

(1998) 02 KAR CK 0074

In the Karnataka High Court

Case No : Regular First Appeal No. 400 of 1991

Abdul Haleem

APPELLANT

Vs

Kalique Ahmed (Deceased) By L.Rs

RESPONDENT

Date of Decision : 04-02-1998

Acts Referred:

Mysore Court-fees and Suits Valuation Act, 1958 — Section 66

Citation : (1998) 02 KAR CK 0074

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri Mirle L. Krishnamurthy, for the Appellant; Sri S. Nanjundaswamy, for the Respondent

Judgement

1. In the memo it has been stated that the matter has been settled out of Court. Hence, the appeal may be dismissed as settled between the parties. It has further been stated that half of the Court fee may be ordered to be refunded to the appellant. The provisions of Court fee Act namely Section 66 of the Karnataka Court fee Act provides for refund on settlement before hearing. Section 66 material portion reads as under:--

"Whenever by agreement of the parties-

(a)

(b)

(c) if any appeal is disposed of before commencing of hearing of said appeal, half of the amount of fees paid in respect of the claim or claims in suit or in appeal shall be ordered by the Court to be refunded to the parties by whom the same have been respectively paid".

Learned Counsel submitted before me that 50% of the Court fee therefore has to be directed to be refunded. Section 66, no doubt, provides for refund of the fee on settlement of the matter before hearing. "Hearing" is the expression of wider

connotation which includes in itself preliminary hearing under Order 41, Rule 11 as well as hearing in case the appeal is not dismissed under Order 41, Rule 11 hearing after notice to the parties. Learned Counsel for the appellant has contended that hearing here refers to hearing after notice under Order 41, Rules 13 and 16 and it does not refer to the preliminary hearing for admission. Thus, it appears that according to the learned Counsel for the appellant, hearing should be given a narrow construction than the wider one. Wider may include hearing at both stages, preliminary hearing for admission under Order 41, Rule 11 and then thereafter final hearing after notice has been served to the respondent. The Court Fee Act is a fiscal statute. One of the settled principles of law of construction of a fiscal statute is that if two interpretations are possible, the one which is favourable to the subject should be interpreted. Apart from this basic principle of interpretation of fiscal statute, the use of expression, "whenever by agreement of the parties, the appeal is disposed of before hearing" gives a connotation and reveal the intention of the legislature that the parties are present before the Court i.e., the parties have put in appearance before the Court. Once the notice has been issued to the parties and parties have appeared before the Court and then before any hearing takes place, if the parties have entered into compromise and settled the matter, then in such a case the appeal is disposed of before its hearing starts, the appellant may be held to be entitled for refund of 50% of Court fee. At some time it also happens that before admitting the appeal under Order 41, show-cause notice is issued to the respondent to show cause why the appeal may not be admitted and heard and the party having appeared to show cause why appeal should not be admitted and thereafter parties come to a compromise and settle the matter either by filing compromise itself or filing an affidavit stating that they have settled the matter by a compromise. The benefit of this section can be availed by the appellant. So what is material is that, after the appeal has been filed, if notice has been issued or not, be it a notice to show cause why the appeal be not be admitted or be it a notice after Order 41 for hearing. In the present case, the respondent has after notice put in appearance. Learned Counsel for the appellant, Sri L. Ramaiah and Sri K.S. Sridhar, learned Counsel for the respondents, jointly state that the parties have settled the matter by a compromise outside the Court and as such, the appeal may be dismissed. So this appears to be a case where before hearing could start after notice as regards disposal of the appeal, it has been stated jointly that the matter has been settled outside the Court and the appeal be dismissed. In my opinion, the appellant is entitled to refund of 50% of the Court fee. I make it clear that hearing here refers to hearing after notice to the respondents. It may be preliminary hearing or may be a case of final hearing as indicated earlier.

In this view of the matter, it is hereby ordered that the appeal is hereby dismissed as the matter has been settled between the parties as stated by both the Counsels. Further, it is directed that in view of the observation made above, appellant is entitled to refund of 50% of Court fee and let it be refunded.