

State of Bombay Vs. Bai Moti and ors.

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Court : Mumbai

Decided On : Mar-01-1957

Reported in : AIR1958Bom18; (1957)59BOMLR663; ILR1958Bom547

Judge : Dixit and ;Vyas, JJ.

Acts : Court-fees Act, 1870 - Sections 31, 31(1) and 31(2); Bombay Court-fees (Amendment) Act, 1954; [Code of Civil Procedure \(CPC\), 1908](#) - Order IV - Order VII - Order VIII - Order XIV, Rule 4 - Order XVIII - Order XX; Bombay City Civil Court Act - Sections 11(1); Presidency Small Cause Courts Act - Sections 73

Appeal No. : Civil Revn. Appln. Nos. 1338 to 1366, 1368, 1370 to 1372, 1374, 1375 and 1377 to 1385 of 1955 and 11

Appellant : State of Bombay

Respondent : Bai Moti and ors.

Advocate for Def. : Arun H. Mehta, Adv. for ;A.B. Patwa, Adv., ;R.M. Shah, ;S.N. Patel, ;B.A. Pandya, ;M.N. Majumdar, ;D.S. Parikh and ;C.G. Shastri, Advs., ;Arun H. Mehta, Adv. for ;A.B. Patwa, Adv., ;M.C. Shah, Adv. f

Advocate for Pet/Ap. : Government Pleader

Judgement :

Dixit, J.

1. These are several applications which raise a common question under Section 31 of the Court-fees Act, 1870. In order to understand the question, it is sufficient to state the facts in C. R. A. No. 1116 of 1956.

2. In regular suit No. 202 of 1954 the parties to the suit arrived at a compromise and a consent decree was taken. This was after the issues were settled, but before the evidence was recorded. The plaintiffs, relying on Section 31, claimed a refund of half the amount of Court-fees and the learned Judge issued notice to the Government Pleader. The Government Pleader objected, contending that as in this case the consent decree was taken after the issues were settled, the plaintiffs were not entitled to claim half the amount of Court-fees. The learned Judge allowed the plaintiffs the refund of the Court-fees as claimed, and the Slate of Bombay has come up in revision.

3. Now, Section 31, by Sub-section (1), provides:

'When any suit in a Court is settled by agreement of parties before issues have been settled or any evidence recorded, half the amount of the fee paid by the plaintiff on the plaint shall be repaid to him by the Court.'

It is to be noted that Section 31 was inserted in the Court-fees Act, 1870, by Bombay Act No. XII of 1954. There is no dispute in this case as regards the facts of the case. On the question of interpretation of Section 31 two constructions are suggested. The one suggested by the learned Advocate appearing for the plaintiffs is that inasmuch as the consent decree was taken before the evidence was recorded, the plaintiffs are entitled to claim a refund of half the amount of Court-fees paid by them. The construction suggested by the learned Government; Pleader appearing for the State of Bombay is that as in this case the consent decree was not taken before the settlement of issues but after the settlement of issues, though before the recording of the evidence, the plaintiffs are not entitled to claim a refund in the manner claimed by them. Section 31 would, at first sight, suggest that the construction contended for by the plaintiffs is right. But one has to look at - the question a little more closely. The words requiring interpretation are 'before issues have been settled or any evidence recorded'. Mr. Arun H. Mehta says that the plaintiffs would be entitled to claim a refund of half the amount of Court-fees even if the consent decree is not taken before the settlement of issues but the consent decree is taken before the evidence is recorded. He says that the words occurring in the section are plain and if the words are plain, they must then receive their natural meaning. In other words, his contention is that a consent decree may be taken before the issues have been settled or a consent decree may be taken before the evidence is recorded and in either case the plaintiffs would be entitled to claim a refund of half the amount of the Court-fees under Section 31. Now, Section 31 refers to 'any suit' in a Court. Speaking broadly, there are suits of a small cause nature and suits which are called regular suits. The second class of suits are either suits which are called ordinary suits or suits which are called special suits, i.e., suits triable under the special jurisdiction of a Court and it is obvious that we have to consider two types of suits: (1) suits which are known as regular suits and (2) suits which are of a small cause nature. It is not in dispute that Section 31 applies to both the types of suits. It is also not in dispute that in regard to suits known as suits of a small cause nature no issues are settled. What happens in such suits is that the Court sets out points for determination; evidence is then recorded and the suit terminates with a judgment and decree. On the other hand, in suits known as regular suits the Court first frames issues on which the parties are at variance and upon the issues being settled, the Court then proceeds to record evidence in the case, and speaking generally, there are five principal stages in a suit. A suit commences with a plaint. The defendant files his written statement in answer to the plaintiff's claim. The Court then proceeds to frame issues in the light of the pleadings of the parties and the documents, if any, produced in the case. After the issues are settled, the Court proceeds to record evidence and after the evidence is recorded, the parties are heard and the suit terminates with a judgment and decree. In the case of a suit of a small cause nature, the suit commences with a plaint. The defendant files his written statement in answer to the plaintiff's claim. But in a suit of this type there is no stage of settlement of issues. The Judge, while giving judgment, sets out the points for determination, records such evidence as the Court thinks fit and proper and then gives judgment, the suit ending in a decree. One has to bear in mind these essential features of a regular suit as well as of a suit of a small cause nature. There can be no doubt that under Section 31(1) refund of half the amount of Court-fees paid by the plaintiff is intended. This concession is conferred upon a plaintiff because the parties do not choose to go to trial and the suit is terminated by

a consent decree before the evidence is recorded. This is in a sense a concession given to a plaintiff. At the stage when the Court frames issues, the Court has to go through the pleadings of the parties, has to look at the documents produced by the parties and it is in the light of the pleadings and the documents that the Court frames issues for decision at the trial. In other words, the Court ascertains as to what the dispute between the parties is, as to what are the points of dispute between the parties and upon those points the Court records evidence when tendered by the parties. Bearing in mind this position, it is, to our minds, easy enough to construe Section 31(1). The key words, if I may so describe them, are 'before issues have been settled or any evidence recorded'. Take a suit of a small cause nature. Are there any issues settled in a suit of a small cause nature? The answer is obviously 'No'. It follows that the expression 'before issues have been settled' does not apply to a suit of a small cause nature and the expression 'before issues have been settled or any evidence recorded' would apply-- and this is not disputed -- to what is known as a regular suit. Now, in this case the consent decree was taken before the evidence was recorded. If the intention of the Legislature was that a refund of half the amount, of the Court-fees can be claimed in the case of a regular suit both before the issues were settled or before the evidence was recorded, it was unnecessary to mention in Section 31 the words 'before issues have been settled' and it is recognised that the Legislature does not use superfluous words. On that construction, the words 'before issues have been settled' would be superfluous. Again, taking a suit of a small cause nature a refund of half the amount of the Court-fees can be claimed before the evidence was recorded. There was no point then in mentioning in Section 31 the words 'before issues have been settled', because obviously these words would have hardly any application to a suit of a small cause nature. In other words, the words 'before any evidence has been recorded' would be superfluous in the case of a regular suit and if one takes a suit of a small cause nature, the expression 'before issues have been settled' would again be superfluous, and as I said, the Legislature does not use superfluous words. If, therefore, Section 31 is construed in the sense indicated above, there is perfect harmony ' in interpreting Section 31 and so interpreted, Section 31(1) will apply, in the case of a suit of a small cause nature, when a consent decree is taken before evidence is recorded and in the case of a regular suit a refund can be claimed if a consent decree is taken before issues have been settled.

4. But it is contended that in so construing Section 31(1), one would add words to the section where these words do not exist. We are not satisfied that this contention is right. It is to be borne in mind that Section 31(1) embraces 'any suit' in a Court which must mean any suit tried in a Court of Law. One must, therefore, apply Section 31(1) to every type of suit which is tried in a Court of Law. This was the view which the learned Judge of the Court below first seemed to take. He considered that this would be the right construction of Section 31, but the learned Judge felt, if I may say so, oppressed by the fact that in so construing Section 31, he would be violating the well-known rules of construction. One of the rules of construction which was in the mind of the learned Judge was that when the words in a statute are plain, then the words must be given their natural and ordinary meaning. He then said that another rule of construction was that in construing a statute, words should not be added to the statute. No exception can be taken to this view and indeed, this legal position is so obvious that one must accept it as sound. But there is also another rule of interpretation and that is that the Legislature in enacting a section does not use superfluous words and that every endeavour should be made to reconcile and to avoid any absurdity in the interpretation of the section and if these are the principles governing the interpretation of Section 31, we have no doubt that the interpretation

which has been suggested by the learned Government Pleader is right. In accepting that interpretation no absurdity is involved. If the idea was to award a refund of the amount of the Court-fees both before the settlement of issues and before the recording of evidence, there was hardly any meaning in suggesting, as Section 31 does, that this could be done either before the one stage or before the other, and as I said, in the case of a suit of a small cause nature the Legislature is well aware of the fact that in such a case a consent decree can be taken before evidence has been recorded. The view we take, therefore, is that under Section 31(1) a refund of half the amount of Court-fees paid by the plaintiff can be allowed, in the case of a regular suit, if the consent decree is taken before the issues have been settled and in the case of a suit of a small cause nature, a refund of half the amount of Court-fees can be claimed by the plaintiff if the consent decree is taken before the evidence is recorded.

5. Happily for us, we do not seem to be quite alone in taking this view. The learned Government Pleader has called our attention to three decisions of this Court which I will mention in the order of dates in which they have been given. The first of these is a decision given in C. R. A. No. 309 of 1955, D/-9-2-1956 (Bom) (A). In that case Mr. Justice Bavdekar was construing Section 31 and he held that as in that case the suit was compromised which was a regular suit after the issues were settled, the application for refund was not in order. The next decision was given in C. R. A. No. 1859 of 1955, D/- 14-8-1956 (Bom) (B). That was a case in which there was a special suit which was filed on 21st April 1954 and in which issues were raised on 20th August 1954, the consent decree having been taken after the issues were settled on that date. Mr. Justice Shah was considering Section 31(1) and he held, reversing the decision of the Court below, that the plaintiff was not entitled to obtain an order for refund of half the Court-fees because the consent decree was taken after the issues had been settled. The last decision to be mentioned is a decision given in C. R. A. No. 1855 of 1955, D/- 11-9-1956 (Bom) (C). That decision was given by Mr. Justice Gajendragadkar and he was dealing with an application made by the plaintiff in civil suit No. 36 of 1953. In that case issues were settled and a compromise took place after the issues were settled and while reversing the order of the Court below, he held that the plaintiff was not entitled to claim a refund. With respect, we follow these authorities and hold that the plaintiffs in this case were not entitled to claim a refund of half the amount of Court-fees because the consent decree was taken after the issues were settled.

(After dealing with other applications raising similar questions His Lordship proceeded)

6. In the result, therefore, we must hold that the contention urged on behalf of the State Government is well founded and must prevail. The scheme of the Code of Civil Procedure is, in our opinion, quite clear. Order IV provides for the institution of a suit which is commenced by a plaint. Order VII deals with a plaint. Order VIII deals with a written statement and set-off. Order XIV deals with the framing of issues. Order XVIII deals with the hearing of a suit and examination of witnesses and Order XX deals with a suit terminating in a judgment and decree. The framing of issues and the recording of evidence are definite and important stages in the course of a suit and that is why under Section 31(1) the Legislature made the settling of issues and the recording of evidence as a point of time before which a consent decree was to be taken. If a plaintiff goes to trial and evidence is recorded, it can hardly be suggested that the plaintiff would thereafter be entitled to claim a refund of half the amount of Court-fees paid by him, because in such a case what happens is that all that remains for the

Court to do is to give judgment in the case. The Legislature might well have thought that in cases in which the issues have been settled, the plaintiff would not be entitled to claim a refund, and as I have already pointed out, the two stages contemplated by Section 31 apply to two different sets of circumstances. This view is in accordance with the three decisions referred to above. Support to this construction is also derived from Section 73 of the Presidency Small Cause Courts Act.

7. This being our view of the matter, we must hold that in C. R. A. No. 1116 of 1955 the order made by the Court below directing the refund of half the amount of Court-fees in favour of the plaintiffs will be set aside and the rule will be made absolute with costs incurred by the State Government in this Court.

8. For the same reasons the order made in C. R. A. Nos. 1338, 1340 to 1342, 1344, 1345, 1346, 1347, 1348 to 1355, 1356, 1357, 1358, 1360 to 1362, 1363, 1364, 1365, 1368, 1370, 1372, 1374, 1375, 1377 to 1384 and 1385 of 1955 will be set aside and the rule will be made absolute with costs in favour of the applicant. For the same reasons the order made in C. R. A. Nos. 1343, 1359 and 1366 of 1955 will be set aside and the rule will be made absolute. The State Government will recover the costs from the plaintiffs only. As regards C. R. A. No. 1339 of 1955, the application fails and the rule will be discharged with costs. As regards C. R. A. No. 1371 of 1955, the application fails and the rule will also be discharged with costs.

Vyas, J.

9. I agree with my learned brother's construction of Section 31(1) of the Court-fees Act.

10. The learned Government Pleader contends that in regular suits refund of half the amount of Court-fee is claimable, if the suits are settled by agreement of parties before issues have been settled, except where it does not become necessary to settle the issues on account of there being no substantial dispute between the parties, in which case refund is claimable if a suit, though it be a regular suit, is settled by agreement of parties before any evidence has been recorded. In small cause suits, says the learned Government Pleader, refund of half the amount of Court-fee is claimable if the suits are settled by agreement of parties before any evidence has been recorded. On the other hand, the learned Advocates for the opponents contend that in all suits a refund of half the amount of Court-fee is claimable, if the suits are settled by agreement of parties either before the issues have been settled or after the issues have been settled but before any evidence has been recorded.

11. There is an essential distinction between regular suits and small cause suits. In regular suits issues are required to be settled under Order XIV of the Civil Procedure Code before evidence on merits is recorded under Order XVIII. In small cause suits no issues are required to be settled. There is, therefore, no doubt that the words 'before issues have been settled or any evidence recorded' cannot govern claims to refund of Court-fee in both the categories of suits and it is well-known that the intention of the Legislature is to be gathered from the words used by the Legislature. The fact that the Legislature used the phrases 'before issues have been settled' and 'before any evidence has been recorded', both of which cannot apply to both the categories of suits -- regular suits and small cause suits -- would show that the Legislature intended the one phrase to refer to one category of suits and the other phrase to the other category of suits. The words 'before issues have been settled'

must have been intended to govern claims to refund in regular suits and the words 'before any evidence has been recorded' must have been intended to refer to small cause suits. It might sometimes happen, as the learned Government Pleader has contended before us, that even in a regular suit, there being no substantial dispute between the parties except as to the amount due for which the matter might be sent down to the Commissioner, it may not be necessary to settle the issues. Upon such a position arising, the words which would govern a claim to a refund of Court-fee in such a suit, though it be a regular suit, would be the words 'before any evidence has been recorded'. But except for such a limited contingency, the words which would govern cases of refund of Court-fee in regular suits are the words 'before issues have been settled'.

12. If we were to accept the construction which the learned Advocates for the opponents are contending for viz., that in all suits a refund of half the amount of Court-fee would be claimable if the suits are settled by agreement arrived at even after the issues have been settled but before any evidence has been recorded, the words 'before issues have been settled' would be redundant in their application to regular suits and they would be out of place in their application to small cause suits. They would be redundant in the regular suits, as the stage of settlement of issues has already passed when the stage of recording evidence arrives. Issues are always settled before evidence on merits is recorded. Therefore, if the Legislature intended that a plaintiff could claim refund of half the amount of Court-fee if the suit was settled by agreement reached before the evidence was recorded, there could be no point in saying at the same time that the refund could be claimed if the suit was settled by agreement before the settlement of the issues. The stage of recording evidence on merits being a later state than the stage of settling issues, if the stage of recording evidence was intended to be a terminus with reference to which the claim to refund was to be decided in regular suits, it would be purposeless to refer to the earlier stage -- the stage of settlement of issues -- in the same context.

13. Besides, the Legislature would not use words which would create two mutually incongruous positions in the same breath. The settlement of a suit before the issues are settled and the settlement of a suit before the evidence is recorded but after the issues are settled are two totally different positions. The construction which the learned Advocates for the opponents are contending for puts these two different positions on a par on the point of refund of Court-fees. I do not think that such a construction of its intention was envisaged by the Legislature.

14. The words 'before issues have been settled' are out of place in the small cause suits, since the law does not require settlement of issues in small cause suits. Clearly, therefore, these words could not have been intended by the Legislature to govern a claim to refund of Court-fee in small cause suits. So far as the small cause suits are concerned, the words of Section 31(1) which would govern claims to refund are the words 'before any evidence has been recorded'.

15. There is no doubt that in the context the word 'evidence' in the phrase 'any evidence recorded' means evidence on merits which is required to be recorded under Order XVIII. The evidence which the Court may record under Order XIV, Rule 4 is the evidence helpful for settling the issues. Such evidence would be recorded before the settlement of issues and the stage of recording such evidence would be included in the stage which is reached when the settlement of issues takes place. That stage could not, therefore, have been thought of again by the Legislature when the

Legislature used the words 'any evidence recorded' after using the words 'before issues have been settled'. The stages envisaged by the Legislature when it used the words 'before issues have been settled' and the words 'any evidence recorded' in Section 31(1) are two distinct stages, as distinguished from overlapping stages, and that being so, the Legislature while referring in Section 31(1) to the stage of recording evidence could not have intended to refer to a stage, part of which would precede the settlement of issues and part of which would follow the settlement of issues. In my view, the stage which the Legislature envisaged when it used the words 'any evidence recorded' was the stage which is reached after the issues are settled, in other words, the stage of recording evidence under Order XVIII of the Civil Procedure Code.

16. The construction which we are putting upon Section 31(1), viz., that the words 'before issues have been settled' would govern claims to refund of Court-fee in regular suits, except when even in a regular suit it does not become necessary to settle the issues on account of there being no substantial dispute between the parties, and that the words 'any evidence recorded' would govern cases of refund in small cause suits was also put upon this section by three learned Judges of this Court: C. R. A. No. 309 of 1955 (Bom) (A) was decided by Mr. Justice Bavdekar, C. R. A. No. 1859 of 1955 (Bom) (B) was decided by Mr. Justice Shah and C. R. A. No. 1855 of 1955 (Bom) (C) was decided by Mr. Justice Gajendragadkar. Mr. Justice Bavdekar, Mr. Justice Shah and Mr. Justice Gajendragadkar construed Section 31(1) in the same way in which we have done. We have not been referred to any judgment of a Division Bench of this Court or any judgment of a single Judge or a Division Bench of any other High Court which has taken the view which the learned Advocates for the opponents are contending for. We are told by the learned Advocates, M/s. Mehta and Patel that the words, similar to the words used in Section 31(1), were used in Notification No. P. 1301 published in the Bombay Government Gazette Part IV-C dated September 8, 1955, at p. 1368 and Notification No. 1123/7 dated 26th March 1954, published in the Bombay Government Gazette Part IV-A dated April 1, 1954, at p. 104, issued by the State of Bombay under Section 31(2), and are also used in Section 11(1) of the Bombay City Civil Court Act. Merely the use of similar language somewhere else, unless the said language is construed by a Court, would not help the opponents on a question of construction. Neither Section 11(1) of the Bombay City Civil Court Act nor any of the Notifications referred to above has so far been construed by any Court and we are told that the practice in the City Civil Court, Greater Bombay, is in consonance with the construction placed by us upon Section 31(1) of the Court-fees Act. So reference to the Notifications cited above and to Section 11(1) of the Bombay City Civil Court Act would not help the opponents.

17. In the result, I agree with the order proposed by my learned brother.

18. Order accordingly.