

(1950) 02 CAL CK 0018

**Calcutta High Court****Case No:** Reference under Section 5 of the Court Fees Act in Appeal from Original Decree  
No. 33 of 1950

Ashutosh Bhattacharjya

APPELLANT

Vs

Satindra Kumar Chaudhuri

RESPONDENT

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**Date of Decision:** Feb. 9, 1950**Acts Referred:**

- Court Fees Act, 1870 - Article 17, 2, 5, 6, 8

**Citation:** (1951) 1 ILR (Cal) 386**Hon'ble Judges:** Roxburgh, J**Bench:** Single Bench**Advocate:** Paresh Nath Mookerjee and Chandra Nath Mookerjee, for the  
Appellant; Jajneswar Hajumdar, Assistant Government Pleader for State, for the  
Respondent

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**Judgement**

Roxburgh, J.

This is a Reference u/s 5 of the Court-fees Act. The Appellant in this case obtained a decree for specific performance of a contract of sale of some immovable property, valuing the suit at Rs. 75,000. The lower court directed that the parties would bear their own costs. The appeal to this Court relates only to the order which in effect deprives the Appellant of the cost, which he would ordinarily expect to receive. The memorandum of appeal was filed with a court-fee stamp of Rs. 2 only. The Stamp Reporter demanded an ad valorem court-fee on the amount of costs. The matter was placed before the Taxing Officer and has now been referred to me for decision.

2. Two decisions of this Court relating to the matter of court-fees chargeable in respect of costs are referred to in the Reference by the Taxing Officer, viz., a decision of Nasim Ali J. in the case of Kshirode Chandra Sen v. Bhagabati Dad (1937) F.A.T. 2488 (unreported) and a decision of Chatterjea J. in the case of Kamal Kumari Debi v. Rungpur North Bengal Bank (1921) 25 C.W.N. 934.

3. In the course of arguments, my attention has also been drawn to a decision of Mitter J. in the case of *Jyoti Prosad Singha Deo v. Jogendra Ram Roy* (1928) 32 C.W.N. 1105.
4. The case of *Kamal Kumari Debi v. Rungpur North Bengal Bank* (supra) arose out of a cross-objection, where costs had been disallowed in a suit on a mortgage. Chatterjea J. first considered the general question as to the liability for court-fees in respect of a dispute in appeal relating to costs, whether alone or whether also joined with an appeal as to the main subject-matter. He pointed out that it had been the regular practice of this Court that in no case were any court-fees charged in respect of a dispute as to costs, where there was also an appeal with regard to the main subject-matter in dispute. He then discussed various cases of other Courts, including in particular *In re Makki* (1896) ILR 19 Mad. 350 and found that no distinction could be made between cases where the appeal related to the whole subject-matter of the original suit, or only to part thereof. In particular, he cited as an example the case of a suit for Rs. 1,000 with a decree for Its. 990, no costs being allowed. He pointed out that if there was an appeal in respect of the Rs. 10 not allowed, as well as in respect of the whole costs, court-fees would be charged on Rs. 10 only. He also relied on two cases of the Privy Council on the question of the meaning of the "subject-matter in dispute", viz., *Doorga Doss Chowdhry v. Ramanauth Chowdhury* (1860) 8 M.I.A. 282 and *Nilmadhab Das v. Bisambhar Das* (1869) 3 B.L.R. (P.C.) 27 (34) : 13 M.I.A. 85 (103).
5. This decision was referred to by the Taxing Officer in the Reference before Nasim Ali J. in the case of *Kshirode Chandra Sen v. Bhagabati Dasi* (supra) but was not discussed by the latter. The case before Nasim Ali J. related to an appeal against an award under the Land Acquisition Act and was really disposed of as covered clearly by Section 8 of the Court-fees Act. Nasim Ali J. observed:

Where the relief as to costs is the only relief claimed in the appeal, the value of the subject-matter of the appeal is the amount of costs in dispute in the appeal. Further, it is conceded by the learned advocate for the Appellant in this case that the subject-matter of the present appeal is really the difference between the amount awarded as compensation to the Appellant and the amount claimed by the Appellant in this appeal, as the amount of costs is to be deducted from the amount of compensation claimed by the Appellant.
6. It would seem, therefore, that although there was an observation by Nasim Ali J. on the question which arises in the present case, the decision in that case was really based on Section 8 of the Court-fees Act,
7. The case of *Jyoti Prosad Singha Deo v. Jogendra Ram Roy* (supra) was a partition case, in which, on appeal, the only question in dispute was as to costs. Mitter J. held that the case was nevertheless one clearly governed by Article 17 of Schedule II and the fee payable was Rs. 15.

8. The cases cited have discussed the various cases of different Courts in which similar questions had arisen. The judgment of Chatterjea J. has itself been the subject of later discussion in such cases as *Ma Shin v. Maung Shwe Unit* (1924) ILR 2 Ran. 637 and *Chiranji Lal v. Bool Chand* (1930) ILR 52 All. 1020 and the view there expressed has not been accepted. Some comment was also made in the Rangoon case on Chatterjea J's reference to the decisions of the Privy Council.

9. There can be no doubt that ordinarily, where there is an appeal against a decision where the order that has been made as to costs is the normal order, the costs following the event, no one, I think, has ever suggested that, although the costs are included in the decree, on appeal, any court-fee has to be paid in respect of the costs calculated separately. This practice, in my opinion, seems to be based on the view which was expressed in the Privy Council cases cited. Costs are not regarded as being any part of a subject-matter in dispute either in the suit or in the appeal. In the appeal, the Appellant does not in such an event really dispute the order as to costs, for it is the natural order that is ordinarily made following the decision as to the main subject-matter in dispute and if he himself succeed in the appeal in regard to the main subject-matter, automatically he will expect to succeed with regard to the costs.

10. The question then arises whether any difference is created where costs do not follow the event and the party affected by the order appeals against the order as to costs either alone or along with an appeal as to the main subject-matter. The same problem also arises in a cross-objection. The matter was tersely dealt with by Sir Arthur J.H. Collins in the case of *In re Mahki* (supra) by saying:

The Appellant has made the costs the subject-matter of dispute and therefore, a court-fee stamp is leviable.

11. Taking the question in its widest form, the difficulty I should feel in accepting that view, apart from the question of what has been the practice in this Court, is that it seems to ignore the problem, which was pointed out by Mitter J. in the case of *Jyoti Prosad Singha Deo* referred to above, in a case coming under Schedule II, Article 17. The matter seems more simple if the main subject-matter in dispute is one on which court-fee is payable *ad valorem* and comes under Article I, Schedule I, and by following the view of Sir Arthur J.H. Collins, it can be said that all that is necessary is to add the costs, where specifically to be in dispute, to the main amount in dispute and charge court-fee accordingly., The same, as pointed out by Mitter J., cannot be easily done if the main subject-matter in dispute has no value and the case comes under Article 17 of Schedule II.

12. But, in any case, the matter seems to me, so far as this Court is concerned, at any rate, to be settled by the admitted practice that, at any rate, where a part of the main subject-matter is in dispute in appeal, even though there is a specific dispute about the costs, because they have not followed the event, no fee is charged, in

other words, the amount of costs in that case is not taken to be part of the subject-matter in dispute. I cannot see how, if that is the practice in such a case, any difference can be made in the case where the dispute on the main subject-matter, so to speak, in the appellate court vanishes to zero. It seems to me that the practice should be consistent and while agreeing that in a case, such as the present, which is admittedly one under Article I, Schedule I, court-fee leviable is to be calculated under that Article, I come to the conclusion that, as the costs are not to be taken as part of the subject-matter in dispute, the slightly anomalous result is reached that there is an appeal, though the amount of the subject-matter in dispute in the particular case is nil. The court-fee payable under Article I, Schedule I, there is also nil, because, in my opinion, the fees payable are 6 annas on Rs. 5, or part thereof and here the so called part is nothing; nothing cannot, in my opinion, be deemed to be a part of something. The Court-fees Act is in essence a taxing statute and if the interpretation given is deemed by the powers concerned not to achieve the results they wish, there is no difficulty in their making specific provision for this problem of appeals relating to costs only.

13. I should mention that, in the case of *Kamal Kumari Debi v. Rungpur North Bengal Bank* (supra). Chatterjea J. was dealing with a cross-objection and made it specifically clear that he expressed no opinion as what is to be done as to the memorandum of appeal; but, on the other hand, in view of the manner in which he dealt with the cross-objection, there can be little doubt that he would not have followed the view I now express. Indeed, so far as I can see, there can be no difference between the two cases and both the cross-objection and the memorandum of appeal come under Article I, Schedule I and are chargeable either as I have indicated, if the view is taken as I have done that the amount of costs does not form part of the subject-matter in dispute, or is chargeable in full ad valorem on the view taken by other High Courts. I cannot see how either can be held as coming under Article II, Schedule II or Article ID of Schedule II. All that Section 6 of the Court-fees Act says is that certain documents are to be chargeable with certain fees according to the schedules. It nowhere said that every document filed in a court is necessarily chargeable with a fee specified somewhere under the Court-fees Act and if it cannot be fitted under one, or if the Article under which it appears to come does not give any amount of fee as chargeable, then, by some process of reasoning, it must somehow or other be fitted under some other Article.

14. I would also point out that some, if not all, of the reasons given by Chatterjea J. for distinguishing between the case of a memorandum of appeal and a cross-objection appear to have lost their validity in view of the amendment of Section 2 of the Court-fees Act, 1870, by Bengal Act VII of 1935, whereby a suit has been defined as including as appeal and an appeal as including a cross-objection.

15. At any rate, so far as the memorandum of appeal is concerned, the decision of Chatterjea J. left the matter entirely open. In my opinion, in a case like the present

one, it clearly comes, as I have said, under Article I, Schedule I, although the result is that the fee payable is nothing. The court-fee paid in this case is more than adequate.