(1964) 01 RAJ CK 0005

Rajasthan High Court

Case No: Civil Special Appeal No. 3 of 1964

Vastulal Pareek		APPELLANT
	Vs	
Pareek Commercial Bank Ltd.		RESPONDENT

Date of Decision: Jan. 8, 1964

Acts Referred:

- Banking Companies Act, 1949 - Section 45B, 45T
- Court Fees Act, 1870 - Article 1 , 11

Citation: AIR 1964 Raj 202 : (1964) RLW 235

Hon'ble Judges: L.N. Chhangani, J; I.N. Modi, J

Bench: Division Bench

Advocate: Chandmal Lodha, for the Appellant; C.D. Mundra, Kansingh, G.A., for the Respondent

Judgement

Modi, J.
The only question which has been raised for our decision in this appeal at this stage is whether the court-fee of Rs. 2/- paid by the appellant Vastulal on the memorandum of appeal is proper, or, as contended by the office, an ad valorem court-fee on the claim decreed should have been paid.

2. A few facts may be stated in order to bring out the point in controversy. The respondent Pareek Commercial Bank Limited was a public banking company incorporated under the Indian Companies Act, 1913, as applied to the State of Bikaner as it then was. The appellant Vastulal was the Chairman of the Company till it was wound up by an order of the learned Company Judge dated the 31st July, 1952, in company petition No. 2 of 1952. A claim for a sum of Rs. 22,000/- including principal and interest was instituted by the Pareek Commercial Bank Limited through the Official Liquidator against Vastulal u/s 456 of the Banking Companies Act, 1949 (Act No. X of 1949, hereinafter called the Act) on the 25th August, 1960. This claim was decreed by the learned Company Judge for

sum of Rs. 15,000/- principal and Rs. 7,000/- interest with pendente lite and future interest at six per cent per annum simple by his order dated the 16th July, 1963.

The present appeal has been filed against that order on a court-fee stamp of Rs. 2/- as already stated. The objection raised by the office is that ad valorem court-fee should have been paid on the claim allowed and this objection is supported both by the learned counsel for the Company as well as by the learned Government Advocate on behalf of the State. In support of this submission reliance is placed on Rule 743 in Chapter XXIX of the Rules of this Court. This rule reads as follows :--

"On every appeal from a decision of the Court u/s 453 of the Act or Rule 732 of these Rules, the court-fee payable shall be the same as provided in Article 1, Schedule I of the Court Fees Act subject to a minimum of Five Rupees".

It appears that by a later amendment, this rule was re-numbered as rule No. 740.

3. We may state at once, however, that in so far as the objection is sought to be supported on the footing of this rule it becomes untenable because this set of rules was replaced by another set which was brought into effect by virtue of a notification of this Court No. 7/SRO dated the 24th August, 1959, published in the Rajasthan Rajpatra dated the 26th November, 1959, by which it was ordered that with effect from the date of publication in the Rajasthan Gazette, the rules mentioned under the Notification shall be adopted and that the said rules be included as Chapter XXIX of Part VII of the Rules of the High Court of Judicature for Rajasthan, 1952, and be substituted in place of the Rules 729 to 745 as then included in the said Chapter. It is admitted that Rule 743 has been entirely omitted in the new rules, and there is no counter-part thereof in them. That being so, the question must fall to be governed by the provisions of the Rajasthan Court Fees Act (Adaptation) Ordinance, 1950 (Ordinance No. IX of 1950, hereinafter called the Court Fees Act) read with the provisions of the Act with which we are concerned in so far as they have a bearing on the point raised before us.

4. The first question that seems to us to arise in this connection is: what is the nature of the proceeding which was filed by the Company against the appellant? Was it a suit properly so-called or was it merely an application? It may be pointed out in this connection that the Company framed its claim as if it was a suit and called itself the plaintiff, and the present appellant as the defendant. In his judgment, the learned Company Judge speaks of this as a suit u/s 45B of the Act by the Pareek Commercial Bank Limited in liquidation through the Official Liquidator. At the end, the learned Judge framed his order in the following terms:--

"The suit is decreed for a sum of Rs. 15,000/-principal and Rs. 7,000/- interest with pendente lite and future interest at 6 per cent per annum simple on the principal amount together with costs of the suit."

There is no doubt that even according to the learned Judge, it was a proceeding u/s 456 of the Act. We are, however, unable to agree with the position that this was a suit. And in this connection we would invite a reference to Rule 732 of the Rules of the Court. Sub-rule (1) of this rule reads as follows:

"Applications for the determination of all questions of priorities and all other questions whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of a Banking Company, shall be made by petition. The petition shall contain a statement of facts relied on and the nature of the relief asked for. The petition shall be signed and verified in the same manner as a plaint and shall be supported by an affidavit".

To our mind, it is absolutely, clear, therefore, that a claim like the one before us by or against a franking company could only be made by a petition and a suit would not be necessary. We may also mention here that according to the notification to which our attention has been invited by learned counsel for the contesting respondent, such a claim was exempt from payment of any court-fee whatever. See notification No. F 2 (18) ENT/56 dated the 17th April, 1957, published in the Rajasthan Rajputra Part IV (C) dated the 30th May, 1957.

5. Even so, it is contended on the other side that Rule 736 of the Rules of our Court enables a suit to be filed in a matter like the present. We have carefully read this rule and are of the opinion that this provision refers to suits which may have been filed in the High Court itself before the winding up proceedings came to be commenced or which may have been filed elsewhere and which might have been ordered to be transferred to it under Rule 733 but should not be understood to refer to claims which are filed before the High Court after the winding up proceedings have commenced. In arriving at this conclusion we have been guided in the main by two considerations. The first is that the language of Rule 732 (1) is extremely wide and would include a claim filed by or on behalf of or even against the Company and arising in the course of its winding up before the High Court; and secondly, we must interpret the two rules as far as possible harmoniously so that any conflict between both of them may be eliminated.

6. Thus the position to which we come is that it was enough for the Company to have filed a petition before the learned Company Judge u/s 45B of the Act read with Rule 732 of the Rules to have its claim against the appellant adjudicated upon, and it was not necessary for it to file a suit.

7. The next question is whether the adjudication at the end of such a proceeding is a decree or amounts to a decree. At this stage, we must read Section 45-T of the Act which, omitting its immaterial portion, reads as follows :

"(1) All orders made in any civil proceeding by a High Court may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be

enforced.

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(3) Without prejudice to the provisions of Subsection (i) or Sub-section (2), any amount found due to the banking company by an order or decision of the High Court may, with the leave of the High Court, be recovered in the same manner as an arrear of land revenue."

The question to decide is whether such an order is a decree or has the force of a decree; for if that is its effect, then clearly ad valorem court-fee would be required to be paid under Schedule 1 Article 1 of the Court-fees Act. But if that is not the nature of such an order, then ad valorem court-fee would not, in our opinion, be payable, and an order like this would fall under Schedule 2 Article 11 of the Court-fetes Act. The important point to note in this connection is that Section 45-T speaks of "orders" made by the High Court, though it further enacts that such orders are capable of being enforced in the same manner in which decrees of the High Court made in any suit pending therein may be enforced. One thing as clear to our mind from the language used in this provision, and that is that in the contemplation of the Legislature the final result of the adjudication made by the High Court as an order and has not been spoken of as a decree.

8. The further question that remains to consider is whether it has the force of a decree because it has been enacted that such an order is capable of being enforced in the same manner in which a decree of the High Court may be enforced.

9. Now, so far as this question is concerned, our attention has been invited to a Bench decision of this Court Vastu Lal v. Official Liquidator, Pareek Commercial Bank Ltd. ILR (1961) Raj 16 which seems to conclude the controversy raised before us. It was held there that there is a good deal of distinction between a decree and an order'' having the force of a decree on the pne hand and an order which is simply enforceable as a decree, on the other and it was further laid down that where an order is given the force of a decree by a statute, it is an order that stands as a decree pro-prio vigore, while where an order can be just enforced as a decree, that amounts to an order which becomes effective only when it is executed by the method by which a decree may be executed. In other words, it seems to us that a distinction was maintained between the intrinsic nature pf an order as having the force of a decree as contradistinguished from its enforceability as such and relying on this distinction, it was held that an order of the second category that we have mentioned above must be held to be neither a decree nor an order having the force of a decree. With this main conclusion of the learned Judges, we are in respectful agreement, though, with utmost deference, we cannot but point out that when they further observed that they were doubtful whether such an order would fall under Schedule 2 Article 11 of the Court-fees Act, they seem to have said so by sheer inadvertence and we are not quite able to follow them.

Once it is held that an order like the one with which we are concerned neither amounts to a decree nor to an order having the force of a decree, and, therefore, does not fall for purposes of court-fee under Article 1 of Schedule 1 of the Court-fees Act, then the conclusion seems to us to be clear and indeed inevitable that such an order must fall for purposes of court-fee under Schedule 2 Article 11 of the said Act (as the law stood at the time when the present litigation commenced) and no other Article of the Court-Fees Act has been brought to our notice which would apply to an order of this nature, and that being so, a court-fee of Rs. 2/-only would be payable on the memorandum of appeal as provided therein. As this much of court-fee has been paid, we are clearly of the opinion that there is no deficiency in the matter of payment of court-fee in the present case.

10. We may point out, in passing, before concluding our judgment, that the law has since been changed, and a court-fee of Rs. 100/- would be payable on a memorandum of appeal against such an order under the Rajasthan Court-fees and Suits Valuation Act, 1961 (Act No. 23 of 1961) under Article 3(iii)(3) of Schedule II thereof where an order of this kind has been made after the coming into force of the new. Act and to which it must apply.

11. The result is that we think that the memorandum of appeal in this case is properly stamped for purposes of court-fees as it stands, and. therefore, the objection in that behalf must fail. We hold accordingly.