PETITIONER:
STATE OF BOMBAY

Vs.

RESPONDENT:
SUPREME GENERAL FILMS EXCHANGE LTD.(with connected appeal)

DATE OF JUDGMENT:
22/04/1960

BENCH:
DAS, S.K.
BENCH:
DAS, S.K.
SARKAR, A.K.
HIDAYATULLAH, M.

CITATION:
1960 AIR 980 1960 SCR (3) 640

ACT:
Court Fee-Amendment of statute enabling levy of higher court fee-When retrospective--Suit instituted before amendment, appeal field thereafter--Court fee on memorandum of appeal-Court Fees Act, 1870 (7 of 1870), ss. 4, 6, Sch. 1, Art. 1--Court Fees (Bombay Amendment) Act, 1954 (Bom. 12 of 1954).

HEADNOTE:
In 1954 certain amendments were made in the Court Fees Act, 1870, as applied to Bombay by the Court Fees (Bombay Amendment) Act, 1954, by which the system of charging court fees in the Bombay High Court on the original Side was altered and instead of a fixed fee payable on the plaint, etc., ad valorem fees became leviable. The amendments came into force on April 1, 1954, but there was no provision, express or by necessary intendment, for giving them retrospective effect. In respect of appeals filed after that date against decrees passed in suits instituted before that date, the question arose as to whether the court fees payable on the memoranda of appeal were according to the law in force at the date of the filing of the suits or according to the law in force at the date of the filing of appeals:
Held, that the court fees payable on the memoranda of appeal were according to the law as it stood at the date of the filing of the suits.
An impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only ; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment.
Hoosein Kasam Dada (India) Ltd. v. The State of Madhya Pradesh and others, [1953] S.C.R. 987 and Garikapatti Veerayya v. N. Subbiah Choudhuyy, [1957] S.C.R. 488, followed.
A Reference under Section 5 of the Court Fees Act, (1954) 57 Bom. L.R. 180, Amara Eswaramma and others v. Makkam Seethamma,
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A.I.R. 1955 Andhra 221, Ayjun v. Amyita and others, I.L.R.

[1956] Nag. 296 and Nagendra Nath Bose v. Mon Mohan Singh, (1930) 34 C.W.N. 1009, approved.
Mohri Kunway v. Keshri Chand, I.L.R. [1941] All. 558, distinguished.

JUDGMENT:

CIVIL APPELLATE, JURISDICTION : Civil Appeals Nos. 86 and 87 of 1956.

Appeals from the Judgment and Order dated November 24, 1954, of the Bombay High Court in Appeals Nos. 89/X and 96/X of 1954.

H. R. Khanna and R. H. Dhebar, for the appellants.S. D. Goswami and Gopal Singh, for the respondents.

1960. April 22. The Judgment of the Court was delivered by S.K. DAS, J.-These two consolidated appeals arise out of the judgment and order of the High Court of Bombay dated November 24, 1954, passed on two applications in two appeals disposed of by the said High Court. The facts are similar and the question of law arising therefrom is one and the same, namely, whether in the absence of provisions giving retrospective effect to certain amendments made in the Court Fees Act, 1870, as applied to Bombay by the Court Fees (Bombay Amendment) Act, 1954 (Bombay Act No. XII of 1954), which amendments came in force on April 1, 1954, hereinafter called the relevant date, the court fees payable on two memoranda of appeal were payable according to the law in force at the date of filing of the suits which was prior to the relevant date, or according to the law in force at the date of the filing of the memoranda of appeal which was after the relevant date.

The facts are simple and may be very shortly stated. On April 16, 1953, Messrs. Sawaldas Madhavdas brought a suit against the Arati Cotton Mills Ltd., praying for a decree for rupees two lacs and odd. The suit was decreed on July 22, 1954. The Arati Cotton Mills Ltd. filed a memorandum of appeal against the said decree on September 4, 1954, and paid court fees of Rs. 3,193-12-0 on the said memorandum. On or about October 5, 1954, a settlement was arrived at between the parties and on October 9, 1954, a prayer was made for dismissal of the appeal for want of prosecution. On November 18, 1954, an application was

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made under s. 151, Code of Civil Procedure, by the Arati Cotton Mills Ltd., for refund of excess court fees paid on the memorandum of appeal. In the application it was stated: " The appellants say that the appeal having arisen out of a suit which had been instituted on or about 16th April, 1953, long prior to the coming into force of the Court Fees (Bombay Amendment) Act, XII of 1954, no court fees were payable on the memorandum of appeal herein except as provided in the Table of fees hereinafter mentioned and that it was due to a mistake that the appellants were called upon to pay the said institution fee amounting to RE;. 3,193-12-0 and the said sum was paid by the appellants under a bona fide mistake and/or inadvertence and/or oversight. The appellants say that the only fee payable for the filing of the said memorandum of appeal was the fee of Rs. 32 under item No. 58 of the Table of fees set out at page 396 of the Rules of this Court. The appellants say that they were not legally bound to pay anything more than the said sum of Rs. 32 and that sum of Rs. 3,161-12-0 paid by them in excess of the said sum of Rs. 32 was paid by mistake and ignorance of the appellant’s legal rights and/or through inadvertence or

oversight. The appellants submit that it is necessary for the ends of justice that the said sum of Rs. 3,161-12-0 should be ordered to be refunded to them."

Similarly, on December 17,1953, Messrs. Rasiklal and Company Ltd., brought a suit against Messrs. Supreme General Films Exchange Ltd. and two other defendants in which a decree was passed on May 11, 1954, for a sum of Rs. 44,876-12-0 against Messrs. Supreme General Films Exchange Ltd. The latter filed a memorandum of appeal on July 31, 1954, and paid court fees of Rs. 1,958 on it. The appeal was, however, withdrawn with the leave of the High Court on September 27, 1954. Messrs. Supreme General Films Exchange Ltd. then applied for refund of the excess court fees paid on a ground similar to that mentioned earlier in connexion with the application of the Arati Cotton Mills Ltd.

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Both the applications were heard together after issue of notice to the Advocate-General, Bombay, who appeared for the State of Bombay and opposed the applications. By its judgment and order dated November 24, 1954, the High Court allowed the applications. The State of Bombay then asked for and obtained a certificate in the two cases which were consolidated to the effect that they were fit for appeal to this Court. These two appeals have been preferred on the strength of that certificate.

Now, the learned Chief Justice who delivered the judgment allowing the two applications, referred to an earlier decision of his, reported in A Reference Under Section 5 of the Court Fees Act (1) and ;aid that that decision governed the present cases also. The facts which led to the earlier decision were: (1) that prior to the relevant date a suit for partition of joint family property fell under Schedule II, Art. 17 (vii) of the Court Fees Act and the court fees payable were Rs. 18-12-0 only; (ii) an amendment which came into effect on the relevant date said that the court fees payable in such suits should be according to the value of the share in respect of which the suit is instituted ; (iii) a suit for partition of joint family property was brought before the relevant date but an appeal was filed thereafter. The question was: on the facts stated above, what court fees were payable on the memorandum of appeal. Relying on the decision of this Court in Hoosein Kasam Dada (India) Ltd. v. The State of Madhya Pradesh and Others (2) and certain other decisions to which we shall presently refer, the learned Chief Justice held that a right of appeal is a substantive right which vests in a litigant at the date of the filing of the suit, and cannot be taken away unless the legislature expressly or by necessary intendment says so; furthermore, an appeal is a continuation of the suit, and it is not merely that a right of appeal cannot be taken away by a procedural enactment which is not made retrospective, but the right cannot be impaired or imperilled nor can new conditions be attached to the filing of the appeal; nor can a condition already existing be made more onerous or more stringent so as to

(1) [1954] 57 Bom. L.R. 180.

(2) [1953] S.C.R. 987.

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affect the right of appeal arising out of a suit instituted prior to the enactment. Learned counsel for the appellant has made a somewhat feeble attempt to distinguish the decision in A Reference Under Section 5 of the Court Fees Act (1) on facts, but it cannot be seriously disputed that if that decision is correct, then it must govern the two cases before us. Though the facts are not identical, we see

no difference in principle between them.
On behalf of the State of Bombay, appellant before us, the correctness of the decision has been challenged on the ground that there is no vested right in procedure and reliance has been placed on the principle " that the presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the courts, even when the alteration which the statute makes may be disadvantageous to one of the parties " (see Maxwell on Interpretation of Statutes, 10th Edn., p. 225). Very strong reliance has been placed on the decision in Mohri Kunwar v. Keshri Chand (2) and on the observations made therein to the effect that no suitor has a vested right to insist that during the pendency of a litigation which a suitor has started, the enactment relating to court fee shall not be changed and the fee leviable shall not be increased or reduced with regard to future appeals and he would be entitled to carry on proceedings on the basis of the law as it stood when- the plaint was filed even though the law is different when he comes to file an appeal. On behalf of the respondent it has been submitted that since the decision of the learned Chief Justice of the Bombay High Court in A Reference Under Section 5 of the Court Fees Act (1), there has been another decision of this Court which concludes the question (Garikapatti Veerayya v. N. Subbiah Choudhury) (3) and it is argued that the true principle is that where a right of appeal is impaired or imperilled or a more onerous or stringent condition is put on the right of appeal, the impairment, peril or imposition of a more stringent condition is not retrospective unless
(1) [1954] 57 Bom. L.R. 180. (2) I.L.R. [1941) All. 558.
(3) [1957] S.C.R. 488.
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the legislature says so expressly or by necessary intendment.
It is necessary to state here what the High Court has clearly pointed out with regard to the amendments made by the Court Fees (Bombay Amendment) Act, 1954. On the relevant date the whole system of charging court fees in the Bombay High Court on the Original Side was altered and instead of a fixed fee payable on the plaint, etc., ad valorem fees became leviable as in the districts. The change was effected inter alia by deleting s. 4 and amending s. 6 of the Court Fees Act, 1870, and Art. 1 of Sch. I to the Act. There was no provision, express or by necessary intendment, for giving retrospective effect to the amendments made in the sense of affecting a right of appeal arising out of a suit instituted prior to the relevant date. As this position has not been contested, it is not necessary to read here the provisions of the Amending Act.
We proceed straightaway to consider the arguments advanced on behalf of the appellant. So far as we have been able to appreciate the submissions made on behalf of the parties, the point of controversy is really this: is an impairment of the right of appeal by imposing a more stringent or onerous condition thereon a matter of procedure only or is it a matter of substantive right ? We think that the question is really concluded by the decisions of this Court. We refer first to the decision in Hoosein Kasam Dada (India) Ltd. v. The State of Madhya Pradesh and others (1). The facts of that case were these: Section 22(1) of the Central Provinces and Berar Sales Tax Act, 1947, provided that no appeal against an order of assessment should be entertained by the prescribed authority unless it was satisfied that such

amount of tax as the appellant might admit to be due from him, had been paid. This Act was amended on November 25, 1949, and s. 22(1) as amended provided that no appeal should be admitted by the said authority unless such appeal was accompanied by satisfactory proof of the payment of the tax in respect of which the appeal had

(1) [1053] S.C.R. 987.

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been preferred. On November 26, 1947, the appellant submitted a return to the Sale-, Tax Officer, who, finding that the turnover exceeded 2 lacs, submitted the case to the Assistant Commissioner for disposal and the latter made an assessment on April 8, 1950. The appellant preferred an appeal on May 10, 1950, without depositing the amount of tax in respect of which he had appealed. The Board of Revenue was of opinion that s. 22(1) as amended applied to the case as the assessment was made, and the appeal was preferred, after the amendment came into force and rejcted the appeal. It was held by this court that the appellant had a vested right of appeal when the proceedings were initiated in 1947 and his right of appeal was governed by the law as it stood then. It was further held that the amendment of 1950 could not be regarded as a mere alteration in procedure or an alteration regulating the exercise of the right of appeal; it whittled down the right itself, and bad no retrospective effect as the Amendment Act of 1950 did not expressly or by necessary intendment give it retrospective effect. This decision proceeded on the principle that impairment of the right of appeal by imposing a more onerous condition is not a matter of procedure only. The decision in Garikapatti Veerayya v. Subbiah Choudhury (1), referred specifically to two decisions relating to an increase in court fees by subsequent amendment of the Court Fees Act, and one of the decisions was Sawaldas Madhavdas v. Arati Cotton Mills Ltd. (2), the very decision which is under appeal here. The other decision was R. M. Seshadri v. The Province of Madras (3). Perhaps, our attention was not then drawn to the circumstance that the decision in Sawaldas Madhavdas v. Arati Cotton Mills Ltd. (2) was at the time pending in appeal here. The point of the decision in Garikapatti Veerayya (1) is, however, this: this Court referred with approval to decisions which accepted the position that taking away a right of appeal and imposing a more onerous condition on such right involved the same principles as to retrospective effect of the subsequent legislation.

(1) [1957] S.C.R 488. (2) [1954] 57 B.L.R. 394.

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A similar view was expressed in Amara Eswaramma and others v. Makkam Seethamma (1) and Arjun v. Amrita and others (2). The appellant has relied on In re,: Punya Nahako (3). That was a case of review, and it was held that if between the date of the plaint or the appeal and the date for filing the petition for review, there was a change in the Court Fees Act increasing the fee payable ad valorem, the petitioner must pay at the increased rate. The learned Chief Justice (Chagla, C. J.) expressed the opinion that a review does not stand on the same footing as an appeal, and one cannot say that there is a substantive right of review. It may be pointed out here that even in respect of a review, a view different from that of the Madras High Court was taken in Parmeshar Kurmi v. Bakhtwar Pande (4). It is, however, unnecessary to say anything more about a review, because we are riot concerned with it in the present case.

In Anand Ram Pramhans and others v. Ramgulam Sahu and others

(5) the question which was mooted and discussed related to the proper presentation of a memorandum of appeal, and incidentally it was observed that the new Bihar and Orissa Court Fees Act which had already come into force applied to the case. There was no discussion of the question as to whether the enactment in question was given retrospective effect or not. As to the decision in Mohri Kunwar v. Keshri Chand (6) on which so much reliance has been placed by the appellant, it is necessary to point out that the question there was if the right of appeal created by s. 6A of the Court Fees Act, which was added by U. P. Act, XIX of 1938, was available as against an order passed after the coming into force of the latter Act, although that Act was not in exist-
ence and consequently there was no right of appeal at the date of filing that plaint. It was held that the enactment, by the amending Act of 1938, of s. 6A which allowed an appeal against an order demanding the payment of a deficiency in court fees did not take away any right which was vested in the plaintiff on

(1) A I.R. 1955 Andhra 221. (2) I.L.R. [1956] Nag. 296.
(3) [1926] I.L.R. 50 Mad. 488. (4) [1932] I.L.R. 54 All. 1092.
(5) A.I.R. 1923 Pat. 150. (6) I.L.R. [1941] All. 558.

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the date on which he filed the plaint, it only conferred on him a new right; nor did it take away any right which was vested in the defendant, for though the defendant could object if the plaint was not properly stamped and might also have a right to have the matter determined by the court he had no vested right in the procedure by which it was to be determined, and this procedure could be changed pending the suit and a change in procedure could not be said to deprive him of any vested right. It would appear from what has been stated above that the decision proceeded on the footing that the amending Act conferred a new right of appeal, and not that it took away a vested right of appeal; and the reason of the decision was based on the principle that there is no vested right in the procedure by which the sufficiency of court fees is determined by a court. That is a principle of a different character from the one we are concerned with in the present case, viz., the retrospective effect of a subsequent enactment which either takes away a right of appeal or impairs it by imposing a more stringent or onerous condition thereon. We do not, therefore, think that the Allahabad decision helps the appellant.

The question was considered in reverse in Delhi Cloth and General Mills Co. Ltd. v. Income-tax Commissioner, Delhi (1) and the principle of Colonial Sugar Refining Co. v. Irving (2) was applied. Another decision in point is that of Nagendra Nath Bose V. Mon Mohan Singh Roy (3). In that case the plaintiff instituted a suit for rent valued at Rs. 1,306-15-0 and obtained a decree. In execution of that decree the defaulting tenure was sold on November 20, 1926, for Rs. 1,600. On December 19, 1928, an application was made under 0. 21, r. 90, of the Code of Civil Procedure, by the petitioner who was one of the judgment debtors for setting aside the sale. That application having been dismissed for default of his appearance, the petitioner preferred an appeal to the District Judge, Hoogly, who refused to admit the appeal on the ground that the amount, recoverable in

(1) [1927] L.R. 54 I.A. 421. (2) [1905] A.C. 369.
(3) [1930] 34 C.W.N. 1009.

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execution of the decree had not been deposited as required by the proviso to s. 174(c) of the Bengal Tenancy Act as a mended by an amending Act of 1928. The contention of the petitioner was that the amending provision, which came into force on February 21, 1929, could not affect his right of appeal from the decision on an application made on December 19, 1928, for setting aside the sale. Mitter, J., said : " We think the contention of the petitioner is wellfounded and must prevail. That a right of appeal is a substantive right cannot now be seriously disputed. It is not a mere matter of procedure. Prior to the amendment of 1928 there was an appeal against an order refusing to set aside a sale (for that is the effect also where the application to set aside' the sale is dismissed for default) under the provisions of Order 43, rule (1), of the Code of Civil Procedure. That right was unhampered by any restriction of the kind now imposed by s. 174(5), proviso. The Court was bound to admit the appeal whether the appellant deposited the amount recoverable in execution of the decree or not. By requiring such deposit as a condition precedent to the admission of the appeal, a new restriction has been put on the right of appeal, the admission of which is now hedged in with a condition. There can be no doubt that the right of appeal has been affected by the new provision arid in the absence of an express enactment this amendment cannot apply to proceedings pending at the date when the new amendment came into force. It is true that the appeal was filed after the Act came into force, but that circumstance is immaterial-for the date to be looked into for this purpose is the date of the original proceeding. which eventually culminated in the appeal." This decision was approved by this Court both in Hoosein Kasam Dada (1) and Gankapatti Veerayya (2).

It is thus clear that in a long line of decisions approved by this Court and at least in one given by this Court, it has been held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a

(1) [1953] S.C.R. 987.

(2) [1957] S.C.R. 488.

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substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment.

We are, therefore, of the view that the High Court was right in the view it took, and the orders of refund of excess court fees which it passed were correct in law.

Accordingly, the appeals fail and are dismissed with costs. There will be one set of costs, as the appeals have been consolidated and heard together.

Appeals dismissed.