IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10226 OF 2019

Prashant s/o Malharrao Deshmukh
Age 38 years, Occupation : Nil
Residing at Flat No.2, Diamond Plaza
Coop. Hsg.Society, Mhada Colony,
Besides Malvani Bus Depot,
Malad (W) Mumbai. .. PETITIONER
[Original appellant]

VERSUS

Prachi w/o Prashant Deshmukh,
Age 33 years, Occupation : Household,
Residing at : C/o Chandrashekhar Appaji Pawar
Gut No.452, Property No. 35/4, Sudarshan
Housing Society, Sambhaji Nagar,
Jalgaon .. RESPONDENT
[Original Respondent]

...
Adv. Mr.Hemant Surve for petitioner.
A.G.P. Smt.D.S.Jape for State.
....

CORAM : MANGESH S. PATIL, J.
RESERVED ON : 07/09/2020
PRONOUNCED ON : 11/09/2020

JUDGMENT :-

Heard.

2] Rule. The Rule is made returnable forthwith and with the consent of the petitioner the matter is heard finally. The respondent has been duly served with a notice for final disposal but she has not appeared.

3] In this Petition under Article 227 of the Constitution of India, the petitioner is impugning the order passed by learned District Judge-3, Jalgaon dated 6/9/2018 upholding the office objection and directing correction of the valuation of the appeal in the light of the provision of Section 6(ii) of the Maharashtra Court Fees Act, 1959.

4] I have heard the learned advocate Mr.Surve for the petitioner. He submits that the original proceeding initiated by the respondent was for maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956 against the petitioner. She claimed maintenance at the rate of Rs.15,000/- p.m. In addition she also claimed Rs.90,000/- being the arrears at that rate for a period of 6 months next before filing of the Petition and also claimed an amount of Rs.25,000/- by way of costs. The petitioner contested the petition and by the judgment and decree dated 9/4/2018 the learned Civil Judge allowed the suit partly and directed the petitioner to pay to the respondent maintenance at the rate of Rs.5,000/- p.m. from the date of the decision i.e. 9/4/2018.

5] Being aggrieved and dissatisfied with the judgment and decree the petitioner filed Regular Civil Appeal No.849/2018 and valued the appeal with an endorsement as, "Valuation : Rs.50,000/- (Maintenance awarded Rs.5,000 x 10 times = Rs.50,000/-, as per Section 6(ii) of the Bombay Court Fees Act, 1959 for purposes of jurisdiction and Court Fees" and paid the Court fee of Rs.4,930/-.

6] The office of the District Court raised following objection :

> "Appeal memo is not properly stamped as per valuation of appeal memo is not properly worked out as required under Section 6(ii) of the Maharashtra Court Fees Act, 1959. "

7] The petitioner contested the petition before the learned District Judge-3 by filing written note of arguments (Exh.E). The learned District Judge by the impugned order (Exh.F) upheld the office objection and directed the petitioner to value the appeal accordingly and to pay the deficit Court fees within 7 days. Hence this Petition.

8] The learned advocate Mr.Surve submits that though the appeal in a suit for maintenance is to be valued under Section 6(ii) of the Maharashtra Court Fees Act, 1959, the liability to pay the difference between the Court fees paid by the plaintiff claiming maintenance and 10 times of the maintenance for a period of 1 year decreed by the trial Court remains in abeyance and can only be recovered if and when the quantum of maintenance becomes final. In support of his submission he cites the decision in the case of **Shripat Govindji Suke V/s Shrimati Saraswatibai Sripat; 1965 Mh.L.J. 793**. The learned advocate Mr.Surve submits that in view of such decision of the Division Bench of this Court, the impugned order expecting the petitioner to value the appeal in accordance with the proviso to Section 6(ii) of the Maharashtra Court Fees Act 1959 cannot stand a test of legality. He therefore, submits that the impugned order be quashed and set aside and the appeal may be directed to be registered.

9] I have carefully gone through the impugned order and the decision in the case of Shripat Govindji Suke (supra). The relevant provision of Section 6(ii) of the Maharashtra Court Fees Act reads thus :

> **"6. Computation of fees payable in certain suits**
>
> (i)...........
>
> **(ii) for maintenance and annuities**
>
> In suits for maintenance (with or without a prayer for the creation of a charge) and for annuities or other sums payable periodically according to the value of the subject matter of the suit, and such value shall be deemed to be, in the case of a suit for maintenance, the amount claimed to be payable for one year and in any other case, ten times such amount :
>
> Provided that if in a suit for maintenance the plaintiff obtains a decree for maintenance the defendant shall be liable to make good the deficit, if any, between the fee payable ten times the amount awarded for one year and the fee already paid by the plaintiff; and the amount of such deficit shall, without prejudice to any other mode of recovery, be recoverable as an arrears of land revenue."

10] As can be seen, the substantive provision *inter alia* lays down that in suits for maintenance the value of the subject matter shall be deemed to be the amount claimed to be payable for one year. The proviso then adds that if in a suit for maintenance the plaintiff obtains a decree for maintenance the defendant shall be liable to pay the difference between the fees payable on 10 times the amount awarded for one year and the fees which is already paid by the plaintiff and such deficit shall be recoverable as arrears of land revenue. It is in view of such peculiar wordings of the provision that it has been observed and laid down by the Division Bench in the matter of Shripat Govindji Suke (supra) as under :

> *"7] On a plain reading of section 6(ii) with the proviso, it is clear that the section speaks of the value of the subject matter of the suit and makes no reference to the plaintiff or the defendant. What is further to be noted is that a legal fiction is created by the use of the words "such value shall be deemed to be" in the case of suits for maintenance and that is equated with the amount payable for one year. It was necessary to create such a legal fiction because the amount payable for maintenance is also in a sense an amount payable periodically or is in the nature of an annuity. But whereas in the case of an amount payable periodically or for annuities, the valuation is fixed at 10 times such an amount, the Legislature has chosen to make an exception in the case of an amount payable for maintenance and has fixed that valuation at the amount claimed for one year in respect of maintenance and not ten times the yearly claim. This concession is not taken away and the legal fiction created under the substantive section is not in any manner cut down because the matter is agitated in the further stages in the same lis at the instance of any party by way of an appeal. The lis is the same and it continues to have the same character, whether it is taken from one Court to another, and the Legislature having fixed a notional value of the relief for maintenance by creating a legal fiction, we do not find that there is any jurisdiction for not giving the benefit of the legal fiction or the notional valuation at all the stages of the lis including a first appeal or a second appeal or even an appeal under the Letters Patent, under Section 6(ii) of the Bombay Court Fees Act.*
>
> *8] It is however urged that the proviso also must be given its legal effect and the proviso uses the words "the fee payable" and that fee is computed at ten times the amount payable for one year and therefore that must be taken to be the real valuation of the relief. We do not*

think that it is possible to accept this interpretation of the proviso. As far as we can see, the proviso comes into effect only after the suit is decided and a suit is not finally decided until the lis comes to a final conclusion between the parties. A suit is not necessarily decided by the decree of the first Court because the person aggrieved by the decision has a right to challenge it in further appeals. We must therefore hold that the provision made by the Legislature in creating a liability in favour of the State Exchequer and for which a machinery is provided for its realisation can really be worked out only after the suit is finally decided. It may well happen that the plaintiff"s suit for maintenance is decreed fully or partially or not decreed at all in the first Court. It is only the final decision of the claim of the plaintiff for maintenance that will give rise to the liability created by the proviso which is of a special nature. The special feature of this liability is that the liability is attracted only when the plaintiff succeeds. If the plaintiff fails, there is no question of recovering any deficit. It may well be that the Legislature wanted that the State revenue may not suffer in respect of a certain amount which may otherwise be payable as Court-fees but which is recoverable only from a defeated defendant after the final decision of the lis between the parties. The stage at which therefore the liability created under the proviso is to be worked out is the final decision of the suit and not merely at the end of the litigation in the trial Court or the first appellate Court.

9] The Special Officer has also taken the view that the liability which is created against a defeated defendant must be made good as a condition precedent for his filing a first or a second appeal. We do not see any warrant for such a construction of the proviso in the Act. The learned counsel appearing for the State as well as the opponent have not supported this view which has found favour with the Special Officer. We also do not see that there is any such provision in the Court-fees Act which makes the filing of a first or a second appeal by a defeated defendant dependent on his paying or making good the *liability which is created by the proviso. As far as we can see, the liability created under the proviso is a liability in the nature of a revenue due which is recoverable, apart from other modes that may be available, as an arrear of land revenue. The stage at which and the authority by which this liability may be realised does not arise until the final decision of the suit and one of the modes is to recover it as an arrear of the land revenue. This obviously means that Revenue Officers are entitled to call upon the defeated defendant to make good this liability, and on his failure, to proceed to recover it as an arrear of land revenue. We are not called upon to decide in this revision application whether this liability is in the nature of a tax or a fee though it is called a deficit between the fee payable on ten times the amount awarded for one year and the fee already paid by the plaintiff. Therefore, we do not feel it necessary to pronounce on the vires of the proviso or whether it is within the legislative competence of the Legislature of the State.*

10] <u>We have thus come to the conclusion that there is no difference in valuing the relief when the claim is for future maintenance, whether it is in a suit or in an appeal, and that relief is to be valued at the amount claimed for one year.</u> The valuation does not change because the lis is at the stage of a suit or a first appeal or subsequent appeals. The proviso does not come into operation until the final termination of the lis and the liability of the defeated defendant is to be worked out only after the termination of the lis. Whatever liability may arise at that stage is not relevant in entertaining or registering the first or second appeal. The Court-fees which he is liable to pay will be according to the provision in the substantive section, namely, on the notional value of the relief or the amount claimed by way of future maintenance for one year." (emphasis supplied).

11] It is therefore, abundantly clear that the liability to realize such difference as contemplated under the proviso would arise only after final decision of the suit and not when the *lis* is pending in the form of an appeal. It is in view of such interpretation put by the Division Bench that the impugned objection raised by the office of the District Court, Jalgaon and the impugned order upholding it is clearly erroneous.

12] However, the observations in para no.7 (supra) and particularly the portion underlined by me clearly shows that even when an appeal is preferred by either of the parties such a litigant is liable to value the appeal for the purpose of Court-fees in accordance with the substantive provision of Section 6 (ii) and would be liable to pay *ad valorem* Court-fees on the amount of maintenance claimed (if the appeal is preferred by a wife) or granted (if the appeal is preferred by the husband) for a period of one year.

13] In the matter in hand the Civil Court has awarded maintenance to the respondent at the rate of Rs. 5,000/- per month which comes to Rs. 60,000/- for a year. Therefore, the petitioner ought to have valued the appeal preferred by him to the District Court at Rs. 60,000/- and should have paid *ad valorem* fees which comes to Rs. 5,330/-. But he has paid only a Court-fees of Rs.4,930/- and thus the deficit comes to Rs. 400/-. True it is that the valuation clause as is appearing in the appeal memo just below the title clause shows that oblivious of petitioner's liability under the proviso to Section 6(ii) of the Court Fees Act, he has erroneously stated to have valued the appeal at Rs.50,000/- being ten times the monthly maintenance of Rs. 5,000/- awarded by the trial Court. It is quite clear as has been laid down by the Division Bench, the valuation of appeal would be in accordance with the substantive provision of Section 6 (ii) on the amount of maintenance claimed / awarded for a period of one year and the liability under the proviso would arise after the decision reaches finality. Therefore, it is quite clear that though the learned District Judge by the impugned order has incorrectly and illegally upheld the office objection holding the valuation made by the petitioner to be incorrect, the appeal indeed has not been valued correctly. The petitioner ought to have valued the appeal for the time being at Rs.60,000/- being the maintenance at the rate of Rs. 5,000/- per month for a period of one year and should have paid the Court-fees accordingly, further continuing his liability to pay the difference in view of the proviso to Section 6(ii) as interpreted by the Division Bench, after the list reaches finality.

14] In view of above, the petition deserves to be allowed but only partly. The impugned order to the extent directing the petitioner to value the appeal and to deposit the deficit court fees in accordance with the proviso to Section 6 (ii) of the Maharashtra Court Fees Act is quashed and set aside. However, the petitioner shall value his appeal at Rs.60,000/- and shall pay an amount of Rs.5,330/- out of which he having paid Rs. 4,930/-, he shall pay the deficit of Rs. 400/-. The District Court shall allow him to carry out necessary amendment in the appeal memo and shall allow him to pay the deficit Court-fees as directed herein within two weeks from the date of this order, whereupon his appeal shall be registered. However, it is clarified that the petitioner would be liable to pay the difference as contemplated under the proviso to Section 6 (ii) of the Maharashtra Court Fees Act when the decision reaches finality.

15] The Rule is accordingly made absolute.

[MANGESH S. PATIL, J.]

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