Before Swatanter Kumar, J

VIDYAWATI—*Petitioner*

versus

GOPI RAM & OTHERS—*Respondents*

C.R. NO. 3267 OF 1982

3rd August, 2000

Code of Civil Procedure, 1908—O.20, Rls. 1, 6 & 7 and S. 33.—Suit dismissed—Preparation of decree deferred till payment of court fee—Plaintiff failing to make up deficiency—Whether drawing of a decree be denied—Held, no—Payment of court fee a matter between the plaintiff & the State—Court fee can be recovered through the revenue authorities.

(Munshi v. *Giani, 1968 P.L.R. 530, followed)*

Held, that the cumulative effect of the provisions of the Code places a mandatory obligation upon the Court to pronounce a judgment and ensure that a decree is drawn in terms thereof. The expression 'shall' used in these provisions connotes a definite meaning in regard to passing of a decree. Normally the Court in the cases of the present kind may not be justified in placing a bar upon drawing a decree. Drawing of a decree is a necessary consequence of pronouncement of the judgment.

(Paras 6)

Further held, that the question of payment of appropriate Court fee is between the Court and the plaintiff. The plaintiff is obliged to pay the requisite court fees, but to ensure its payment, the Court is required to follow the prescribed procedure. The Court could direct recovery of the court fees through the revenue authorities in accordance with law and ensure that the requisite court fee is affixed.

(Para 7)

Argued by :—G.S. Jaswal, Advocate.

Swatanter Kumar, J.

(1) Challenge in this revision petition is to the judgment and order dated 6th November, 1982 passed by the learned Sub Judge Ist Class, Saffidon. Plaintiff had filed a suit for possession of the land in dispute. She claimed herself to be owner of the suit land. The plaintiff also prayed for permanent injunction to restrain the defendants from dispossessing her from the suit land. In the alternative it was prayed that if the Court holds that plaintiff is not in possession then the decree for possession may also be passed. The defendants contested the suit and controverted the allegations. It was stated by the defendants that the entire Khasra No. 363 measuring 1 kanal 12 marlas was jointly owned by the present plaintiff along with her husband. Further it was said that the land was leased out to defendant No. 2 in terms of the agreement dated 28th May, 1961. They further prayed for dismissal of the suit.

(2) Learned trial Court framed six issues. Issue No. 1 related to : whether the plaintiff was owner in possession over the disputed land ? The learned trial Court held that defendants were in possession of the suit land not as trespassers but were tenants upon the suit land under the plaintiff. Issue No. 4 as framed by the trial Court reads as under :—

> "4. Whether the suit has not been properly valued for purposes of court fee and jurisdiction and if so what should be the correct valuation ?"

(3) This issue was also answered against the plaintiff and in favour of the defendants. The learned trial Court held that the rate/value of the suit land was not less than Rs. 20,000, as such the value of the suit for the purposes of court-fees and jurisdiction has to be at least Rs. 20,000. Thus, it directed the defendant to make up deficiency of the Court -fee by 30th November, 1982. Finally the Court passed the following relief :—

> "In view of my findings on the various issues above, the suit of the plaintiff merits dismissal and the same is hereby dismissed with costs. However, the decree-sheet shall be prepared after the plaintiff furnishes the necessary deficiency of the court fee as ordered in issue No. 4 above. If the deficiency of the court fee is not made up by the date fixed, file be consigned to the record room without preparing the decree-sheet."

(4) Learned counsel for the petitioner has contended that the learned trial Court could not create a bar in drawing of a decree even if the plaintiff defaulted in making up the deficiency of the Court-fee within or even after the time granted by the Court for that purpose.

(5) There is some substance in the submission made on behalf of the plaintiff. Under Section 33 of the Civil Procedure Code the Court is obliged to pronounce the judgment after the case has been heard and on such judgment, a decree *shall* follow. The scope of this Section is further explained under the provisions of Order 20 of the Code. Order 20 Rule 1 of the Code places an obligation upon the Court that after the case has been heard, the Court shall pronounce judgment in open Court either at once or thereafter as soon as may be practicable. Under Rule 6 of Order 20 of the Code it is provided that a decree shall agree with the judgment and would clearly state the relief granted or other determinations of the suit. Under Rule 7, the decree drawn at any time in conformity with the judgment shall relate back to the date of the pronouncement of the judgment and the Court has to further satisfy itself that decree has been drawn up in accordance with the judgment and then sign the decree.

(6) The cumulative effect of the above provisions of the Code places a mandatory obligation upon the Court to pronounce a judgment and ensure that a decree is drawn in terms thereof. The expression *shall* used in these provisions connotes a definite meaning in regard to passing of a decree. Normally the Court in the cases of the present kind may not be justified in placing a bar upon drawing a decree. Drawing of a decree is a necessary consequence of pronouncement of the judgment.

(7) It is equally true that to ensure payment of appropriate Court fee is also between the Court and the plaintiff. The plaintiff is obliged to pay the requisite court-fees, but to ensure its payment, the Court is required to follow the prescribed procedure. Under the provisions of Order 7 Rule 11 of the Code, the plaint of the plaintiff may be liable to be rejected for non-payment of requisite court fees but if the Court chooses to pronounce a judgment dismissing the suit of the plaintiff on merits, then it would neither be fair nor just to prevent passing of a decree in consonance thereof. May be the Court could direct recovery of the court-fees through the revenue authorities in accordance with law and

ensure in that way that court-fees is affixed. In the case of *Munshi* Versus *Giani, (1)* a Bench of this Court held as under :—

> "The matter of court-fee should have been decided by the learned Judge in the very beginning and the plaintiff should have been called upon to make up the deficiency, if any, in the court-fee payable, failing which his suit could have been dismissed straightway. But having heard the claim of the plaintiff on merits and having dismissed it, it is practically putting a bar to the plaintiff to appeal against the decree dismissing his suit when a decree is not to be prepared unless he makes up the deficiency in court-fee. Apparently the order is, to say the least, improper and not justified. The learned counsel for the plaintiff refers to *Wailaiti Ram* v. *Gopi Ram (AIR 1935 Lah. 75)* in which Tek Chand J. set aside such an order by the Court below and directed that, if the court fee had been paid, it be refunded. On the side of the defendant reference is made to *Mohan Lal* v. *Nand Kishore (1905) 28 All. 210)* which is a decision of a Full Bench of the Allahabad High Court, but that was a case in which although deficiency in court-fee in the lower appellate Court was discovered when there was a appeal in the High Court, but that was a appeal in the High Court, but the appellant in the lower appellate second Court had failed to make good the deficiency in the court-fee even on having been called upon to do so. This is exactly what has not happened in the present case. The position would have been parallel if the learned trial Judge had decided the question of the deficiency of court fee in the beginning, given an opportunity to the plaintiff to make up the deficiency, and then he had failed to do so. In any event, I am bound by the decision in *Wailaiti Ram's case.*"

(8) With respect, I would follow the above decision and accept the present revision and order that the direction of the learned trial Court on Issue No. 4 ordering preparation of a decree after furnishing the necessary Court free is hereby set aside. Though all the findings otherwise arrived at by the Court below do not call for any interference nor could squarely fall within the ambit of the present revision.

(1) 1968 PLR 530

(9) Resultantly, the revision is partly accepted. The learned trial Court is requested to prepare a decree in accordance with law leaving the plaintiff to take recourse to such remedy as may be available to him inlaw. It is also clarified that the learned Trial Court would be at liberty to pass such other orders as are permissible in law for recovery of the Court fee from the plaintiff, There shall be no order as to costs.

S.C.K.

Before M.L. Singhal, J

HOUSING BOARD HARYANA—*Appellant*

versus

RAM NATH & OTHERS—*Respondents*

R.S.A. NO. 1169 OF 1993

7th July, 2000

Haryana Housing Board Act, 1971—S. 67 & Reg. 7(i)—Housing Board Haryana (Allotment, Management & Sale of Tenements) Regulations, 1972—Rl. 10.—Applications invited for allotment—Last date for general category fixed—Reserved category applicants could submit applications before the date of allotment—Draw of lots held—Only 3 applicants belonging to reserved category applied—Whether reserved category applicants could apply after the date of draw—'Date of draw' and 'date of allotment'—Distinction between—General category applicants have no right of allotment of houses meant for reserved category.

Held, that it is clear from Clause 6 of the advertisement that the members of Scheduled caste/Backward class were treated as a special category vis-a-vis serving military personnel and their wives/Ex-servicemen/war widows/ freedom fighters whereas for serving military personnel and their wives/Ex-servicmen/freedom fighters, the last date for applying for allotment of houses was 31st August, 1987, the last date for members of SC/BC was the date of allotment or the date upto which their quota was fully subscribed whichever was earlier and for all other applicants, the last date was 1st June, 1987. If members of scheduled caste/backward class were treated as special category keeping in view that they are down trodden and economically backward vis-a-vis other categories, it could not be said that in their case, the date of applying should be taken as 29th January, 1988 or the date upto which quota was