

conclusion that the formalities enjoined by the proviso were complied with in the present case.

The conclusion at which we have arrived is that the decision of the learned Commissioner that the questions formulated by the assessee on the point of jurisdiction cannot form the subject of a reference to the High Court is correct. We, therefore, reject this application with costs. The counsel for the Department is entitled to a fee of Rs.75.

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SETH KAN-  
HAIYA LAL  
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ER OF IN-  
COME-TAX

Before Mr. Justice Allsop

CHHAKAURI SINGH (PLAINTIFF) v. SRI KRISHNA  
PANDE AND OTHERS (DEFENDANTS)\*

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September, 13

*Court Fees Act (VII of 1870 ; as amended by Local Act XIX of 1938), section 7(iv-B), proviso—Suit for injunction, filed before the amendment—Second appeal filed after the amendment—Court fee on second appeal.*

In a suit for an injunction, filed before the amendment of the Court Fees Act by Local Act XIX of 1938, the relief was valued at Rs.5 and court fee was paid accordingly. A second appeal was filed, after the said amendment, with the same valuation and court fee as on the plaint: *Held* that the court fee paid on the second appeal was sufficient. Section 7(iv-B) of the Court Fees Act as amended has laid down that it is the amount mentioned in the plaint which is the basis of the valuation, and therefore the court should look back to the date of the plaint and assess the court fee upon the amount at which the relief was in fact valued—and rightly valued inasmuch as the proviso to section 7(iv-B) was not then in force—in the plaint.

Mr. *Baleshwari Prasad*, for the appellant.

The respondents were not represented.

ALLSOP, J.:—The question which is to be decided is what amount of court fee should be charged on a memorandum of appeal against a decree passed in a suit to obtain an injunction.

The law in force when the suit was instituted was that the court fee charged on the plaint should be *ad valorem*

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according to the amount at which the relief sought was valued in the plaint, it being left to the plaintiff's discretion to place whatever valuation he wished upon his relief. The plaintiff valued his relief at Rs.5 and paid the proper court fee on that amount.

At the time when the second appeal was filed in this Court the law had been amended by a Local Act, Act XIX of 1938. After the substitution of the words "second appeals from decrees in suits" for the word "suits" in accordance with the provisions of section 2(iv), and the omission of the portions which are irrelevant, section 7 is now as follows: "The amount of fee payable under this Act in the second appeals from decrees in suits next hereinafter mentioned shall be computed as follows:

"(iv-B) In second appeals from decrees in suits . . . (b) to obtain an injunction, . . . according to the amount at which the relief sought is valued in the *plaint*: Provided that such amount shall be not less than one-tenth of the market value of the property involved in or affected by the relief sought or Rs.50 whichever is greater."

According to the stamp reporter we should look to the date on which the memorandum of appeal was filed and assess the court fee not upon the amount at which the relief was valued in the plaint but upon the amount at which it should have been valued at that date in accordance with the terms of the proviso. According to learned counsel for the appellant we ought to look to the date of the plaint and assess the court fee upon the amount at which the relief was in fact valued and rightly valued in the plaint. The question is not free from difficulty but on the whole I think that the contention of learned counsel must prevail. The legislature has decided that it is the amount mentioned in the plaint which is the basis of the valuation, and therefore. I think, we must look back to the date of the institution

of the suit as we would in suits for movable property other than money under section 7(iii) of the Act which mentions suits for movable property other than money where the subject-matter has a market value and lays down that the court fee shall be calculated upon such market value at the date of presenting the plaint. The proviso to section 7(iv-B) also mentions market value and in some cases the fee payable would depend upon such market value. It seems to me that the market value would be such value at the date of presenting the plaint. If we are to go back to the date of the presentation of the plaint, then, as the proviso was not in force on that date, the relief was rightly valued at Rs.5 and the court fee paid on the memorandum of appeal was sufficient. I hold accordingly.

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*Before Mr. Justice Collister and Mr. Justice Bajpai*

KANHAIYA LAL GOENKA (APPLICANT) v. COMMISSIONER OF INCOME-TAX (OPPOSITE PARTY)\*

1940  
September, 19

*Income-tax Act (XI of 1922), section 14(2)(b)—“Assessed to income-tax”, meaning of—Not merely taken into calculation of the profits and losses—Sum advanced or invested by a partner in a firm—Interest on such sum paid to him by the firm—Interest not deducted in calculating the profits of the firm—Claim by the partner to exemption in respect of the interest from his individual assessment.*

The assessee who had some property at Meerut was also a partner in a Calcutta firm. He and the other partners of the firm had advanced certain sums to the firm on interest. The firm was assessed to income-tax in Calcutta, and in calculating the profits of the firm no deduction was allowed in respect of the interest which the firm had to pay to the partners on these advances. On his individual assessment at Meerut, the assessee's share of the profits of the firm which were assessed to income-tax in Calcutta was exempted but he claimed a further exemption in respect of the interest which had been paid to him by the firm, basing his claim under