

(2015) 06 KL CK 0224
In the High Court Of Kerala
Case No : Regular Second Appeal ... of 2015

Ashraf

APPELLANT

Vs

Aboobacker

RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Section 52

Citation : (2015) 3 KLT 329

Hon'ble Judges : P.B. Suresh Kumar, J

Bench : Single Bench

Advocate : P. Ramachandran, for the Appellant

Judgement

P.B. Suresh Kumar, J—This matter has come up in the defect list on account of the objection raised by the Registry as to the correctness of court fee paid by the appellant in the Second Appeal. The appellant is the defendant in a suit for recovery of money. The suit, which was instituted on 3.4.2000 was decreed by the Trial Court on 17.12.2008, permitting the plaintiff to recover a sum of Rs. 1,00,000/- from the defendant, together with interest at the rate of 12% per annum from the date of institution of the suit till the date of the decree and thereafter at the rate of 6% per annum till realization. The operative portion of the judgment of the Trial Court reads thus:

"In the result, the suit is decreed with costs allowing the plaintiff to realize an amount of Rs. 1,00,000/- (Rupees one lakh only) together with interest at the rate of 12% per annum from the date of suit till the date of decree and thereafter, at the rate of 6% per annum till realization from the defendant personally and from his assets."

Though the defendant challenged the decision of the Trial Court before the lower appellate court, the decision of the Trial Court was confirmed by the lower appellate court on 20.11.2014. The decision of the Trial Court as confirmed by the lower appellate court is challenged in this Second Appeal. In the Second

Appeal, the appellant has not only paid the court fee for the principal sum of Rs. 1,00,000/-, but also for the interest accrued on the principal sum from the date of institution of the suit, viz., 3.4.2000 to the date of the decree of the Trial Court, viz., 17.12.2008 at the rate of 12% per annum and thereafter, till the date of the decree of the appellate court, viz., 20.11.2014 at the rate of 6% per annum. The stand taken by the Registry is that in the light of the decision of this Court *Veebros Freight Carriers Vs. Eshita Agency*, AIR 2004 Ker 307 : (2004) 3 ILR (Ker) 549 : (2004) 2 KLJ 1 : (2004) 2 KLT 666, the appellant is liable to pay interest at the rate of 12% till 20.11.2014, the date of the decree of the appellate court.

2. Section 52 of the Kerala Court-Fees and Suits Valuation Act, 1959 ("the Act" for short) provides that the fees payable in an appeal shall be the same as the fee that would be payable in the court of first instance on the subject-matter of the appeal. Explanation 3 to Section 52 of the Act provides that in claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of the decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished. In *Veebros Freight Carriers v. Eshitta Agency* (supra), this Court held that since the decree impugned in the Second Appeal is the decree of the appellate court, court fee shall be paid also for the interest accrued on the principal sum till the date of the appellate decree. The issue considered in the said case was whether the appellant therein was liable to pay court fee on the interest accrued on the principal sum from the date of the decree of the Trial Court till the date of the decree of the appellate court. This Court, on a consideration of the provision contained in Explanation 3 to Section 52 of the Act resolved the said issue as stated above. The issue arises for consideration in this case is as to the rate at which interest is to be calculated on the principal sum from the date of the decree of the Trial Court till the date of the decree of the appellate court for payment of court fee. The Act being a taxing statute, its provisions are to be construed strictly in favour of the subject litigant. Going by the decree passed by the Trial Court as confirmed by the appellate court, the appellant is liable to pay interest on the principal sum of Rs. 1,00,000/- at the rate of 12% per annum only till the date of the decree of the Trial Court. Thereafter, the liability of the appellant to pay interest is only at the rate of 6% per annum. When the appellant is not liable to pay interest at the rate of 12% on the principal sum of Rs. 1,00,000/- during the pendency of the appeal before the lower appellate court, he cannot be fastened with the liability to pay court fee on the said amount for the purpose of challenging the decree in the Second Appeal.

For the reasons stated above, the objection raised by the Registry is overruled.