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*The Mahalaxmi
Mills Ltd.*

v.

*The Commission-
er of Income-Tax
Bombay*

Das Gupta J.

relating to tax on profits of business" in paragraph 2 of the Removal of Difficulties Order. We hold that the High Court has rightly decided that the depreciation availed of by the assessee under the Bhavnagar War Profits Act was a deductible amount in computing the written down value of the assets.

All the appeals are therefore dismissed with costs. There will be one set of hearing fee in all the appeals.

Appeal dismissed.

STATE OF MAHARASHTRA

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October 24

MISHRI LAL TARACHAND LODHA AND
OTHERS

(P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. N.
WANCHOO, J.C. SHAH AND RAGHUBAR DAYAL JJ.)

*Bombay Court Fees Act, 1959 (36 of 1959), Art. 1, Sch. 1—
"Value of the subject-matter in dispute in appeal—Construction of
—Award of interest pendente lite not specifically challenged—Court
fees, if payable.*

The plaintiff-respondent No. 1 instituted a suit for recovery of the amount lent to the defendant with interest upto the date of the suit. His claim was decreed in a sum of Rs. 13,033-6-6 with future interest from the date of suit till realisation at 4% per annum on a sum of Rs. 10,120. Against this decree the defendant appealed to the High Court and valued the appeal at Rs. 13,033-6-6 and paid the requisite court fee on that amount. All his grounds of appeal related to the merits of the plaintiff's claims and did not deal with the correctness of the trial court awarding future *pendente lite* interest on the rate at which it was to be calculated. The Taxing Officer directed the defendant to pay the deficit court fee of Rs. 70 on the memorandum of appeal as he was of the opinion that the appeal was against the whole decree and that the amount of value of the subject-matter in dispute for purpose of court fee was Rs. 14,036.80nP. as the amount of interest from the date of the suit till the date of the decree on Rs. 10,120 came to Rs. 1,033.40nP.

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The defendant challenged this order in revision before the High Court under s. 5(2) of the Bombay Court-fees Act, 1959. The High Court set aside the order of the Taxing Officer and the learned Judge expressed the view:

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"The subject matter in appeal is the real matter in dispute between the parties and not something which must stand or fall with the decision on it. In other words, it must mean the right which is in dispute between the parties".

In this Court the appellants State challenged the correctness of the said view of the High Court and relied mainly on the construction put by courts on expression "value or subject-matter in dispute" in the relevant provisions relating to the High Court's giving leave to appeal to the Privy Council.

Held: (i) That the expression 'amount or value of the subject-matter in dispute' in art. 1 of Schedule 1 of the Bombay Court-fees Act, cannot be construed in the light of the construction placed on a similar expression for the purposes of considering whether the case had come within the rule allowing the High Courts to give leave for appeal to the Privy Council. The Act is a taxing statute and its provisions have to be construed strictly, in favour of the subject-litigant.

Gooroopersad Khoond v. Juggutchunder, 8 M.I.A. 166 and *Doorga Doss Chowdry v. Ramanauth Chowdry*, 8 M.I.A. 262, held in applicable.

(ii) Claims not based on any asserted right but dependent on the decision of the disputed right and reliefs in regard to which are in the discretion of the court do not come within the purview of the expression 'subject-matter in dispute in plaint or memo of appeal'.

(iii) The amount of *pendente lite* interest decreed is not to be included in the 'amount or value of the subject-matter in dispute in appeal' for the purposes of art. 1 of Sch. I of the Act unless the appellant specifically challenges the correctness of the decree for the amount of interest *pendente lite* independently of the claim to set aside that decree.

In the present case, the decree in that respect was not specifically challenged and therefore the view of the High Court must be held to be correct.

Mitthu Lal v. Chameli, 57 All. 71, *Keolapati Mst. v. B.N. Varma*, I.L.R. 12 Luck. 466 and *Ashutosh v. Satindra Kumar*, 54 C.W.N. 380, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 587 of 1962.

Appeal by special leave from the judgment and order dated April 12, 1961, of the Bombay High Court in Civil Revision Application No. 441 of 1961.

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S.V. Gupte, Additional Solicitor-General of India
 and *R.H. Dhebar*, for the appellant.

S.G. Patwardhan and *A.G. Ratnaparkhi*, for res-
 pondent No. 1.

The Judgment of the Court was delivered by

RAGHUBAR DAYAL J.—This appeal, by special
 leave, raises the question whether the amount of
 interest decreed for the period subsequent to the in-
 stitution of a suit comes within the expression ‘amount
 or value of the subject-matter in dispute’ in art. 1 of
 Schedule I of the Bombay Court-fees Act, 1959,
 hereinafter called the Act, for purposes of court-fee
 payable on the memorandum of appeal.

The plaintiff-respondent No. 1 instituted Special
 Suit No. 5 of 1957 in the Court of the Civil Judge
 (Senior Division) at Ahmednagar to recover Rs.13,205
 on account of the principal lent to defendant No. 7
 and interest up to the date of the suit at the rate
 of 9% per annum. On July 18, 1960, his claim was
 decreed in a sum of Rs. 13,033-6-6 with future interest
 from the date of suit till realisation at 4% per annum
 on a sum of Rs. 10,120.

Defendant No. 7 appealed to the High Court
 against the decree. In the memorandum of appeal,
 defendant No. 7 valued the claim for purposes of
 jurisdiction and court-fee at Rs. 13,033-6-6 and his
 grounds Nos. 1 and 48 of appeal were as follows:

- “1. That the lower Court erred in decreeing
 the plaintiff’s suit.
48. That the decree is otherwise erroneous, un-
 just and illegal and therefore deserves to
 be set aside.”

The remaining 46 grounds related to the merits
 of the plaintiff’s claim and did not deal with the
 correctness of the trial Court awarding future *penden-
 lite* interest on the rate at which it was to be calculated.

The Taxing Officer was of opinion that the appeal
 was against the whole decree and that the amount
 of value of the subject-matter in dispute for purposes

of court-fee was Rs. 14,036. 80nP. as the amount of interest from the date of the suit till the date of the decree on Rs. 10,120 came to Rs. 1,033.40 nP. and it had been conceded by the counsel for the defendant-appellant that the subject-matter of the appeal was the decree passed by the trial Court. He therefore directed the defendant-appellant to pay the deficit court-fee of Rs. 70 on the memorandum of appeal and to amend the claim accordingly.

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The defendant-appellant then filed a revision to the High Court under s. 5(2) of the Act. His objection was upheld by the learned Judge who expressed the view :

“The subject-matter in appeal is the real matter in dispute between the parties and not something which must stand or fall with the decision on it. In other words, it must mean the right which is in dispute between the parties.”

He accordingly set aside the order of the Taxing Officer and held that the amount of court-fee paid on the memorandum of appeal was the proper court-fee. The State of Maharashtra has filed this appeal by special leave against this order.

Mr. Gupte, for the appellant State, contends that the view expressed by the learned Judge is not correct and mainly relies on the construction put by Courts on the expression ‘value or subject-matter in dispute’ in the relevant provisions relating to the High Court’s giving leave to appeal to the Privy Council.

In *Goorooopersad Khoond v. Juggutchunder* ⁽¹⁾ the Judicial Committee said, in connection with the requirements of the directions in the Order-in-Council of April 10, 1838, with respect to the conditions for granting leave to appeal to the Privy Council, that leave to appeal was to be given in cases where the value of the matter in dispute in the appeal amounted to the specified sum of Rs. 10,000 and that in

(1) 8 M.I.A. 166.

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determining such value, the amount of interest decreed up to the date of the decree be included to the amount of the principal.

Doorga Doss Chowdry v. Ramanauth Chowdry ⁽¹⁾

is an authority for the proposition that the costs of a suit are no part of the subject-matter in dispute. Their Lordships of the Privy Council said:

“.....if they were allowed to be added to the principal sum claimed, it would be in the power of every litigant, by swelling the costs, to bring any suit up to the appealable value.”

It may also be said that a litigant's conduct may lead to a protracted trial and consequently to the increase in the amount of *pendente lite* interest which may raise the value of the subject-matter in dispute in appeal to the appealable value.

We do not consider it correct that the expression in the Act be construed in the light of the construction placed on a similar expression for the purposes of considering whether the case had come within the rule allowing the High Courts to give leave for appeal to the Privy Council. The Act is a taxing statute and its provisions therefore have to be construed strictly, in favour of the subject-litigant. The other provisions are for the purpose of allowing the party feeling aggrieved against the decision of the High Court to take up his case to the next higher Court, the Privy Council and therefore the relevant provisions in that regard had to be given a liberal construction.

In the present case we have to construe the expression 'value of the subject-matter in dispute in appeal' for the purposes of determining the amount of Court fee due on a memorandum of appeal and not for determining such valuation for preferring an appeal to this Court.

The relevant provision governing the question of court-fee to be paid on the memorandum of appeal filed in a Civil Court is contained in art. 1 of Sche-

(1) 8 M.I.A. 262.

dule I of the Act. It is to be paid *ad valorem* according to the amount or value of the subject-matter in dispute. The rates applicable with respect to the various amounts are mentioned in the article. The maximum amount of court-fee, however, is Rs. 15,000.

The amount of court-fee payable, therefore, depends on the amount or value of the subject-matter in dispute in appeal. The defendant-appellant valued his claim at Rs. 13,033-6-6 and paid the requisite court-fee on that amount. It is obvious therefore that he disputes in appeal that part of the decree which awarded Rs. 13,033-6-6 against him on account of principal and interest due up to the date of the institution of the suit. He did not dispute, according to the value of his claim, the amount of interest which could be found on calculation for the period between the date of the suit and the date of the decree at 4% per annum on a sum of Rs. 10,120 as had been awarded under the decree. Whether his appeal is competent or not without his including this amount in his claim in appeal, is a question different from that relating to the value of the subject-matter in dispute in appeal. He does not dispute the decree for that amount and therefore the Court has not to decide about it and so this amount cannot be included in the amount of the subject-matter in dispute in appeal covered by the relevant expression. None of his grounds of appeal refers specifically to this amount of interest between the date of the suit and the date of the decree. This makes it further plain that he does not question the propriety of awarding of future interest or the rate at which it was awarded or even the amount on which it could be awarded. It is not possible to say, in these circumstances, that the value of the subject-matter in dispute in the appeal must include this amount of interest between the date of the suit and the date of the decree.

Mr. Gupte has rightly conceded that it is well-settled that the plaintiff has to value his appeal against the dismissal of his suit on the amount of the claim he had made in the plaint and has not to include

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the interest due on the amount claimed up to the date of instituting the appeal, that the defendant has not to include that amount of future interest subsequent to the date of the decree till the institution of the appeal in the valuation of the appeal for the purposes of court-fee and that no court-fee is to be paid on the amount of costs decreed in the suit when the party aggrieved appeals against the decree.

On what principle are these amounts not treated as forming part of the value of the subject-matter in dispute in appeal? Such value is to be determined on the substantial allegation in the plaint or from the pleas in the memorandum of appeal with respect to the points in dispute between the parties and sought to be determined by the Court. Such are necessarily the points affecting the rights of the parties sought to be adjudicated by the Court. Claims not based on any asserted right but dependent on the decision of the disputed right and reliefs in regard to which are in the discretion of the Court do not come within the purview of the expression 'subject-matter in dispute in plaint or memo of appeal'.

There appears no good reason to make a distinction between the decreed amount of costs and that of *pendente lite* interest for the purpose of determining the amount of the subject-matter in dispute in appeal. It is true that costs of suit arise independently of the claim and are really those which are incurred by the plaintiff while the decree for the amount of *pendente lite* interest is directly related to the plaintiff's claim though its award is within the discretion of the Court, but this will not justify the distinction. The costs too, and particularly the costs on account of court-fee and counsel's fee, arise directly on account of the claim put forward in Court. The reason really is that it is the value of the right claimed in the suit or appeal which is covered by the expression 'amount or value of subject-matter in dispute in art. 1, Schedule I, of the Act and that the plaintiff' has no right to get any of these amounts from the defendant though the Court may, in its discretion, allow future interest

and costs according to the circumstances of the suit in view of ss. 34 and 35 C.P.C. This principle equally applies to the non-inclusion of the decreed amount of *pendente lite* interest in evaluating the subject-matter in dispute in appeal as that too is awarded in the exercise of its discretion by the Court and the plaintiff has no right or claim for that amount against the defendant.

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It is obvious that if the defendant-appellant succeeds in establishing to the satisfaction of the appellate Court that the decree for the principal and interest up to the date of the suit is bad in whole or in part, that will itself lead the appellate Court to exercise its discretion with respect to the amount of costs and future interest in such a way that if the plaintiff's claim is dismissed *in toto*, he will not be awarded any future interest or any costs of the suit or appeal and that in case his claim succeeds in part, the amount of future interest and costs decreed in his favour would be appropriately modified by the appellate Court. The defendant-appellant has therefore no reason to appeal against the decree for costs or the decree for future interest unless he disputes those amounts wholly or partially for certain reasons. If he disputes expressly the propriety or correctness of the decree with respect to the costs or *pendente lite* interest independently of the claim to the subject-matter in the Trial Court he will have to pay court-fee on the amounts challenged as in that case he does dispute those amounts in appeal and therefore those amounts do come within the expression 'value of the subject-matter in dispute in appeal'. This has been the basis of the various decisions of the Courts in which court-fee has been demanded on the amount of costs or future interest.

In *Mitthu Lal v. Chameli*⁽¹⁾ it was held that no court-fee was to be paid on interest *pendente lite* granted by the lower Court unless the awarding of it was specifically challenged in appeal. It was said at p. 76:

(1) 57 All. 71.

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“Interest *pendente lite* is awarded under section 34 of the Civil Procedure Code. The Court may award it whether the plaintiff claims it or not. In this respect the court’s power stands on the same footing as its power to award costs to a successful party. It is well-settled rule that no court fee is payable on the amount of costs awarded by a decree appealed from, if no ground is specifically directed against the award of costs.....The same principle is applicable to interest *pendente lite* which the Court may award in the exercise of its power under section 34. On a proper reading of the appellant’s grounds of appeal in the lower appellate court we are satisfied that the subject-matter of his appeal to that court was the principal amount and interest up to the date of the suit.”

In *Keolapati, Mst. v. B.N. Varma* ⁽¹⁾ it was held that unless the appellant expressly challenges the award of future interest, no court-fee is to be paid on the amount of interest accruing from the date of the suit till the date of the filing of the appeal.

In *Ashutosh v. Satindra Kumar* ⁽²⁾ it was said at p. 382:

“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 succeeds in the appeal in regard to the main subject-matter, automatically he will expect to succeed with regard to the costs.”

We therefore hold that the amount of *pendente lite* interest decreed is not to be included in the ‘amount or value of the subject-matter in dispute in appeal’ for the purposes of art. 1 of Schedule I of the Act unless the appellant specifically challenges the cor-

(1) I.L.R. 12 Luck. 466.

(2) 54 C.W.N. 380.

rectness of the decree for the amount of interest *pendente lite* independently of the claim to set aside that decree. The appellant here has not specifically challenged the decree in that respect and therefore the High Court is right in holding the memorandum of appeal to be sufficiently stamped. The appeal is therefore dismissed with costs.

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Appeal dismissed. Raghubar Dayal
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(P.B. GAJENDRAGADKAR, K. SUBBA RAO, K.N. WANCHOO, N. RAJAGOPALA AYYANGAR AND J.R. MUDHOLKAR JJ.)

Madhya Pradesh Accommodation Control Act, 1955 (23 of 1955), s. 4(a)—Notice—Whether tenant should in arrears on the date of suit—Acceptance of arrears—If right under notice waived—Transfer of Property Act, 1882 (4 of 1882), s. 106.

The defendant was a tenant of the plaintiffs. The defendant was in arrears of rent for one year to the extent of Rs. 1,020. On April 11, 1959 the plaintiffs served a notice on the defendant requiring him to remit to them Rs. 1,020 within one month from the date of service of notice, failing which suit for ejection would be filed. This notice was received by the defendant on April 16, 1959. On June 25, 1959 the defendant sent a reply to the notice enclosing with it a cheque for Rs. 1,320. This amount consisted of the rental arrears as well as the rent due right up to June 30, 1959. The plaintiffs accepted the cheque and cashed it and gave a fresh notice on July 9, 1959 requiring the defendant to vacate the premises by the end of the month of July. The defendant did not vacate the premises.

Then the plaintiffs filed a suit to eject the defendant upon the ground that the latter was in arrears of rent for one year and had failed to pay the arrears within one month of the service of the notice dated April 11, 1959 upon him. From the undisputed facts it was clear that the defendant was in fact in arrears of rent and had failed to pay it within the time prescribed by cl. (a) of s. 4 of the Madhya Pradesh Accommodation Control Act, 1953.

Held: (i) Though the notice dated April 11, 1959 could be construed to be composite notice under s. 4(a) of the accommodation Act and s. 106 of the Transfer of Property Act it was ineffective