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In re BABOO JIVAN HANSRAJ *v.* IRRAWADDY FLOTILLA COMPANY.

PAGE, C.J.

of the applicant and the respondent we propose finally to dispose of this case. In our opinion the application in revision fails and is dismissed. We make no order as to costs.

DAS, J.—I agree.

MYA BU, J.—I agree.

COURT FEES ACT REFERENCE.

Before Mr. Justice Sen.

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Jan. 10.

IN RE A.A.R. CHETTYAR FIRM *v.* DAW HTOO AND OTHERS.*

Court-fees—Review of judgment—Review limited to costs awarded—Court-fees Act (VII of 1870), Schedule I, Article 5.

On an application for review of judgment the proper court-fee to be charged is to be calculated on the basis of the relief which the applicant seeks in review.

Where the applicant asks for a review of the judgment only so far as it affects the question of the costs awarded against him, the application must be stamped *ad valorem* on the amount of costs so awarded and not on the whole amount claimed in the plaint.

Ma Shin v. *Maung Shwe Hnit*, I.L.R. 2 Ran. 637 ; In re *Punyao Nahako*, I.L.R. 50 Mad. 488—*referred to*.

Basu for the applicant. A mortgage suit by the 1st mortgagee in respect of property which had already been sold for arrears of revenue was dismissed by the trial Court and the first appellate Court, but on second appeal a money decree was passed with costs against the applicant, who was the second mortgagee, and who was made a party to these proceedings by the 1st mortgagee. The applicant is now seeking to have the order as to costs set aside ;

* Civil Reference No. 15 of 1932.

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and the question for determination is what is the court-fee payable thereon.

The proper court-fee on any application is to be determined by a consideration of the relief sought. See In re *Manohar G. Ta'mbekar* (1). In this case, the applicant is seeking to have the order as to costs alone set aside. Article 1, schedule I, of the Court-Fees Act provides for any memorandum of appeal not otherwise provided for and the present application falls under that category. In addition, the memorandum of appeal has been filed within 90 days from the date of the decree and in such cases article 5 states that only half the fee *leviable* on the plaint or memorandum, under article 1, need be paid. The policy of the law is to reward diligence.

The word "leviable" does not mean "levied"; the reference is obviously to the court-fee payable on a plaint or memorandum of appeal which would be requisite if there were a fresh plaint or memorandum of appeal seeking the additional relief which the applicant now seeks. See 7 Mad. H.C.R. App. 1; In re *Punyao Nahako* (2).

The views of the Courts are not, however, uniform and the Court in *Satyakripal Banerji* v. *Satyabikash Banerji* (3) took a contrary view. But fiscal enactments should always be construed strictly, and in favour of the subject.

Eggar (Government Advocate) for the Crown. The words of the Act are clear and where the words of the Act are clear it is not the function of the Court to put a benevolent construction on them. As pointed out in the Calcutta case of *Satyakripal*, cited *ante*, the reference is to the plaint or memorandum of appeal already filed and in existence, and not to any future

(1) I.L.R. 4 Bom. 26. (2) I.L.R. 50 Mad. 488.
(3) I.L.R. 57 Cal. 679.

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imaginary plaint or memorandum of appeal. To hold otherwise would defeat the policy of the law which by these provisions seeks to impose a clog on *mala fide* applications for review.

SEN, J.—This is a reference under s. 5 of the Court-Fees Act. The question for decision is as to what is the proper fee payable on an application for review of a judgment of the first appellate Court.

The facts of the case out of which this reference arises are as follows. One Daw Htoo filed a mortgage suit against certain persons (presumably mortgagors), and the applicant, A.A.R. Chettyar Firm, being a second mortgagee, was made a party to that suit. The trial Court dismissed the suit. On appeal the District Judge passed the usual preliminary mortgage decree in favour of Daw Htoo. One of the defendants appealed to the High Court, and the present applicant was made a respondent in the said appeal. The appeal was successful, and the suit was dismissed as against the appellant, the present applicant, and another, and a money decree was passed against the other defendants, who were mortgagors.

It appears from the judgment of the appellate Court (High Court) that the applicant, A.A.R. Chettyar Firm, and the three defendants were ordered to pay the successful appellant's costs in the two lower Courts. The application for review which has now been presented by the A.A.R. Chettyar Firm merely seeks to review that portion of the appellate Court's (High Court) judgment which relates to the order for payment of costs against it.

The taxing master has, in his order of reference, cited cases from several High Courts in India, and as there is a divergence of opinion on this question, *viz.*, whether on an application for review of judgment the

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proper court-fee to be charged should be the same as that paid on the plaint or the memorandum of appeal or whether the fee payable and to be charged is to be calculated on the basis of the relief which the applicant seeks in review. I have considered the cases cited in the order of reference, and I may say at once that I am unable to accede to the view expressed by or accept the decision of the Calcutta, Allahabad and the Punjab High Courts, which have all held that the court-fee charged should be the same as the fee paid on the original plaint or memorandum of appeal. I have no hesitation in accepting the view held by the Madras and Bombay High Courts that it is sufficient if fees are paid on the actual relief sought for in the application for review.

The learned advocate for the applicant has urged before me that the whole question turns on the meaning that should be ascribed to article 5, schedule I, of the Court-Fees Act. This article runs as follows :

" Application for review of judgment . . . The fee leviable on the plaint or memorandum of appeal."

He urges that the question should be decided on the meaning or interpretation that is to be put on the word " leviable " and he urges that " leviable " does not mean " levied," and, as I understand him, his view is that the decision In re *Punyao Nahako* (1) is a correct one and that the judgment of Wallace J. therein makes clear the meaning of the word " leviable " in article 5. I am inclined to agree with his contention. It seems to me that if the view of the Calcutta, Allahabad and the Punjab High Courts is to prevail, then a glaring piece of injustice is done to an applicant seeking a review only on the question of costs awarded against him and where the original plaint and memorandum of appeal bear an *ad valorem* court-fee on the amount of the claim in suit out of all proportion

(1) (1926) I.L.R. 50 Mad. 488.

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to the value of the relief sought in review. It could never have been the intention of the Legislature to penalise a litigant, when it granted him the right to a review of a judgment of the trial or appellate Court to practically debar him in many cases from taking advantage of such a right, as the court-fees payable on his application for review in such cases may be even greater in amount than the value of relief which he seeks to obtain in review. To take an instance, if the judgment passed on the original plaint or memorandum in appeal awarded costs, say Rs. 1,000, against a party, and the plaint or memorandum in appeal was stamped with a court-fee of Rs. 3,000, this party, if only appealing against the Rs. 1,000, costs awarded against him, would if the view of the Calcutta, Allahabad and Punjab High Courts were to be adopted be liable to pay court-fees of Rs. 3,000, on his application for review. My interpretation and reading of article 5 is different.

If an application for review was to be stamped on the same basis as a plaint or memorandum of appeal I can see no reason why a separate article should have been inserted in the Act dealing with reviews only. It would have sufficed to include "review" in article (1) which embraces not only plaints, memorandum of appeals but also cross-objections.

I find that there is some authority for the view I take in *Ma Shin* v. *Maung Shwe Hnit* (1). Although this case merely dealt with the question as to the fee to be levied on cross-objections filed by the respondent in an appeal, I find therein the same principle adopted in the judgment of Robinson C.J. I can see no difference as to the principle which should underlie the fixing of fees in cases of cross-objections filed by a respondent and cases of application for

(1) (1924) I.L.R. 2 Ran. 637.

review by a respondent where he is asking for review of the judgment only so far as it affects the question of the costs awarded against him.

I therefore hold that the application for review must be stamped *ad valorem* on the amount or sum awarded as costs against the applicant in the appellate Court.

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CIVIL REVISION.

Before Mr. Justice Bagnley.

MAUNG BA LAT

v.

LIQUIDATOR, KEMMENDINE THATHANAHITA CO-OPERATIVE SOCIETY.*

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Jan. 10.

Co-operative Societies—Liquidator's demand against member for "costs of liquidation"—Application to Civil Court for execution—Court's power to examine order—Court's refusal of aid—Burma Co-operative Societies Act (Burma Act VI of 1927), s. 47 (2).

Though a Civil Court has no power of interference with a liquidator's orders as such passed by him under the provisions of the Burma Co-operative Societies Act, nevertheless when the liquidator comes to the Civil Court for its assistance to enforce his order, then, before giving its assistance, the Civil Court is bound to see that the order is one that can reasonably be brought within the ambit of s. 47 (2) of the Act. The Court can refuse its aid in execution if the order is one that cannot be legally passed under that section.

The liquidator claimed from the applicant a sum of money as "costs of liquidation" which he had paid his advocates in a suit filed by the applicant against the liquidator. The costs awarded by the Court to the liquidator were much less. The liquidator maintained that he had to engage expensive advocates to contest the case as a test case for the purpose of strengthening the position and powers of all liquidators of co-operative societies.

Held that the expenditure was not for the purpose of winding up the particular society but was incurred to establish a point of law for the benefit of the whole co-operative movement and the Civil Court was entitled to refuse its aid in execution of the order.

Ganpat Ramdas v. *Krishnadas*, I.L.R. 44 Bom. 582; *Liquidator, Central Co-operative Stores* v. *Roy*, 37 C.W.N. 177; *Mathura Prasad* v. *Sheobi Ram*, I.L.R. 40 All. 89; *Maung Aung Nyein* v. *Maung Gale*, I.L.R. 7 Ran. 533;

* Civil Revision No. 213 of 1932 from the order of the Small Cause Court of Rangoon in Civil Execution No. 2423 of 1931