dismissed and the plaintiff still wants interest in appeal, he must pay court fee on the amount claimed upto the date on which he files the appeal but again not beyond that. In *Tarapada Mitra v. Jagadamba Kumari* (8), it was held by the Patna High Court that in equity and in law a party is required to pay a court fee on the sum for the recovery of which he seeks the assistance of the court and where a decree holder uses to recover a sum as interest in addition to the sum named in the decree, he must pay court fee on the amount he claims.

(12) In *Gobardhan Das v. Narendra Bahadur Singh and others* (9), it was held by the Oudh High Court that the proper court fee payable on an appeal relating to future interest is an *ad valorem* fee on the amount of interest claimed up to the date of the presentation of the appeal. In *Jamuna Rai v. Ramtahall Raut and others* (10), a suit on a mortgage was dismissed by the trial court and the plaintiffs who filed the appeal paid the same court fee on the memorandum of appeal as had been paid on the plaint and the appellate court awarded the plaintiffs the sum claimed in the plaint together with interest accruing due between the institution of the suit and the date of the decree and under these circumstances, it was held by the Division Bench of Patna

(6) AIR 1934 Lahore 739

(7) AIR 1937 Nagpur 6

(8) AIR 1920 Patna 376

(9) AIR 1919 Oudh 305(1)

(10) AIR 1922 Patna 387 (2)

High Court that the plaintiffs were bound to pay additional court fee on the amount awarded as interest.

(13) In *Hakim Mehr Din v. Swami Kutilak Ram* (11), the preliminary mortgage decree in a suit for sale of the mortgaged property awarded the plaintiff a certain amount on account of principal and interest on a part of the principal from the date of the suit till the date fixed for redemption. In appeal, the plaintiff claimed interest on the whole amount of the principal from the date of the suit till the date of realisation. Under those circumstances, it was held by a Full Bench of Lahore High Court that the period from the date of institution of the suit till the date of realisation was divisible into two parts :—(1) the period from the date of the institution of the suit up to the date of redemption, and (2) the period from the date of redemption up to the date of realisation. It was further held that as far as the second period was concerned, the amount claimed by the plaintiff was unascertainable and as such the plaintiff must pay the fixed court fee of Rs. 10, but so far as the first period was concerned, the total amount claimed by the plaintiff was ascertainable and similarly the total amount awarded to the plaintiff in respect of this period was also ascertainable. It was further held that thus from the total amount claimed in appeal in respect of first period, the total amount awarded to the plaintiff in respect of this period by the trial court must be deducted and the difference between these two sums would be a definite and ascertainable sum and court fee on this amount must be paid *ad valorem* under Schedule I Article I of the Court-fee Act.

(14) In view of the law laid down in the above mentioned authorities, it would be clear that the plaintiff bank was required to pay the *ad valorem* court fee on the future/further interest claimed in appeal up to the date of filing of the appeal being the difference between the amount allowed by the trial court and the amount claimed by the plaintiff-appellant bank in appeal.

(15) The question regarding the payment of court fee on future interest under appeal also came up for consideration before their Lordships of the Supreme Court, in *State of Maharashtra v. Mishrilal Tarachand Lodha and others* (12). In the said authority it was held by the Hon'ble Supreme Court that no court fee was required to be paid on future interest where the appellant challenging the decree of the trial court was challenging the entire decree. However, where the appellant was not challenging the entire decree but was only challenging that part of the decree passed by the trial court, whereby a

(11) AIR 1943 Lahore 275

(12) AIR 1964 SC 457

lesser rate of interest was allowed to the plaintiff-appellant towards future/further interest, even according to the Hon'ble Supreme Court, the plaintiff-appellant bank would be required to pay *ad valorem* court fee on the amount sought to be claimed. In the said authority, after placing reliance on the law laid down by Allahabad High Court in *Mitthoo Lal v. Mt. Chameli* (13) and by the Oudh High Court in *Mt. Keolapati v. B.N. Verma* (14) (supra), it was held by the Hon'ble Supreme Court as under :—

“(20) We, therefore, hold that the amount of pendente lite interest decreed is not to be included in the amount or value of the subject matter in dispute in appeal for the purposes of article 1 of Schedule I of the Act unless the appellant specifically challenges the correction of the decree for the amount of interest pendente lite independently of the claim to set aside that decree. The appellant here has not specifically challenged the decree in that respect and therefore the High Court is right in holding the memorandum of appeal to be sufficiently stamped.”

(16) It was further held by the Hon'ble Supreme Court in the said case, it was required to construe the expression “value of the subject matter in dispute in appeal” for the purposes of determining the amount of court fee due on memorandum of appeal and the relevant provision governing the question of court fee to be paid on the memorandum of appeal filed in a civil court is contained in Article I of Schedule I of the Court-fee Act, according to which the court fee is to be paid *ad valorem* according to the amount or value of the subject matter in dispute. It was further held in the said authority that if the appellant disputes expressly the propriety or correctness of the decree with respect to the cost or pendente lite interest, independently of the claim to the subject matter in the trial court, he will have to pay court fee on the amounts challenged, as in that case he disputes those amounts in appeal and therefore those amounts do come within the expression “value of the subject matter in dispute in appeal”. It was further held that this has been the basis of the various decisions of the courts in which court fee has been demanded on the amount of costs or future interest.

(17) In view of the law laid down by their Lordships of the Supreme Court in the above mentioned authority, it would be clear that the plaintiff-appellant bank was required to pay the *ad valorem* court fee on the amount claimed in appeal towards future/further interest, which had been dis-allowed by the trial court and while

(13) AIR 1934 Allahbad 805

(14) AIR 1937 Oudh 8

calculating the said amount, the plaintiff-appellant bank would be required to calculate the difference between the amount allowed and the amount claimed towards future/further interest up to the date of the filing of the appeal. In my view, the law laid down by their Lordships of the Supreme Court in the above said authority is a clincher with regard to the payment of *ad valorem* court fee on future/further interest specifically claimed by the plaintiff appellant bank in the appeal against the judgement and decree passed by the trial court.

(18) Before parting with this judgement, it is my duty to refer to an authority of Orissa High Court, which has some bearing on the case in hand and which I came across while going through the law on the subject. In *M/s Indian Metals and Ferro Alloys Limited v. Gurcharan Biswal and another* (15), a part of the claim was dis-allowed by the trial court alongwith pendente lite and future interest. In appeal, the plaintiff claimed the amount which was disallowed by the trial court alongwith future and pendente lite interest. It was under these circumstances that it was held by the Orissa High Court that the grant of pendente lite and future interest being within the judicial discretion of the court, no court fee was payable to challenge that part of the decree, when refusal of interest from the pre-suit period has been challenged and the court fee has been paid on it. In my opinion, the law down by the Orissa High Court in the said authority would have no application to the facts of the present case, where the entire claim of the plaintiff bank was decreed by the trial court except grant of interest at a lesser rate and in appeal, the plaintiff bank had claimed higher rate of interest and no more. In any case, in view of the law laid down by their Lordships of the Supreme Court in AIR 1964 SC 457 (supra) the plaintiff bank would be required to pay *ad valorem* court fee in appeal filed by it against the judgement and decree passed by the trial court.

(19) In view of my detailed discussion above, in my opinion, the learned Additional District Judge was perfectly justified in directing the plaintiff appellant bank to pay *ad valorem* court fee in the appeal on the difference of the amount claimed in appeal towards interest i.e. on the difference between the amount claimed and the amount awarded by way of interest.

(20) Accordingly, the present revision petition fails and is dismissed in limine. It is made clear that the plaintiff bank would be required to pay the *ad valorem* court fee on the amount claimed by the bank by way of future/further interest which had been dis-allowed by the trial court, to be calculated up to the date of filing of the appeal.

(21) While directing the plaintiff-appellant bank to pay the requisite court fee, the Additional District Judge had allowed time to the plaintiff-appellant bank to pay the court fee up to 15th February, 1999. This period has since expired. Under these circumstances, it is further ordered that if the appellant bank has not so far paid the requisite fee, the petitioner bank is allowed time up to 3rd April, 2000 to pay the requisite court fee.

R.N.R.