

(1983) 09 KL CK 0019
In the High Court Of Kerala
Case No : A.S. (unnumbered) of 1983

Azeez and Co. and Others

APPELLANT

Vs

Indian Overseas Bank and Others

RESPONDENT

Date of Decision : 19-09-1983

Acts Referred:

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

Citation : (1983) 09 KL CK 0019

Hon'ble Judges : Kumari Fathima Beevi, J; Bhaskaran, J

Bench : Division Bench

Advocate : V.R. Venkitakrishnan, N.C. Joseph and K.T. Sankaran, for the Appellant; Government Pleader, for the Respondent

Judgement

Bhaskaran, J.—The question for decision is whether in terms of Explanation (3) to Section 52 of the Kerala Court Fees and Suits Valuation Act, 1959 (Act 10 of 1960)(the Act) court fee is payable on the pendente lite interest accrued and decreed. The Appellants having paid court fee on the memorandum of appeal only on the amount claimed in the plaint, the Court Fee Examiner's note pointing out the defect has been placed before Court.

2. The position does not admit of any doubt to our minds. Explanation (3) to Section 52 of the Act reads:

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 decree shall be deemed to be part of the subject matter of the appeal except where such interest is relinquished.

The question of relinquishing any portion of the amount decreed does not arise, as in the instant case the Appellants are not decree-holders-Plaintiffs, but judgment-debtors-Defendants. The counsel for the Appellants placed reliance on the decision in *State of Maharashtra v. Mishritlal (x)* where the Supreme Court expressed the view that no court fee was payable in an appeal by the Defendant

questioning the right to recover money claimed from the Defendant on the interest that had accrued from the date of suit till the date of appeal. Paragraphs 12, 14, 15 and 16 of the judgment have been read out to us. The distinction between the decision of the Supreme Court on the one hand and the case on hand here on the other is that the Supreme Court was not dealing with the provisions under the Court Fees Act which contained a deemed provision as is contained in Explanation (3) to Section 52 of the Act. It makes all the difference. Therefore the decision reported in *State of Maharashtra Vs. Mishri Lal Tarachand Lodha and Others*, , does not apply to the facts of the case. We were then referred to the decision of a full Bench of this Court in *Rathnamma v. Karthiyani Pillai* 1974 KLT 56. That again could not be applicable to the case on hand because that was a case which related to an appeal for recovery of property without the Appellant paying court fee on the mesne profits that had accrued from the date of the suit till the date of appeal. No doubt, in that case it was decided that the Appellant had the right to choose the subject-matter of the appeal; at times that selection might result in the appeal being dismissed as incompetent, but if the appeal was sustainable, he could not be compelled to include in the subject-matter of the appeal memorandum something which he did not want to become part of the subject-matter of the appeal. The full Bench, however, towards the end of paragraph 6 of the decision, at page 58 of the report, had taken sufficient care to make the position clear in so far as the impact of the deemed provision contained in Explanation (3) to Section 52 of the Act was concerned. Said the Full Bench:

These explanations are no doubt, not applicable to the question at issue but are referred to only as indicative of certain principles. In this regard, we may also advert to Explanation (3) which by a deeming provision has included as part of the subject-matter of the appeal, interest subsequent to the institution of the suit till the date of the decree indicating thereby that in the absence of the deeming provision such interest would not be part of the subject-matter of the appeal.

Reference was made to the full Bench decision noted above by a later Division Bench in *Raveendran v. Appukuttan* 1981 KLT 239. Speaking for the Bench Khalid, J., as he then was, in paragraph 5 of the order, it is stated, as follows:

One of us had to consider the same question in an unnumbered appeal, subsequently numbered as A.S. No. 220 of 1979. That was a Defendant's appeal against a decree for money with interest at 6 per cent per annum. The contention put forward there was that no court fee was payable on the interest decreed since what the Defendant wanted was the suit to be dismissed for the principal amount and if the suit was dismissed for the principal amount there was no question of any interest. The Appellant also contended that Explanation (3) to Section 52 applied only to a Plaintiff's appeal because of the use of the words "except where such interest is relinquished". The contention is that interest can be relinquished only by the Plaintiff and not by the Defendant. That contention was repelled and the court fee was directed to be paid for the interest also.

A Division Bench of this Court in *Padmanabhan v. Ouseph* 1982 KLT 373 has gone further, and held that the provisions of the proviso would apply to the question of Court fee paid on memorandum of second appeal. Speaking for the Bench Balagangadharan Nair, J., in paragraph 8 of the order stated as follows:

The interest would continue to accrue even subsequent to the decree of the trial Court but in view of the words limiting it to the trial Court, the arguments proceeded it should not be deemed to be part of the subject-matter of the second appeal. Having regard to the normal and well-accepted scope of the expression "suit" and to the circumstances that Section 52 as a whole is not confined to first appeals, we feel that the word "suit" means not only the suit during its career in the trial Court but includes the first appeal resulting in the decree from which the second appeal is preferred. This is not only consistent with the meaning given to the word "suit" in appropriate contexts, over the years but also with the scheme and object of Section 52. The Appellant's contention overlooks this meaning of the word "suit" and introduces a measure of disharmony into the section. The construction which has commended itself to us avoids this disharmony also. We do not think that the intention of Explanation (3) was to treat first and second appeals differently for purpose of Court fee.

The Division Bench has clearly stated that not only in the first appeal but also in second appeals the deemed provision contained in Explanation (3) to Section 52 of the Act would apply in regard to the payment of court fee.

3. Construing almost identical provision contained in Explanation (3) to Section 49 of the Andhra Court fees and Suits Valuation Act (Act 7 of 1956), a Division Bench of the Andhra Pradesh High Court in *Rai Sahab S.C. Agarwal v. Union of India* (1966) 1 An. W.R. 149 has taken the view that the Court fee payable is on the entire amount inclusive of the pendente lite interest accrued till the filing of the appeal memorandum. The view taken by the Madras High Court in *Ramaswamy v. Subbhusami* ILR Mad 508, also supports this view.

4. We have been told by the Government Pleader that recently in an appeal against OS. No. 89 of 1980 of the Sub Court, Tellicherry, a Division Bench of this Court has taken the view that the court fee payable on a money decree would include the court fee payable on the pendente lite interest held in 1982 KLT 373, 1974 KLT 56 (F.B.) and 1966 KLT 997. Reference was also made to ILR Mad 508 and (1960) 2 An. W.R. 372.

We have no doubt in our minds that in terms of the deemed provision contained in Explanation (3) to Section 52 of the Act, court fee payable on memorandum of appeal includes pendente lite interest accrued and decreed.

Time for payment of balance court fee two months.