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**(1963) 09 KL CK 0011**

**In the High Court Of Kerala**

**Case No :** A.S. No. 572 of 1963 and B.C.C. No. 572 of 1962

Chacko T. Marattukulam — APPELLANT

Vs

Catholic Bank of India Ltd. — RESPONDENT

**Date of Decision :** 18-09-1963

**Acts Referred:**

Banking Companies Act, 1949 — Section 45N
Kerala Court Fees and Suits Valuation Act, 1959 — Article 3, 3(2)

**Citation :** AIR 1964 Ker 181 : (1963) 7 KLJ 976

**Hon'ble Judges :** M.S. Menon, C.J;M. Madhavan Nair, J

**Bench :** Division Bench

**Advocate :** Mani, J. Meenattur, C.T. Peter, P.A. Francis and T.C. Karunakaran, for the Appellant;

## Judgement

Madhavan Nair, J.—In A. S. No. 544 of 1961, we have held that the court-fee payable on appeals from orders under the Companies Act was under Article VI, Sch. II of the T. C. Court-fees Act. 1125, corresponding to Article XI, Schedule II of the Indian Court-fees Act. Raman Nayar, J., in a note to the Registrar, pointed out that that ruling does not apply to appeals under the Banking Companies Act - Finding that on this appeal "under Section 45N of the Banking Companies Act, 1949, Court-fee of Rs. 2/- only has been paid, as ii under Article VI aforesaid, the office has made this reference.

2. Article VI, Schedule II of the T. C. Court-fees Act, 1125, reads thus:

VI. Memorandum of appeal, when the appeal is not from a decree or an order having the force of a decree and is presented.

(a) to any Civil Court other than the High Court, or to any Revenue Court or Executive Officer subordinate to the Govern-ment : One rupee.

(b) to the High Court or the Government : Two rupees

Obviously, this Article would not come into play if the order appealed against was one having the force of a decree.

3. In the Companies Act, 1956, Section 483 deals with appeals and Section 634 deals with the nature of the orders under the Act.

"483. Appeals from any order made, or decision given, in the matter of winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction.

634. Any order made by a Court under this Act may be enforced in the same manner as a decree made by the Court in a suit pending therein."

4. The present appeal is filed u/s 45N(1) of the Banking Companies Act against an order u/s 450(4), the nature of which is mentioned in Section 45D(5). Those sections read thus:

"45N(r). An appeal shall lie from any order or decision of the High Court in a civil proceeding under this Act when the amount or value of the subject-matter of the claim exceeds five thousand rupees."

"45D (4). At the time of the settlement of any such list, the High Court shall pass an order for the payment of the amount due by each debtor and make such further orders as may be necessary in respect of the relief claimed, including reliefs against any guarantor or in respect of the realisation of any security.

45D(5). Every such order shall, subject to the provisions for appeal be final and binding for all purposes as between the banking company on the one hand and the person against whom the order is passed and all persons claiming through or under him on the other hand, and shall be deemed to be a decree in a suit."

5. It is clear from the above provisions that orders under the Companies Act are only enforceable in the same manner as decrees, while orders under the Banking Companies Act have to be deemed to be decrees. That is a distinction which is not immaterial. That an order is allowed to be enforced in the manner in which decrees may be enforced is only a provision as to the procedure for its enforcement. As observed by Bur-kitt, J. in Ref. u/s 28 of Act VII of 1870, ILR All 238, with the concurrence of Knox, J. and Blair, J.,

"The mode in which an order may be enforced is not necessarily an indication or a criterion of the nature of the order. There is a great difference and no interconnection between the force of a decree and the method of enforcing it."

His Lordship observed that "the words ''having the force of a decree'' are not very intelligible"; and expressed reluctance to say that an order that might be enforced in the same manner as a decree had the force of a decree.

Much the same opinion was expressed by Sale J. with the concurrence of Marten, J. and Khosla, J. in Official Liquidator Universal Bank Ltd. v. M. U. Qureshi, AIR 1945 Lah 146 (FB), when his Lordship observed:

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"Section 199 (the Indian Companies Act, 1913) does not say that such orders have the force of a decree; what it says is that, ''all orders made by a Court under the Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.''

It would seem that the distinction between ''force,'' and ''mode of enforcement,'' was not present to the minds of the learned Judges, who decided L. P. A. No. 116 of 1941..... There is a distinction, both real and practical, and not merely artificial, as the learned A. A. G. contends, between an order that has by statute the force of a decree and an order that may by statute be enforced in the same manner as a decree..... OUR attention has been drawn to the expression used in Clause (2) of Section 89, Lunacy Act IV of 1912 (which) laws down:

''... such order shall be enforced in the same manner, and shall be of the same force and effect..... as a decree.''

We must presume that this declaration of the force of the order, and the provisions for its enforcement are not merely redundant but mean two different things."

6. In view of the distinction mentioned at the beginning of the last preceding paragraph, the rule laid down in A. S. No. 544 of 1961 cannot apply to appeals u/s 45N of the Banking Companies Act, 1949. Under the T-C. Court-fees Act, 1125, such appeals had to bear ad valorem court-fees under Article I, Schedule I or fixed Court-fee under Article VIII Schedule II of that Act.

7. But the present case stands on a different footing. It has arisen in a proceeding to fix the liability of a debtor u/s 450 of the Banking Companies Act commenced after the Kerala Court-fees and Suits Valuation Act, X of 1960, has come into force; and therefore the court-fee payable on the present appeal has to be determined under the latter Act.

8. In the Kerala Court-fees and Suits Valuation Act, X of 1960 Schedule II Article 3(iii) (A)(3) purports to deal with appeals u/s 456 of the Banking Companies Act, 1949, which does not relate to any appeals at all. It appears that in, the original Banking Companies Act, before its amendment by Act LII of 1953, Section 456 provided for appeals ''from every order or decision'' under the same section. But by the Amending Act of 1953 the entire Part IIIA of the Act was recast and appeals are now provided for in Section 45N instead of old Section 456. It is unfortunate that the Kerala Legislature, in drafting the Court-fees and Suits Valuation Act, 1959, referred to the Banking Companies Act, 1949, as it originally emanated, and not to the Act as it stood at the relevant time. But, it is not the province of this Court to remedy the defects in legislation; it can only take the Act as it is, and cannot improve upon the same. It is for the Legislature itself to rectify the mistakes or remedy the defects in its enactments.

9. In the absence of a specific provision applicable to appeals of the kind now before us, we have to hold that this appeal which is filed "under Section 5 of the

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Kerala High Court Act, 1958..... and Section 45N of the Banking Companies Act, 1949" has to bear court-fee under Article 3(111)(A)(2)(c)of Schedule II of the Kerala Court-fees and Suits Valuation Act, X of 1960, which provides:.

"3. Memorandum of appeal .....not otherwise provided for when presented.

.....

(iii) to the High Court-

(A) from an order other than an order under the Kerala Agriculturists Debt Relief Act, 1958,

.....

(2) Where the appeal is u/s 5 of the Kerala High Court Act, 1958:

.....

(c) in any other case. One hundred rupees."

10. The court-fee of Rs. 2/- paid on the instant memorandum of appeal is declared insufficient; and the proper court-fee payable thereon is declared to be Rs. 100/-.

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