



Short Article

Payment of Court-fees: Analysis of Rao Saheb Raghunath Ganesh Thakar v. Vaman Vasudev Chitale

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Abstract: *The Court Fees Act came into force in the year 1870. Two reasons are key while discussing the necessity of the Act. Firstly, in order to reduce the unnecessary workload on the Judiciary due to the institution of vexatious lawsuits. Secondly, in order to cover the costs that are incurred during day-to-day activities of the Court. It is not to generate some extra revenues. The article focuses on one of the many facets of the Court Fees Act. It focuses on payment of the requisite court-fees that is levied before or during the lengthy court procedures. The article is an analysis of the landmark judgement pronounced by the Bombay High Court in 1950. Firstly, the article commences with an introduction to the Act and the case followed by a section explaining the brief facts of the case. The third section of the article concerns itself with the statutory provisions that are key in the Judgement. This section takes on a detailed discussion on Sections 6, 7, and 28 of Court Fees Act. Next section comprises the issues raised and decided by the court. The next section deals with the valuable observations that were made by the esteemed bench. The sixth section entails the decision of the court. Followed by a small section concluding the article.*

Keywords: *Vexatious Lawsuits, Lengthy Court Proceedings, Court Fees Act 1980.*

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1. Introduction

The requisite fee levied on a person instituting a suit in the court of law is addressed as court fees. The Government levies these fees on the people who seek redressals for damages through filing a civil suit. The idea of court-fee was executed on Indian sub-continent by the British. It was firstly introduced in Bengal through Regulation 38 of 1795.

It was executed for the purpose of preventing vexatious litigation *i.e.*, cases instituted in order to harass the other party. The number of such cases increased and the work-load on the judicial systems increased, in order to manage this, the Court Fees Act was introduced. The relief prayed before a court of law is not granted in a few moments; there is a due course of lengthy procedure. If the courts spend their time in dealing with such cases; it will lead to delay in justice and justice delayed is justice denied. Another reason for affixing court fees is that it covers the costs incurred for the smooth functioning of Courts' administration. The Courts also need funds to maintain themselves; Court fees are a way for that.

It is true that "Justice" should not be something that holds a price-tag. However, there should be some machinery installed in place that could safeguard the smooth running of the Judiciary. In today's time this key function is performed by court-fees charged in the cases instituted. In the case of *State of Madras v. Zenith Lamps*¹, the Hon'ble Court decided on the reason for collection of court fees is to cover the cost of the court procedure and is not a method for generating revenues. Court pronounced that, "... *there must be a broad co-relationship with the fees collected and the cost of administration of civil justice....*".

The present case deals with one such placement of facts. Here certain provision of the Court fees Act was discussed in order to determine their applicability while deciding the issues. The case was decided in front of the learned High Court of Bombay. The main Sections that formed the subject matter of the case were sections 6, 7 and 28 of the said Act. The court decided the case against the favour of plaintiffs.

2. Brief Facts

The case was heard and decided by the Bombay High Court by Civil Application No. 324 of 1947. The suit was filed against the order transferring the suit on the Original Side of this Court to the Poona Civil Judge's Court with a direction that that suit be heard with Suit No. 820 of 1946.

¹ *State of Madras v Zenith Lamps* AIR 1970 SC 999

The order was as follows:

“We therefore make the rule absolute and direct that Suit No. 1920 of 1946 pending on the Original, Side of this Court be transferred to the Court of the Civil Judge, Senior Division, Poona, and that Suit No. 820 of 1916 pending in the Court of the Civil Judge, Junior Division, Poona, be transferred to the Court of the Civil Judge, Senior Division, Poona, and that both, the suits should be heard and decided by the Court of the Civil Judge, Senior Division, Poona, according to law.”

An issue of payment of proper court fees on the suit claim was raised by the learned Civil Judge, Senior Division, Poona, against the plaintiff. The learned judge decided against the plaintiff and ordered him to pay ad valorem court-fee of Rs. 10,000/-. The plaintiff was aggrieved by the said order and filed this revision application.

2.1. Statutory Provisions

Section 6 – The Section reads as follows:

“Except in the Courts hereinbefore mentioned, no document of any of the 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.”²

Section 6 of The Court Fees Act prevents any public officer or court of law which accepts any document until and unless it has been duly stamped. As per the Section the Courts have to be watchful in every scenario where a document is accessible prior to it being sufficiently stamped. The insufficiency of the court fees can be investigated by the court and public officer by means of analyse allegations in the plaint. The court in every scenario has the power to analyse the nature of the relief claimed, especially in the situations where a relief (substantial) is claimed which is presented as a declaratory decree. If, in such cases, the court is satisfied it has all the right to demand appropriate court fees irrespective of the fact that the plaint was arbitrarily valued by the plaintiffs.

The Section is required to be read along with Section 28 of the Act³. In a certain way section 28 complements Section 6 of the Act. Section 6 does not regulate the applicability of Section 149 of the Code of Civil Procedure. Section 8 is responsible for conflicts that takes place between the applicability of Sections 6 & 4

² Court Fees Act 1870, sec 6

³ Court Fees Act 1870, sec 28

and Section 149 CPC. The Court has the power to either reject or return a memorandum of appeal which, on perusal by the court, is found inadequately stamped under section 28 of the Act and section 149 CPC.

Section 7 – The complimentary Schedules I and II are read with Section 7. These schedules are not alternative. Section 7 deals with different processes which can be employed while valuating the suits for various purposes. For fulfilling this purpose, standard court fees payable on institution of plaints or on memorandum of appeal is determined by Schedule 1.⁴ Schedules I & II provides for payment of proper fee on a few documents may differ on the bases of courts where it is filed. It is declared in Schedule II that a prescribed fixed fees will be borne on plaints and appeals that are mentioned in the said Schedule. Schedule I specifies the list of suits where an *ad valorem* fee shall be borne on every plaint and memorandum of appeals. The Section entails the ways of computing the requisite court-fees to be levied when cases are instituted, or filed in the Court.

The general rule is that a plaint mandatorily has to be duly stamped under Schedules I and II with a proper court-fee while discussing the ambit of Sections 4 and 6⁵. The said Schedules distinguishes between the kinds of court-fees that are to be affixed with the document. *Ad valorem* fee is provided under Schedule I; and affixation of a fixed fees is provided by Schedule II. It is imperative to determine the kind of court-fees that is to be affixed while a plaint is brought forth in a Court of Justice.

To attain the said necessity certain rules are put in place. Rule 1; the nature of suit is to be ascertained with a careful perusal through the various provisions provided under section 7 read alongside Schedules I and II. Rule 2; this rule is concerned with the specific category of the case for the purpose of computation of court fees. Relief pleaded and allegations were made are put under a scrutiny. Rule 3; the Court in order to determine the court-fees chargeable under either Schedule I or Schedule II, has to look into the real substance of the claim.

Section 28 – The Section reads as follows

*“No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.”*⁶

But, if any such document is through mistake or inadvertence received, filed or used in any court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as

⁴ Court Fees Act 1870, sec 7

⁵ Court Fees Act 1870, sec 4 & 6

⁶ Court Fees Act 1870, sec 28

he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

The present Section mandates that a document is valid only if, firstly it is required to be duly stamped, and secondly it is duly stamped by the appropriate authorities. The succeeding part of Section 28 gives power to the court to make an order saying that the document so presented in front of the Court has to be appropriately stamped in cases where a document which was supposed to be duly stamped, is not stamped, because of inadvertence or mistake. In cases where Rule 11 of Order 7⁷ is read with Section 28⁸ a clear implication can be understood *i.e.*, only in a situation where the party has been awarded with the opportunity to pay the requisite fees and the party has failed to comply, only then the learned court has the authority to deny to take a look at the document.

Section 28⁹ corresponds, in many ways, to Section 149 CPC. The rule is that in situations where complete or any specific part of the duly prescribed fees affixed to that plaint or document hasn't been paid with the time frame, the learned Judge has the authority to direct the defaulter party to pay the requisite amount whether it is the entire amount or a part of the entire amount. When the charged fees are paid, the document with respect to which the fees are charged will be rendered the same effect as the effect of payment of the fees at the first instance. Section 149¹⁰ enjoys a wider authority than that enjoyed by section 28¹¹. It is of utmost importance that Section 149¹² is applicable only on cases of civil nature and not on cases of criminal nature. This section can only be applied in a situation of insufficiently stamped documents that were received by the court by means of mistake or inadvertence. The Section has no applicability in a situation where no such mistake or inadvertence has been made.

3. Issues Raised and Decided by The Hon'ble Court

3.1. Whether the order passed by the Civil Judge, Senior Division, Poona, directing the plaintiff to pay the necessary court-fee on a plaint which was transferred to his Court valid?¹³

⁷ Code of Civil Procedure 1908, rule 11, order 7

⁸ Court Fees Act 1870, s 28

⁹ *Ibid*

¹⁰ Code of Civil Procedure 1908, sec 149

¹¹ Court Fees Act 1870, sec 28

¹² Code of Civil Procedure 1908, sec 149

¹³ Rao Saheb Raghunath Ganesh Thakar v. Vaman Vasudev Chitale, AIR 1950 Bom 234

The Court decided the matter against the plaintiff. It has been agreed upon that when the Court assented that plaintiff was properly filed with proper court-fee on the Original Side. Court decided that this proper payment on the original side will not prevent the application of Section 6 of the said Act. The Court explained that, “... under that section no document specified as chargeable with court fee under the schedules to the Court-fees Act--and a plaint is a document so specified--can be filed, exhibited or recorded or received in any Court of Justice or can be received or furnished by any public officer unless proper court-fee indicated by the schedules is paid thereon....”¹⁴

The Hon’ble High Court of Bombay decided that in the present case the plaint required to be filed, exhibited or received, was properly filed in the Original Side, is not relevant while considering its validity in the Court of Civil Judge Senior Division under jurisdiction of Court Fees Act. As per Section 6¹⁵ the plaint was required to bare the requisite court fees. This requirement was not fulfilled. It will be applicable on the case irrespective of the fact that the transfer was carried out because of the Court order and by the voluntary act of the plaintiff.

The Hon’ble Court decided Section 6 of the Act is explicit and unambiguous. The procedure by which the document is presented in the Court is irrelevant and the fees prescribed by the Court (Rs. 10,000) must be paid.

3.2. Whether the court-fee is payable on a plaint filed or instituted in the Court of the Civil Judge, Senior Division, Poona?¹⁶

Schedules I and II provides for all the instances where payment of court fees is mandatory while filing exhibiting or recording and document in a Court of Justice excluding the Courts provided under Chapter II.¹⁷

Therefore, it is clear by virtue of abovesaid para, Court of the Civil Judge, Senior Division, Poona, does not come under the list mentioned by Chapter II of the Act. Hence, the plaint filed or instituted by the plaintiff in the said Court of justice comes under the jurisdiction of Section 6 of the Act and provisions of Schedules I and II of the Act. Section 6¹⁸ provides that:

“Except in the Courts hereinbefore mentioned, no document of any of the 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

¹⁴ Rao Saheb Raghunath Ganesh Thakar (n 13)

¹⁵ Court Fees Act 1870, sec 6

¹⁶ Rao Saheb Raghunath Ganesh Thakar (n 13)

¹⁷ Court Fees Act 1870, chapter II

¹⁸ Court Fees Act 1870, sec 6

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.”

By reason of Section 28¹⁹, which provides as follows:

“No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped. But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance....”; court-fee is payable on a plaint filed or instituted in the Court of the Civil Judge, Senior Division, Poona.

4. Observations

The Hon’ble High Court made the following observations –

*“In whatever manner the plaint comes before the Court, if it does not bear the court-fee which the provisions of the Court-fees Act say that it shall bear, it cannot be filed, exhibited or recorded in a Court of Justice; and if by mistake or inadvertence it had been so filed, exhibited or recorded, it has no validity whatever till the proper court-fee as computed under the relevant schedule of the Court-fees Act is paid. The circumstance that the plaint was lodged in another Court which according to the provisions governing it treated it as properly instituted cannot prevent the application of Section 6.”*²⁰

1. *“.... The court-fee payable on a document has to be ascertained under the provisions of the Court-fees Act, at the time when the document is required to be filed, exhibited or received in a Court; and if the document is not adequately stamped at the crucial date, it has no validity....”*
2. *“.... The provisions of a taxing statute such as the provisions of Sections 6 and 23, Court-fees Act are clear and definite, I do not see any ground for escaping them on the indefinite suggestion that it is the act of the Court which is causing prejudice to a party who had filed a suit properly in the High Court. Nor is the decision in Bibee Golap Kumari Saheba v. Md. Kadiruddin²¹, of any use to the plaintiff....”*

¹⁹ Court Fees Act 1870, sec 28

²⁰ Court Fees Act 1870, sec 6

²¹ *Bibee Golap Kumari Saheba v Md. Kadiruddin*, 12 C.W N. 917

5. Decision of the Court

The Hon'ble High Court of Bombay decided both the issues against the favour of plaintiffs. The Court decided that the fact that the plaint was clear of any dues and was duly stamped in another court is irrelevant while considering its maintainability and validity under the Act. The plaint has to be duly stamped in order to be exhibited or filed in the said Court. The learned Court has the legal jurisdiction guaranteed under section 6 to demand the requisite court-fee. This court fees had to be borne by the plaint which it did not. While considering the applicability of Section 6 of the Act on the present scenario, the fact that the plaint was instituted by reason of a Court order and not by any voluntary action is immaterial.

The Hon'ble Court decided that the manner in which the document reaches the court is immaterial for Section 6²² to be applicable on the present case as. The Court decided that the prescribed court-fee of Rs. 10,000 is proper and must be paid by the plaintiff.

6. Conclusion

In the report given by the Law Commission of India advocates for a fixed limit for fees which is to be charged to the plaintiffs. Charging a high fee by the courts can most certainly tip the balance towards discouraging the aggrieved person to take a judicial redressal. The case deals with two key issues: whether the order passed by the Civil Judge, Senior Division, Poona, directing the plaintiff to pay the necessary court-fee on a plaint which was transferred to his Court valid; and whether the court-fee is payable on a plaint filed or instituted in the Court of the Civil Judge, Senior Division, Poona²³.

The Bombay High Court, in the light of all the facts, decided both the issues against the favour of plaintiff. The Court decide that the Civil Judge, Senior Division, Poona, was correct while directing the plaintiffs to pay the *ad valorem* court fees of Rs. 10,000 when the case was presented in the Court. The Hon'ble High Court decided that the fact that the plaint was brought in the Court of Civil Judge, Senior Division, Poona, by the order of the Court and not by the voluntary actions encouraged by the parties is immaterial. The Court also decided that the Court of the Civil Judge, Senior Division, Poona had all the jurisdiction, by the virtue of Sections 6, 7, and 28²⁴ to order the plaintiffs to pay the *ad valorem* court-fees.

²² Court Fees Act 1870, sec 6

²³ Rao Saheb Raghunath Ganesh Thakar (n 13)

²⁴ Court Fees Act 1870 sec 6, 7, & 28