
(2000) 05 PAT CK 0036

Patna High Court

Case No: Civil Writ Jurs. Case No. 5863 of 1999

Lipika Gupta

APPELLANT

Vs

State of Bihar and
Others

RESPONDENT

Date of Decision: May 11, 2000

Final Decision: Dismissed

Judgement

1. This writ petition is directed against the decision dated 26-4-99 by the Registrar General of this Court as Taxing Officer in Misc. Appeal No. 367 of 1998 holding that the Court fee paid by the petitioner on the memo of appeal to be insufficient and directing her to pay the deficit court fee.

2. The facts of the case, so far as relevant for decision of the case, are as follows : The petitioner instituted matrimonial case No. 48 of 1980 against her husband for restitution of conjugal rights and other matrimonial rights which was dismissed. The dismissal, it is said, was not on merit. The petitioner had filed petition for time which was rejected and the case was dismissed for default. The petitioner came to this Court in First Appeal No. 99 of 1998 which was converted into Miscellaneous appeal namely, M.A. No. 367 of 1998. The petitioner had paid Court fee of Rs. 22.55 on the memo of appeal which as per the Stamp Report was short by Rs. 6.70. After the first appeal was converted into miscellaneous appeal, afresh stamp report was made arid by report dated 3-4-99, the court fee was said to be short by Rs. 227.50. It may be mentioned here that as per the provisions of the Court Fees (Bihar Amendment) Act, 1995, court fee of Rs. 250 is payable on miscellaneous appeal and it is on that basis that deficiency of Rs. 227.50 was pointed out. The petitioner contested the stamp report contending that as the matrimonial case giving rise to the appeal was filed prior to the coming into force of the Court Fees (Bihar Amendment) Act. 1995, she was required to pay court fee payable prior to the amendment as on the date of I he institution of the suit. The plea did not find favour with the Taxing Officer i.e. the Registrar General and in the circumstances the petitioner has invoked the writ jurisdiction challenging his decision.

3. Shri Kalyan Kumar Ghose, learned counsel for the petitioner, submitted that the impugned decision is contrary to the law laid down by the Apex Court as well as this Court. He contended that appeal is a vested right and where its entertainment is subject to payment of Court fee, any increase in the amount of court fee should be construed as imposing additional restriction on the exercise of the right and therefore, unless the amended provisions are made retrospective, the petitioner cannot be compelled to pay additional Court fee. In support of the plea he placed reliance on [Ganpat Rai Hiralal and Another Vs. Aggarwal Chamber of Commerce Ltd.](#), [Hoosein Kasam Dada \(India\) Ltd. Vs. The State of Madhya Pradesh and Others](#), and [State of Bombay Vs. Supreme General Films Exchange Ltd.](#). He also relied on an order passed by a Division Bench of this Court in First Appeal No. 84 of 1975 and pointed out that following the said order, in first appeals this Court has been charging court fee on the basis of the date of institution of the suit but in miscellaneous appeals, civil revisions etc. the court fee is being demanded on the basis of the date of filing of the miscellaneous appeal, civil revision, as the case may be, which is not correct.

4. Shri Dhurb Narayan, who assisted this Court Amicus Curiae, submitted that though the right of appeal is vested right which cannot be restricted except by an enactment having retrospective effect, payment of court fee is not a restriction on the exercise of such right and therefore, where court fee is payable on the date of filing of the appeal is demanded, the order cannot be said to be illegal. Shri A. P. Jittu, Standing Counsel No. II who appeared for the State submitted that the writ petition is vague as it has been filed both under Articles 220 and 227 of the Constitution of India.

5. There is no dispute, and there cannot be, any, that the right of appeal is a substantive and vested right which cannot be subjected to any restriction except by a legislation having retrospective effect. The decision of the Constitution Bench in [Garikapatti Veeraya Vs. N. Subbiah Choudhury](#), amongst others, is a direct authority on the point. The point at issue, thus, is whether requirement of paying court fee is a restriction on such right. Though the point was not formulated in that form in [State of Bombay Vs. Supreme General Films Exchange Ltd.](#), relied upon by the petitioner's counsel, the facts of the case and the ultimate decision of the Court seem to answer the point in favour of the petitioner. The suit in that case was filed prior to 1-4-1954 when Court-Fee (Bombay Amendment) Act, 1954 levying enhanced court fee came into force. The relevant provisions however, were not retrospective. The appeal was filed later i.e. after 1-4-54. The Supreme Court held that the court fee on the memo of appeal was payable according to the law in force on the date of filing of the suit and not according to the law in force on the date of filing of the memo of appeal. The other decisions cited by the counsel taking similar view, also support the petitioner's contention.

6. Though the dispute in this case lies in a narrow compass and it is not necessary to enlarge the scope, it may be proper to mention, while talking about vested right of appeal, that appeal is a creature of the statute and the statute may impose conditions and thus circumscribe the right such as by providing that unless the appellant deposits the decretal

amount or part thereof, the appeal shall not be entertained. In such a case, the right shall be conditional right upon fulfilment of which only the appeal can be entertained and the theory of "vested right" would not be applicable. See [Vijay Prakash D. Mehta and Another Vs. Collector of Customs \(Preventive\), Bombay, .](#)

7. The principle that right of appeal cannot be subjected to restriction except by a retrospective legislation would apply only in cases where there is a vested right of appeal, that is to say, where appeals are provided as of right. Where the appeal is not provided for as of right and therefore, there is no such vested right, the principle would not be applicable. Civil revisions, review petitions and the like would stand on that footing. The language of Section 96 of the CPC under which appeals from original decrees i.e. first appeals are filed and Section 100 under which appeals against appellate decrees i.e. second appeals are filed vis-a-vis Sections 114 and 115 which provide for review and revision, would make clear the distinction. While in both Sections 96 and 100 the "appeal shall lie from every decree", in Section 114 the words are "any person considering himself aggrieved..... may apply for a review", while in Section 115 the words are "the High Court may". Apart from the Civil Procedure Code, different statutes provide for appeal against judgment or orders and it would depend on the language and intent of the concerned statute as to whether right of appeal conferred on the person aggrieved is a vested right or not.

8. In the instant case, the appeal arises from a matrimonial case under the Hindu Marriage Act, Section 28(1) of the said Act lays down. "All decrees made by the Court in any proceeding under this Act shall..... be appealable as decrees of the Court made in the exercise of its original civil Jurisdiction, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in exercise of its original civil jurisdiction. "From a bare reading it would appear that Section 28 of the Act vests right of appeal against a decree of the matrimonial Court. The appeal would thus stand on the same footing as ordinary appeals u/s 96 of the Civil Procedure Code. The appeal has been registered as miscellaneous appeal, and not first appeal, as in the case of appeals under the Civil Procedure Code, as per the practice of this Court, but for all purposes it stands at par with any appeal against decree u/s 96 of CPC and therefore, would be subject to the same incidents of ordinary appeals thereunder. From the Stamp Report submitted in Misc. Appeal No. 367 of 1998 it appears that a distinction was sought to be made between an "order" and "decree" and it was pointed out that the appeal has been preferred against an order dismissing the matrimonial case in default. But in [Suresh Prasad Vs. Smt. Manorama Debi](#), a Division Bench of this Court held that "order" and "decree" stand at par u/s 28 of the Hindu Marriage Act, and all orders and decrees passed in a proceeding under the Hindu Marriage Act are appealable under that Section.

9. Coming to the controversy in hand, the matrimonial case giving rise to the appeal in the present case having been filed prior to the coming into force of the Court Fees (Bihar Amendment) Act, 1995 which was not given retrospective effect, the petitioner cannot be compelled to pay court fee more than what was payable on the date of filing of the

matrimonial case. The decision of the Taxing Officer, therefore, does not appear to be in accordance with law.

10. However, though the decision is not in accordance with law, this Court is not competent to interfere with the same. The decision has been taken qua Taxing Officer u/s 5 of the Court Fees Act, 1870 and not qua the Registrar on administrative side of the Court. Section 5 of the said Act provides that where difference arises between the Stamp Reporter and the suitor or his lawyer relating to the amount of court fee, such difference is to be referred to the Taxing Officer whose decision thereon shall be final except when in appropriate case the matter is referred to the Taxing Judge. Under Rule 19 of Chapter VII of the Patna High Court Rules, the Registrar of the High Court has been appointed as the Taxing Officer. His decision as Taxing Officer is final by virtue of the provisions of Section 5 of the Court Fees Act, but what is significant for the purposes of the present case is not the finality of the decision but the fact that the decision is to be regarded as a decision of the Court itself. And under Article 227 of the Constitution the High Court cannot set aside its own decision. In [Santosh Kumar Ganguly and Another Vs. Registrar, Appellate Side, High Court and Another](#), a Division Bench of the Calcutta High Court held that the Registrar u/s 5 of the Court Fees Act cannot be regarded as a Tribunal whose orders can be revised by the High Court under Article 227. It would be useful to quote the placitum who culls out the ratio of the decision as under (at page 318):--

"The Registrar is an officer of the High Court and forms part of it and when he is appointed the Taxing Officer u/s 5 of the Court-fees Act, he does not cease to be so. It is really the Court which acts through the Registrar as its Taxing Officer in the matter of determination of proper court-fees, payable on documents filed before it. Under Article 227 of the Constitution the High Court cannot exercise jurisdiction over Itself,"

I am in complete agreement with the legal position as indicated above. On the point of nature of jurisdiction of the Registrar as Taxing Officer, reference may also be made to a Full Bench decision of this Court in [Krishna Mohan Sinha Vs. Raghunandan Pandey](#), .

11. For the aforesaid reasons. Article 227 of the Constitution cannot be invoked for setting aside the impugned decision of the Registrar General. Though Article 226 of the Constitution has also been mentioned in the cause title, that Article is clearly not applicable, for it is not a case of contravention of any fundamental right. What the petitioner complains of is infringement of her statutory right of appeal by imposing additional restriction by way of court-fee.

12. In the result, this writ petition is dismissed.