

(1953) 02 KAR CK 0006

In the Karnataka High Court

Case No : Civil Revision Petition No. 461 of 1952-53

A.B. Hanumantha Setty

APPELLANT

Vs

H.S. Anantiah Setty

RESPONDENT

Date of Decision : 18-02-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152
Mysore Legal Practitioners Rules — Rule 20

Citation : AIR 1953 Kar 106

Hon'ble Judges : Venkataramaiya, J

Bench : Single Bench

Advocate : Nittoor Srinivasa Rao, for the Appellant; P.R. Sreenivasan, for the Respondent

Judgement

1. On an application I. A. No. VII filed by the defendant under Rule 20 of the Rules under the Legal Practitioners Act in Original Suit No. 8 of 1950-51 of the court of the Subordinate Judge, Chitaldroog, the sum of Rs. 25/- mentioned in the decree as being payable to defendant towards lawyer's fee is ordered to be amended by raising it to the ad valorem fee on Rs. 4500/-. It is conceded that there is no variance between the judgment and the decree that Rs. 25/- was definitely fixed as Advocate's fee in the judgment by the predecessor of the Judge who has now made the order. The provision of law under which the application is filed cannot justify the amendment as it only refers to the mode in which the fee has to be assessed ordinarily, without affecting the power of the court to disallow or reduce the amount if it thinks fit. This as well as the conditions under which the decree once drawn up may be altered or amended are to be gathered from the provisions of the Code of Civil Procedure. There is no reference whatever to this in the order- and it proceeds as if the fee has to be determined for the first time and the propriety of limiting the amount arose for consideration. If the defendant felt aggrieved by the small amount allowed as lawyer's fee in the judgment it was open to him to challenge the same in appeal.

The only ground on which amendment is sought in the application is that the fee awarded is inadequate having regard to the value of the subject matter and nature of the contest. I do not think that this can be a valid reason for the decree being interfered with. Section 152, C. P. C., does not contemplate such errors, assuming it is so sufficient as to give jurisdiction to the Court for the purpose. The section refers only to arithmetical mistakes, clerical errors or those due to accidental slip or omission or inadvertence. None of these is alleged or even suggested to be existing in this instance. Sri Srinivasan on behalf of respondent argued that Section 151, C. P. C. though not relied upon in the petition can be applied to the case. This would lead to the Court being required and competent to exercise the powers in appeal. The section cannot be pressed into service when the remedy otherwise is available but not sought for.

In -- "39 Mys 825" (A), a Division Bench of this Court has laid down that when the decree is in conformity with the judgment and there is no apparent error amendment is not permissible. See also -- "Hanuma Setty v. Mada Setty" 19 Mys LJ 286 (B). "39 Mys 1036 " (C) cited for respondent is distinguishable as the omission to make any direction regarding costs was found to be due to inadvertence. The decision is that of a single Judge and related to an order in a claim case which is different from a decree in accordance with the judgment. In -- Piyaratna v. Wahareke, 54 CWN 568 with reference to a provision under the law in Ceylon similar to Section 152 it was observed there:

"The general rule relating to the amendment of an order of the Court is that once an order is passed and otherwise perfected in accordance with the practice of that Court, the Court which passed the order is functus office and cannot set aside or alter the order, however wrong it may appear to be; that can only be done in appeal."

The amendment is not warranted by the provision of law bearing on the petition and cannot be supported by the allegations contained therein. The order of the lower Court is set aside and the application I. A. No. VII is dismissed. Parties will bear their own costs.

2. Order set aside.