

(1991) 11 KL CK 0030
In the High Court Of Kerala
Case No : C.R.P. No. 1366/91-A

Arimboor Panchayat Improvement Trust APPELLANT
Vs
Anthony and Another RESPONDENT

Date of Decision : 12-11-1991

Acts Referred:

Citation : AIR 1992 Ker 308 : (1992) 1 ILR (Ker) 419

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : P. Vijaya Bhanu, for the Appellant; M.A. Khadir Kunju, Govt. Pleader and Roy Chacke, Amicus Curiae and Party in person, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—The question mooted in this revision relates to the Court-fee payable (or not payable) by a plaintiff whose suit was decreed ex parte. Suit was for money and the plaintiff at the time of institution thereof paid one tenth of the fee chargeable under the law relating to Court-fees. When the suit was decreed ex parte, plaintiff was called upon to pay the balance Court-fee within fifteen days. But the plaintiff raised a contention that he is not liable to pay the balance since it was possible to decree the suit without contest from the defendant. Learned munsiff rejected the contention and required the plaintiff to remit the balance Court-fee within the time specified in the order. This revision is in challenge of the said order.

2. Plaintiff availed himself of the benefit provided in Section 4A of the Kerala Court-fees and Suits Valuation Act, 1959 (for short "the Act") and paid only one tenth of the fee chargeable. That Section has been inserted in the Act by the Amendment Act No. 6 of 1991. The said Section reads thus;

"Levy of fee at the time of institution of suit.-- Notwithstanding anything contained in any other provisions of this Act, the amount of fee to be paid on plaints at the time of institution of suit shall be one tenth of the amount of fee

chargeable under this Act and the balance amount shall be paid within such period, not later than fifteen days from the date of framing of issues or where framing of issues is not necessary, within such period not exceeding fifteen days as may be specified by the Court:

Provided that the Court may, for sufficient reasons to be recorded in writing extend the period up to thirty days:

Provided further that if the parties settle the dispute within the period specified or extended by the Court for the payment of the balance amount, they shall not be called upon to pay such balance."

The second proviso in the section relieves a plaintiff of the liability to pay the balance Court-fee when the suit is settled whatever be the amount of Court-fees. According to the plaintiff, the said principle is applicable to a suit decreed ex parte also and the plaintiff in such suit must also be entitled to a similar relief. In support of the contention learned counsel referred to Section 69 of the Act which provides for refund of one half of the Court-fee paid on the plaint when the suit is compromised or the suit is decided solely on the admission of parties without any investigation. Learned counsel alternatively contended that for the purpose of Court-fee, a disposal of suit ex parte must be treated on a par with disposal of a suit on admission of parties without investigation and hence the plaintiff cannot be called upon to pay the balance Court-fee.

3. Chapter II of the Act contains provisions creating liability on a litigant in a civil court to pay Court-fees. Section 4 of the Act says that no document which is chargeable with fee under the Act shall be filed in any Court or be acted upon by any Court "unless in respect of such document there be paid a fee or an amount not less than that indicated as chargeable under this Act." Computation of fees is regulated by provisions included in Chapter IV of the Act. Section 22 of the Act enjoins on a party in a suit for money to compute fee "on the amount claimed". The provision indicates that every litigant in a suit for money is under the liability to pay Court-fee as computed on the amount claimed. Similar provisions are included in the Chapter for determining the Court-fees payable in respect of other types of suits. Section 4A of the Act is a general provision which applies to all litigants and only one tenth of the amount of Court-fee chargeable need be paid at the institution of the suit and the balance shall be paid within such period as may be specified by the Court. First proviso of the Section 4A enables the Court to extend the time for paying the balance. Reference to the second proviso was made earlier. Sections 66 to 70 contain provisions for giving refund of Court-fees in certain cases. It must be remembered that no refund of Court-fees is even contemplated in the Act in a suit decreed ex parte. However, Section 69 of the Act enables the Court to refund one half of the Court-fee in two contingencies. One is when the suit (or appeal) is compromised and the other is when the suit is decided solely on the admission of parties without investigation. Proviso to Section 69 says that no refund shall be ordered where only one tenth of the amount of fee on plaint has been paid by the parties as provided in

Section 4A. The Act never considered that work of the Court would be less if a suit is decreed ex parte.

4. Learned counsel for the petitioner invited my attention to the observation made by a learned single Judge in *Marthoma Rubber Co. v. Union Bank of India*, 1987 (1) KLT 525 that "the suit can be treated as decided on admission when the defendant at the first hearing of the suit makes no defence as envisaged under Clause 6 of Rule 1 of Order XIV C.P.C." According to the counsel, the said observation is in support of his contention that an ex parte decree can be treated as similar to a decree passed on admission of the parties. Order XIV of the CPC deals with settlement of issues. Rule 1(5) of the said Order says that at the first hearing of the suit, Court shall ascertain from parties as to what material propositions of fact or of law the parties are at variance. This is to enable the Court to frame issues. Sub-rule (6) provides an exemption to the aforesaid rule in a case where "the defendant at the first hearing of the suit makes no defence". The stage for "first hearing of the suit" as envisaged in the said rule comes only after the stage for filing written statement. Order IX, Rule 6 enables the Court to make an order "that the suit be heard ex parte" if the defendant does not appear when the suit is called on for hearing after summons was duly served. Merely because the defendant was absent it is not obligatory on the Court to pass a judgment in terms of the plaint. True, Order VIII, Rule 10 enables the Court to pronounce judgment against a defendant who fails to present written statement within the time permitted. But the same rule enables the Court to make such order in relation to the suit "as it thinks fit". This shows that the judgment need not invariably be in terms of the plaint merely because the defendant was absent or the defendant failed to present a written statement. Order IX, Rule 7 says that where the Court has adjourned the hearing of the suit ex parte the defendant can still appear and request the Court that he may be heard in answer to the suit. Dealing with the said rule, the Supreme Court has held in *Arjun Singh Vs. Mohindra Kumar and Others*, , that there is to be a hearing on the date to which the suit shall be adjourned and only after completing the "hearing" the Court is competent to pronounce judgment. In *Sudha Devi Vs. M.P. Narayanan and Others*, , it was held that on the failure of the defendants to appear in the suit and if the Court decides to proceed with the case ex parte, the Court is not obliged to pass any ex parte decree without reliable relevant evidence.

The result of the aforesaid discussion is that a judgment pronounced ex parte cannot be equated with a judgment pronounced on admission by defendant or on compromise or settlement between the parties. Hence the benefit afforded to the parties as per the second proviso to Section 4A of the Act cannot be extended to a plaintiff merely because the suit has been decreed ex parte.

The Civil Revision Petition is accordingly dismissed.

I express my gratitude to Sri Roy Chacko, advocate for arguing as amicus curiae.