



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.  
ORDINARY ORIGINAL CIVIL JURISDICTION  
CHAMBER SUMMONS NO. 1296 OF 2011  
IN  
SUIT (L) NO. 2268 OF 2010**

Smt. Hema w/o. Late Shri Dilip Valecha,  
Indian Inhabitant of Mumbai residing at  
49, Bharat Mahal, 86, Marine Drive,  
Mumbai 400 020 through her constituted  
attorney Shri Ramnarayan Somani Indian  
Inhabitant of Mumbai aged adult, having  
his address at 158/159, Kalbadevi Road,  
Mumbai 400 020 ... Plaintiff

Versus

1. Nasi M. Randelia,  
of Lonawala, residing at 12, Modi  
Bungalow, near Bangarwadi,  
Railway Crossing, Lonawala,  
District Pune and purporting to  
have his address for service at D/4,  
Kismat Nagar, Khushgaon Road,  
Lonawala, District Pune.
2. Dara N. Sarkari,  
Indian Inhabitant, residing at  
Manibhai Bhavan, 2<sup>nd</sup> Floor,  
Flat No. 5, 165, Khetwadi, Buch Road,  
Mumbai 400 004.
3. M/s. Unique Construction,  
A partnership firm registered and  
Constituted under the Indian Partnership  
Act, 1932, and having its registered office  
at Shreeji Darshan, 100, S.V. Road,

Kandivali (West), Mumbai 400 067.

4. Trishul Construction Company,  
A partnership firm carrying on business  
at 1<sup>st</sup> Floor, Flat No. 11, 211,  
Rafi Ahmed Kidwai Road, Wadala,  
Mumbai 400 031. ... Defendants

Mr. A.P. Wachasunder, alongwith Mr. Navin Lond i/by M/s. Meghraj & Associates for the plaintiff.

Smt. Uma Srivastava, Officer Taxing Master, High Court, present.

**CORAM : R.D.DHANUKA J.**

**DATED : JULY 24, 2013.**

ORAL JUDGMENT :

By this Chamber summons, plaintiff impugned the order dated 2<sup>nd</sup> May, 2011 passed by the learned Taxing Master of this court directing at the plaintiff to pay court fees as per current market value of the property under section 5 of the Bombay Court Fees Act.

2. Some of the relevant facts for the purpose of deciding this Chamber summons are as under :

- (a) Parties to suit No. 2541 of 1984 filed consent terms on 7<sup>th</sup> July, 2005 and 1<sup>st</sup> September, 2005. This court passed a decree in terms of the consent terms on 1<sup>st</sup> September, 2005 in the said

suit. In the said suit, plaintiffs had applied for the declaration that the deed of cancellation dated 31<sup>st</sup> July, 1985 was not binding on the plaintiffs therein and was null and void and had no legal effect. By an order passed in terms of the said consent terms filed by the parties to the said suit, it was ordered and declared that the conveyance dated 7<sup>th</sup> April, 1981, between the defendants in the said suit and the plaintiffs was subsisting and binding on the parties and plaintiffs were sole and absolute owners of the suit property.

(b) It is the case of the plaintiffs in this suit that neither the plaintiff nor her late husband who were necessary parties to the suit bearing No. 2541 of 1985 were impleaded as parties to the said suit. The husband of Plaintiff had filed separate suit (896 of 1983) against the defendants herein in respect of the same property which was subject matter of the suit (2541 of 1985). Plaintiffs herein filed this suit (L) No. 2268 of 2010 on 13<sup>th</sup> July, 2010 inter alia praying for an order and decree to set aside the decree passed by this court on 1<sup>st</sup> September, 2005 pursuant to consent terms dated 7<sup>th</sup> July, 2005 and 1<sup>st</sup> September, 2005 in suit

No. 2541 of 1985. Plaintiff also seeks that the proceeding in suit No. 2541 of 1985 be restored to file for disposal according to law and Plaintiffs herein be impleaded as co-defendant in the said suit under order 1 rule 10 of the Code of Civil Procedure upon its restoration.

(c) In paragraph 20 and 21 of the plaint in this suit, it is stated by the plaintiff that the original suit No. 2541 of 1985 was valued at Rs.2,50,000/- being value of the property as treated under the deed of conveyance dated 7<sup>th</sup> April, 1981 and deed of cancellation dated 31<sup>st</sup> July, 1985 and accordingly, valued the suit claim to set aside the decree dated 1/9/1985 passed therein at Rs.2,50,000/- under article 4 of schedule I of the Bombay Court Fees Act, 1959 and paid Rs.9450/- thereon.

(d) On objection raised by the office about deficit payment of court fees, the learned Taxing Master of this court after hearing the learned advocate for the plaintiff and learned Assistant Government Pleader passed an order on 2<sup>nd</sup> May, 2011. The learned Taxing Master considered the plaint in the said suit (2541 of 1985) and the consent terms filed between the parties to the

said suit. The learned Taxing Master was of the view that in the said consent terms, it was recorded that in view of the amicable resolution of the dispute between the plaintiffs and the defendants therein, plaintiffs therein had paid to the defendant sum of Rs.1,21,00,000/- as and by way of full and final settlement of the defendant's alleged claim in respect of the consideration for purchase of the suit property. It was further recorded in the said consent terms that save and except what was recorded therein, neither party had any claim against each other. The suit was accordingly disposed of in terms of the consent terms. In paragraph 11 of the impugned order, learned Taxing Master held that after perusing the consent decree which the plaintiff herein seeks to be set aside, as per section 5 of the Bombay Court Fees Act, plaintiff has to value the property according to current market value. It is held that even if the suit is restored and the plaintiff is impleaded, benefit that the plaintiff may get, would be on current market value of the property and therefore, this suit cannot be valued on the basis of the old valuation of the suit and court fees cannot be accepted on the basis of the old valuation in suit (2541

of 1985) i.e. at Rs.2,50,000/-. It is further held in the said order that the plaintiffs in the said suit had given an undertaking to pay further court fees, if any. Plaintiff in this suit also has given undertaking to pay additional court fees if she is directed. With these reasons, the learned Taxing Master has upheld the objection raised by the office to the valuation of the suit considered by the plaintiff in the plaint for the purpose of payment of court fees and held that in view of the provisions of section 5 of the Bombay Court Fees Act, plaintiff has to pay court fees as per current market value of the property.

(e) For deciding the issue raised in this proceedings, it would be appropriate to refer to section 5 of the Bombay Court Fees Act, 1959 and article 4 of the schedule I of the Bombay Court Fees Act, 1959 which read thus :

“5.(1) No document of any of the kinds specified as a chargeable in the first or second Schedule to this Act annexed shall be filed, exhibited or recorded in any or in public offices. Court of Justice, or shall be received or furnished by any public Officer, unless in respect of such document there has been paid a fee of an amount not less than that, indicated by either of the said Schedules as the proper fee for such document.

(2) When any difference arises between the officer whose duty it is to see that any fee is paid under this Act and any suitor or his pleader, as to the necessity of paying a fee or the amount thereof, the question shall, when the question arises, in the High Court, be referred to the taxing Officer whose decision thereon shall be final, subject to revision, on an application, made within (Thirty days) from the date of the decision, by the suitor or his pleader or such officer as may be appointed in this behalf by the State Government, by the Chief Justice or by such Judge of the High Court as the Chief

Justice shall appoint  
either generally or specially in this behalf.

(3) When any such difference arises in the City Civil Court, Bombay, the question shall be referred to the Registrar, of the City Civil Court whose decision shall be final , subject to revision, on an application, made within (Thirty days) from the date of the decision, by the party concerned or such officer as may be appointed in this behalf by the State Government, by the Principal Judge or such other Judge of the said Court as the principal Judge shall appoint either generally or specially in this behalf.

(4) When such difference arises in any other Court, the question shall be referred to the final decision of the Judge presiding over such Court.

Article 4 of Schedule I of the Bombay Court Fees Act, 1959 reads thus :

<b>4. <u>Plaint, application or petition</u></b> <b>(including</b> memorandum of appeal) which is capable of being treated as a suit, to set aside a decree or order having the force of decree.	The same fee as is leviable on a plaint in a suit to obtain the relief granted in the decree or order, as the case may be.
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3. The learned counsel for the plaintiff submits that article 4 would be attracted to the facts of this case. Learned counsel invited my attention to the averments made in the plaint and also to the prayer clause. It is submitted that in this suit, the plaintiff has pleaded for setting aside the decree passed by this court on 1st September, 2005 pursuant to the consent terms dated 7th July, 2005 and 1st September, 2005. It is submitted that the plaintiff has also prayed for leave for being impleaded as co-defendant in the said Suit (2541 of 1985) under the provisions of Order I rule 10 of the Code of Civil Procedure upon its restoration. It is submitted that the learned Taxing Master was thus not right in raising the objection and in holding that the suit claim would

have to be valued at the current market rate of the suit property in question. It is submitted that in view of article 4 of the schedule I of the Bombay Court Fees Act, the plaintiff is liable to pay the court fees on the basis of valuation of the suit property in suit (2541 of 1985), decree in respect of which is impugned by the plaintiff in this suit and is liable to pay same court fees which was leviable on the suit claim in which said decree was passed, which is impugned by the plaintiff in this suit. The learned counsel placed reliance upon the judgment of the Supreme Court in the case of Satheedevi Vs. Prasanna and another (2010) 5 SCC 622 and in particular paragraphs 4, 12, 13, 17 to 21, bracketed portion of 27 and 38 which read thus :

“4. In furtherance of the direction given by the High Court, the appellant applied for and she was granted permission to amend the plaint and to incorporate prayer for cancellation of the sale deed executed by respondent No. 1 in favour of respondent No. 2. In the amended plaint, value of the property was shown as Rs. 7,00,000/- and accordingly, the court fees was paid. However by an order dated 3.7.2008, the trial Court directed the appellant to pay court fee on the market value of the plaint schedule property which was assessed at Rs. 12 lakhs per acre.

12. Before proceeding further, we may notice two well recognized rules of interpretation of statutes. The first and primary rule of construction is that the intention of the

legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise - **Kanai Lal Sur v. Paramnidhi Sadhukhan** [MANU/SC/0097/1957](#) : 1958 SCR 360.

13. The other important rule of interpretation is that the Court cannot rewrite, recast or reframe the legislation because it has no power to do so. The Court cannot add words to a statute or read words which are not therein it. Even if there is a defect or an omission in the statute, the Court cannot correct the defect or supply the omission. - **Union of India v. Deoki Nandan Aggarwal** [MANU/SC/0013/1992](#) : 1992 Supp (1) SCC 323, **Shyam Kishori Devi v. Patna Municipal Corporation** .

17. Section [40](#) deals with suits for cancellation of decrees etc. which are not covered by other sections. If this section is interpreted in the light of the expression 'save as otherwise provided' used in Section [7\(1\)](#), it becomes clear that the rule enshrined therein is a clear departure from the one contained in Section [7](#) read with Sections [25](#), [27](#), [29](#), [30](#), [37](#), [38](#), [45](#) and [48](#) which provide for payment of court fee on the market value of the property. In that sense, Section [40](#) contains a special rule.

18. Section [40\(1\)](#) lays down that in a suit for cancellation of a decree for money or other property having a money value, or other document which purports

or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject matter of the suit and further lays down that such value shall be deemed to be if the whole decree or other document sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed. If a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property constitute the basis for fixation of court fee. Sub-section (2) lays down that if the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of the property belonging to the plaintiff or the plaintiff's share in such property, fee shall be computed on the value of such property, or share or on the amount of the decree, whichever is less.

19. The deeming clause contained in the substantive part of Section [40\(1\)](#) makes it clear that in a suit filed for cancellation of a document which creates any right, title or interest in immovable property, the court fees is required to be computed on the value of the property for which the document was executed. To put it differently, the value of the property for which the document was executed and not its market value is relevant for the purpose of court fee. If the expression 'value of the subject matter of the suit' was not followed by the deeming clause, it could possibly be argued that the word 'value' means the market value, but by employing the deeming clause, the legislature has made it clear that if the document is sought to be cancelled, the amount of court fee shall be computed on the value of the property for which the document was executed and not the market value of the property. The words "for which" appearing between the words "property" and "other documents" clearly indicate that the court fee is

required to be paid on the value of the property mentioned in the document, which is subject matter of challenge.

20. If the legislature intended that fee should be payable on the market value of the subject matter of the suit filed for cancellation of a document which purports or operates to create, declare, assign, limit or extinguish any present or future right, title and interest, then it would have, instead of incorporating the requirement of payment of fees on value of subject matter, specifically provided for payment of court fee on the market value of the subject matter of the suit as has been done in respect of other types of suits mentioned in Sections [25](#), [27](#), [29](#), [30](#), [37](#), [38](#), [45](#) and [48](#). The legislature may have also, instead of using the expression "value of the property for which the document was executed", used the expression "value of the property in respect of which the document was executed". However, the fact of the matter is that in Section [40\(1\)](#) the legislature has designedly not used the expression 'market value of the property'.

21. If the interpretation placed by the trial Court and the High Court on the expression "value of the property for which the document was executed" is accepted as correct then the word 'value' used in Section [40\(1\)](#) of the Act will have to be read as 'market value' and we do not see any compelling reason to add the word 'market' before the word 'value' in Section [40\(1\)](#) of the Act.

27. .... As already pointed out, Section 7(iv-A) of the Old Act as well as Section 40(1) of the present Act deal with suits for cancellation of a decree for money, cancellation of a decree for other property having a money value and suit for cancellation other document. In the case of other documents, the clause "the amount or the value of the property for which the decree was passed" cannot be held to be applicable and the only clause that can be properly applied is only the value for which the document was executed. In the third category in Section 40(1), to

the words `other document, the words `which purports or operates to create, declare, assign, limit or extinguish' rights in moveable or Immovable property are included. Obviously in suits for cancellation of other documents referred to in Section 40(1) of the new Act the valuation should be the value of the other document executed. In Balireddy v. Abdul Satar the court refers to the section which says that the value of the subject matter shall be deemed to be the amount for which the document is executed. But it confined its discussion to the actual value of the property and held that it referred only to the market value. This decision also does not refer to the valuation of the document on the basis of the amount for which the document is executed. (emphasis supplied)

38. In view of our analysis of the relevant statutory provisions, it must be held that the judgments of the Division Bench of Madras High Court and of the learned Single Judges in **Venkata Narasimha Raju v. Chandrayya** (supra), **Navaraja v. Kaliappa Gounder** (supra), **Arunachalathammal v. Sudalaimuthu Pillai** (supra) and **Andalammal v. B. Kanniah** (supra) as also the judgment of the learned Single Judge of Andhra Pradesh High Court in **Allam Venkateswara Reddy v. Golla Venkatanarayana** (supra) lay down correct law. In the first of these cases, the Division Bench of Madras High Court rightly observed that when there is a special rule in the Act for valuing the property for the purpose of court fee, that method of valuation must be adopted in preference to any other method and, as mentioned above, Section 40 of the Act certainly contains a special rule for valuing the property for the purpose of court fee and we do not see any reason why the expression `value of the property' used in Section 40(1) should be substituted with the expression `market value of the property'."

4. The learned counsel submits that section 40 of the Kerala Court Fees and Suit Valuation Act, 1959 is in para materia with the Article 4 of the Schedule I of the Bombay Court Fees Act. It is submitted that on interpretation of section 40 of the said Act, the Supreme Court has held that the suit for cancellation of the document could not have been valued at the current market price and ought to have been valued on the basis of the amount or value of the property for which decree was passed or other document was executed. It is submitted that on the plain reading of Article 4 of schedule I of Bombay Court Fees Act, it is clear that if the plaint, application or petition is filed which is capable of being treated as suit, to set aside the decree, the same fee is leviable on the plaint in the suit to obtain relief granted in the decree or order as the case may be. It is submitted that in view of the said clear and unambiguous provisions, the learned Taxing Master could not have raised the objection and ask the plaintiff to pay the court fees on the basis of current market value of the property in question.

5. None appears for the state of Maharashtra at the time of hearing of this matter.

6. Mrs. Uma Srivastava, Taxing Master of this court is present in

court and submits that the order passed by the Taxing Master which has been impugned in this proceedings is correct and in accordance with the law and does not require any interference by this court.

7. On perusal of Article 4 of Schedule I to Bombay Court Fees Act, 1959, it is clear that the plaint which is capable of being treated as suit to set aside the decree, same court fees is payable as is leviable on the plaint in the suit to obtain reliefs granted under the decree or order, as the case may be.

8. It would therefore, be necessary to consider whether the fee leviable on the claim made in the suit (2541 of 1984) and paid by the plaintiffs in the said suit was proper or not. On perusal of the plaint in suit (2541 of 1984), it is clear that in the said suit, plaintiff therein had applied for declaration that the deed of cancellation dated 31<sup>st</sup> July, 1985 which was registered with the sub registrar of assurances, was forged and not binding on the plaintiffs therein and was null and void. It was alleged in the plaint that under the said deed of cancellation, the defendant had alleged to have paid Rs.2,50,000/- to the plaintiffs therein which consideration was disclosed in the said deed of cancellation. Relying upon the said document, the plaintiffs in the said

suit (2541 of 1985) inter alia prayed for declaration that the said deed of cancellation was null and void and was forged document and valued the court fees on Rs.2,50,000/- being the alleged consideration of the said deed of cancellation and paid court fees accordingly. It is not in dispute that the said suit was numbered by the office of this court considering the valuation of the said claim in the said suit of Rs.2,50,000/-. In this suit, the plaintiff seeks an order and decree to set aside the decree passed in said Suit (2541 of 1985) pursuant to the consent terms arrived at between the parties to the said suit and for restoration of the said suit and for disposal according to law. In my view as the court fees leviable on the claims made in the suit (2541 of 1985) was not liable to be valued at the market value of the property, this suit by which the plaintiff seeks to set aside the decree passed in that suit also thus need not be valued at the market rate. Whatever, the court fees was leviable in the suit (2541 of 1985), same court fees is leviable in this suit also. In my view, the valuation of this suit would thus be in accordance with article 4 of Schedule I of Bombay Court Fees Act, 1959 and the Court fees paid by the plaintiff considering the valuation of the suit claim in suit (2541 of 1985) is proper and correct.

9. The Supreme Court in the case of Satheedevi (supra) while interpreting section 40 of the Kerala Court Fees and Suit Valuation Act, 1959 which is in para materia with Article 4 of schedule I of the Bombay Court Fees Act held that if the legislature intended that fee should be payable on the market value of the subject matter of the suit, filed for cancellation of a document which purports or operates to create, declare, assign, limit or extinguish present or future right title and interest, then it would have, instead of incorporating the requirement of payment of fees on the value of subject matter, specifically would have provided for payment of court fee on the market value on the subject matter of the suit. It is held that if the word “value” used in section 40(1) of the said Kerala Court Fees and Suit Valuation Act, will have to read as market value, there is no compelling reason to add the word “Market” before the word “value” under section 40(1) of the Act. It is also held by the Supreme Court that first and primary rule of construction and or interpretation of statute is that the intention of the legislature must be found in the words used by the legislature itself. If the words are capable of one construction only, then it would not be open to the courts to adopt any other hypothetical

construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.

10. On interpretation of article 4 of schedule I of the Bombay Court Fees Act, it is clear that in the suit for setting aside the decree or order having force of decree, same court fees which is payable on the plaint in the suit to obtain relief granted in the decree or order as the case may be, is payable. In my view Article 4 is not capable of any other interpretation. Reliance placed by the learned Taxing Master on section 5 of the Bombay Court Fees Act is of no significance.

11. On perusal of the order passed by the Taxing Master, it appears that the learned taxing master has placed reliance on section 5 of the Bombay Court Fees Act while holding that the plaintiff has to value the property according to current market value and also considered that when the suit is restored, plaintiff would be impleaded in the said suit and would get benefit on the current market value of the property. On perusal of the plaint in this proceeding, it is clear that the plaintiff has sought for impleadment of the plaintiff as co-defendant. The suit claim cannot be valued on the premise that if the plaintiff succeeds in their suit, defendant also would be benefited on the basis of the then

current market value of the property. In my view, there is no merit in the conclusion drawn by the learned Taxing Master that the plaintiff would have to value the suit claim on current market value of the property and is liable to pay any deficit court fees.

10. The impugned order passed by the learned Taxing Master is accordingly set aside. Chamber summons is made absolute in terms of prayer clauses (a), (b) and (c). The Taxing Master is directed to accept the court fees of Rs.9430/- paid by the plaintiffs on the suit valued at Rs.2,50,000/- which is proper fees under article 4 of schedule I of the Court Fees Act, 1959. There shall be no order as to costs.

**(R.D. DHANUKA,J.)**