

SARDAR TAJENDER SINGH GHAMBHIR AND ANOTHER A

v.

SARDAR GURPREET SINGH & OTHERS

(Civil Appeal No. 8660 of 2014)

SEPTEMBER 12, 2014 B

[R.M. LODHA, CJI, KURIAN JOSEPH AND
R.F. NARIMAN, JJ.]

COURT FEES ACT, 1870:

s.6(2) and s.6(3), proviso – Payment of court fee at appellate stage – Plaintiff amended adding to valuation of suit – No orders made by trial court to make up the deficit court fee – Objection raised by defendants in first appeal – Time must be granted by court for payment of court fee – In absence of such specific order, sub-ss. (2) and (3) would not come into operation – An appeal is continuation of suit and power of appellate court is co-extensive with that of trial court. C D

s.12(ii) – Decision as to valuation of suit – The provision empowers appellate court to direct a party to make up deficit court fee in plaint at appellate stage. E

The instant appeal arose out of the order of the High Court by which it set aside the order of the first appellate court allowing the plaintiff to make up the deficit court fee. F

Allowing the appeal, the Court

HELD: 1.1. In view of the provisions of sub-ss. (2) and (3) of s.6 of the Court Fees Act, 1870 for payment of court-fee, time must be granted by the court and if despite the order of the court, the deficient court-fee is not paid, then the consequence as provided therein must follow. The expression ‘plaint’ referred to in sub-ss.(2) and (3) of s.6 G

A may, in the context, be read to include 'memorandum of appeal' as well. [para 8-9] [533-C; 534-B]

B 1.2. In the instant case, the first appellate court in its order rightly observed that after amendment of plaint and consequent amendment in valuation, the trial court did not pass any order specifying time for payment of the deficient court-fee. Obviously, in the absence of such specific order, sub-ss. (2) and (3) of s.6 of 1870 Act would not come into operation against the plaintiff. [para 10] [534-C-D]

C 1.3. The High Court also erred in holding that deficiency in court-fee in respect of plaint cannot be made good during the appellate stage. An appeal is the continuation of suit and the power of the appellate court is co-extensive with that of the trial court. What could be done by the trial court in the proceeding of the suit, can always be done by the appellate court in the interest of justice. [para 12] [534-F-G]

D 1.4. Clause (ii) of s.12 of 1870 Act clearly empowers the appellate court to direct a party to make up deficit court-fee in the plaint at the appellate stage. [para 14] [535-D]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8660 of 2014.

F From the Judgment & Order dated 23.11.2012 of the High Court of Uttarakhand at Nainital in Writ Petition No. 376 of 2012.

G Shyam Divam, Madhvi Divan, Ranjeeta Rohtagi, Manan Verma for the Appellants.

Jayant Bhushan, Rajeev Kr. Singh, Anish Dayal, Siddharth Vaid, Bipin B. Singh for the Respondents.

H The Judgment of the Court was delivered by

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R.M.LODHA, CJI. 1. Leave granted.

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2. The appellants are plaintiffs in the suit for declaration and injunction. It is not in dispute that adequate court fee in that regard was paid by the plaintiffs. Later on, reliefs were amended and prayers for compensation and utilization were also made. However, on the amended valuation, there was deficiency in payment of court-fee but to make up such deficiency, no order was passed by the trial court.

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3. The present respondent Nos. 1 & 2 (defendants in the suit) preferred first appeal which was heard by the Additional District Judge, Dehradun. In the first appeal, an objection regarding deficit court-fee was raised by the defendants. The first appellate court, however, observed that while granting amendment in the plaint, the trial court did not prescribe any time limit in connection with the payment of court-fee and even no objection was raised by the defendants in that regard. The aspect of deficit court-fee came to the knowledge of the plaintiffs at the time of preparation of decree only and, therefore, an opportunity deserved to be granted to the plaintiffs to make up the deficit court-fee in the interest of justice.

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4. Against this order of the first appellate court, respondent Nos. 1 and 2 filed a writ petition under Article 227 of the Constitution of India. The High Court in paragraph 7 of the impugned order held as under:

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In the case in hand, after amendment in the valuation clause of the plaint, it was duty of the plaintiffs to make good the deficiency in the court fee. Deficiency of the court fee could be made good in the trial court only. Perusal of sub-section (2) of Section 6 of the Court Fees Act transpires that no plaint shall be acted upon, unless deficiencies in the court fee are made good. Court Fees Act further provides that in no case, the judgment shall be delivered unless the deficiency in court fee has been made good. Section 149 of C.P.C. though gives powers to the

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A Court to allow the plaintiff to pay the deficit court fee but
such power is given to the Court before the disposal of
suit. Thus, permission for payment of additional court fee
or for making good the deficiency in Court fee could only
B be granted during the pendency of suit. In absence of
payment of sufficient court fee the judgment could not be
delivered. Deficiency of court fee in respect of plaint cannot
be made good during the appellate stage. Such
C permission could not be granted by the appellate court
under Section 151 C.P.C.. In case such permission is
permitted to the parties, then it would not only be per-se
illegal but would also be a bad precedent since all litigants
would adopt this method of paying court fee only after
obtaining relief from the trial court, before the Appellate
D Court. I have no hesitation to say that decision making
process of Additional District Judge/FTC II, Dehradun in
per-se vitiated and cannot be appreciated.. He has
exercised his jurisdiction with material irregularity and order
passed by him deserves to be set-aside.

E 5. It is this order which is challenged in the present appeal,
by special leave. The High Court has heavily relied upon the
provisions contained in sub-sections (2) & (3) of Section 6 of
the Court-fees Act, 1870 (as applicable in U.P.) (for short "1870
Act") which provide that no plaint shall be acted upon unless
F deficiency in court-fee is made good and further provision
contained in sub-section (3) of Section 6 that in no case the
judgment shall be delivered unless the deficiency in court-fee
has been made good. The High Court was also of the view that
deficiency in court-fee in respect of plaint cannot be made good
during the appellate stage and such permission could not be
G granted by the appellate court under Section 149 or Section
151 of the Civil Procedure Code.

H 6. We have heard Mr. Shyam Divan, learned senior
counsel for the appellants and Mr. Jayant Bhushan, learned
senior counsel for the respondent Nos. 1 and 2 at quite some
length.

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7. In our view, the impugned order can not be sustained for more than one reason. In the first place, the High Court has not properly construed sub-sections (2) & (3) of Section 6 of the 1870 Act. For proper appreciation of sub-sections (2) & (3) of Section 6, we quote the entire Section 6 of the 1870 Act which reads as under:

6. Fees on documents filed, etc., in Mufassil Courts or in Public Offices -(1) Except in the courts hereinbefore mentioned, no document of any kinds specified as chargeable in the first or second Schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document:

[Provided that where such document relates to any suit, appeal or other proceeding under [any law relating to land tenures or land revenue] the fee payable shall be three-quarters of the fee indicated in either of the said Schedules except where the amount or value of the subject-matter of the suit, appeal or proceeding to which it relates exceeds Rs. 500:

Provided further that the fee payable in respect of any such document as is mentioned in the foregoing proviso shall not be less than [one and one-fourth] of that indicated by either of the said Schedules before the first day of May, 1936].

{Explanation – Where the amount of fee prescribed in the Schedule contain any fraction of a rupee below [twenty-five naye paisa] or above [twenty-five naye paise] but below [fifty naye paise] or above [fifty naye paise] but below [seventy-five naye paise] or above [seventy-five naye paise] but below one rupee, the proper fee shall be an amount rounded off to the next higher quarter of a rupee as

A hereinafter appearing in the said Schedules].

B (2) Notwithstanding the provisions of sub-section (1), a Court may receive plaint or memorandum of appeal in respect of which an insufficient fee has been paid, but no such plaint or memorandum of appeal shall be acted upon unless the plaintiff or the appellant, as the case may be, makes good the deficiency in court-fee within such time as may from time to time be fixed by the court.

C [(3) If a question of deficiency in court-fee in respect of any plaint or memorandum of appeal is raised by an officer mentioned in Section 24-A the Court shall, before proceeding further with the suit or appeal, record a finding whether the court-fee paid is sufficient or not. If the Court finds that the court-fee paid is insufficient, it shall call upon D the plaintiff or the appellant, as the case may be, to make good the deficiency within such times as it may fix, and in case of default shall reject the plaint or memorandum of appeal:

E Provided that the Court may, for sufficient reasons to be recorded, proceed with the suit or appeal if the plaintiff or the appellant, as the case may be, give security, to the satisfaction of the Court, for payment of the deficiency in court-fee within such further times as the Court may allow. F In no case, however, shall judgment be delivered unless the deficiency in court-fee has been made good, and if the deficiency is not made good within such time as the Court may from time to time allow, the Court may dismiss the suit or appeal.

G (4) Whenever a question of the proper amount of court-fee payable is raised otherwise than under sub-section (3), the Court shall decide such question before proceeding with any other issue.

H (5) In case the deficiency in court-fee is made good within

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the time allowed by the Court, the date of the institution of the suit or appeal shall be deemed to be the date on which the suit was filed or the appeal presented. A

(6) In all cases in which the report of the officer referred to in sub-section (3) is not accepted by the Court, a copy of the findings of the Court together with a copy of the plaint shall forthwith be sent to the [Commissioner of Stamps]. B

8. While referring the provisions of sub-sections (2) and (3) of Section 6, we shall refer to 'plaint' which for the purposes of this discussion may be read to include 'memorandum of appeal' as well. Sub-section (2) of Section 6 provides that in C
plaint in which sufficient court-fee has not been paid, such plaint shall not be acted upon unless the plaintiff makes good the deficiency in court-fee within such time as may from time to time be fixed by the Court. Sub-section (3) provides that if a question D
of deficiency in court-fee in respect of any plaint is raised and the Court finds that the court-fee paid is insufficient, it shall ask the plaintiff to make good the deficiency within the time which may be granted and in case of default, the plaint shall be E
rejected. The main provision of sub-section (3) mandates the Court to record a finding whether court-fee paid is sufficient on the question being raised by the concerned officer under Section 24A. It further provides that in answer to that question if the Court finds that court-fee paid is deficient, the Court may F
allow plaintiff to make up that deficiency within time so fixed by the Court. Then there is a proviso appended to sub-section (3) which provides that Court may, for sufficient reasons to be recorded, proceed with the suit if security is given by the plaintiff for payment of the deficiency in court-fee within time that may G
be granted by the court. It, however, requires the Court not to deliver the judgment till such time deficiency is not recovered and if the deficiency in court-fee is not made good within such time as the Court may from time to time allow, the Court may dismiss the suit or appeal.

9. The scheme of the above provisions is clear. It casts H

- A duty on the Court to determine as to whether or not court-fee paid on the plaint is deficient and if the court-fee is found to be deficient, then give an opportunity to the plaintiff to make up such deficiency within the time that may be fixed by the Court. The important thread that runs through sub-sections (2) and (3) of Section 6 of 1870 Act is that for payment of court-fee, time must be granted by the court and if despite the order of the court, deficient court-fee is not paid, then consequence as provided therein must follow.

- C 10. Insofar as present case is concerned, the first appellate court in its order rightly observed that after amendment of plaint and consequent amendment in valuation, the trial court did not pass any order specifying time for payment of deficient court-fee. Obviously, in the absence of such specific order, sub-sections (2) & (3) of Section 6 of 1870 Act would not come into operation against the plaintiff.

- E 11. The argument of the learned senior counsel for the respondent Nos. 1 and 2 on construction of sub-sections (2) & (3) of Section 6 of 1870 Act cannot be accepted. The High Court was clearly in error in invoking the above provision without appreciating the fact that there was no order by the trial court directing the plaintiffs to make good the deficit court-fee within a particular time.

- F 12. The High Court was also in error in holding that deficiency in court-fee in respect of plaint cannot be made good during the appellate stage. In this regard, the High Court, overlooked well known legal position that appeal is continuation of suit and the power of the appellate court is co-extensive with that of the trial court. It failed to bear in mind that what could be done by the trial court in the proceeding of the suit, can always be done by the appellate court in the interest of justice.

- H 13. Secondly, the High Court failed to consider clause (ii) of Section 12 of 1870 Act which reads:

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(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid, to pay within such time as may be fixed by it, so much additional fee as would have been payable had the question been rightly decided. If such additional fee is not paid within the time fixed and the defaulter is the appellant, the appeal shall be dismissed, but if the defaulter is the respondent the Court shall inform the Collector who shall recover the deficiency as if it were an arrear of land revenue.

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14. The above provision clearly empowers the appellate court to direct a party to make up deficit court-fee in the plaint at the appellate stage. The power exercised by the first appellate court can be traced to clause (ii) of Section 12 of 1870 Act as well.

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15. The order of the first appellate court being eminently just and proper, in our view, there was no justification for the High Court to invoke its power under Article 227 of the Constitution of India and interfere with an order which effectively advanced the cause of justice.

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16. For all these reasons, the impugned order is unsustainable in the eye of law and deserves to set-aside and is set-aside.

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17. Civil Appeal is allowed as above with no order as to costs.

Rajendra Prasad

Appeal allowed.