(1990) 12 KL CK 0023

In the High Court Of Kerala

Case No : O. P. No. 5105 of 1990

Dr. Anitha Plttay APPELLANT

Vs

Co. - op. Tribunal and others RESPONDENT

Date of Decision : 03-12-1990

Acts Referred:

Kerala Co-operative Societies Rules, 1969 — Rule 110, 123

Citation : (1991) 2 KLJ 118

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

Bench : Single Bench

Advocate : K. Jagadeesachandran Nair, for the Appellant; K. K. Unni, P.K. Lekshmanan and M. K. Damodaran, for the Respondent

Judgement

K. T. Thomas, J.—A short but interesting question lias cropped up in this Original Petition. The question is whether an appellant before the Kerala Co-operative Tribunal (for short the Tribunal) is obliged to remit fee for notice or summons, to be sent to the opposite parties. An appeal filed before the Tribunal was rejected by Ext. P9 order on the ground that - process fee was not paid. The said order is challenged in this Original Petition. The petitioner was deputy warden in women''s hostel attached to Calicut University., For some amount claimed to be due to 2nd respondent-Co-operative Store, Ext. P5 award was passed by an inspector of Cooperative Department who acted as arbitrator, holding four persons (including the petitioner) liable to pay the amount claimed in equal shares to the 2nd respondent.

2. Learned counsel for the petitioner first contended that the posting date of 16-4-1990 was never intimated to the petitioner and hence her Absence should not have resulted in any consequence. Be that as it may, I shall proceed to consider the question whether the petitioner was obliged to pay any process fee.

3. Learned counsel contended that on presentation of appeal accompanied by payment of the fee prescribed in Rule 123 of the Rules, appellant has no further liability to remit any process fee. Under Rule 123 the person who files the appeal

has to pay a fee at the rate of two percent of the amount involved subject to a minimum of Rs. 50/- and maximum of Rs. 509/- in a case involving monetary disputes. Fees for non-monetary disputes are also prescribed in the same rule. Rule 98 prescribes that the appeal memorandum shall be in Form No. 13, and it shall be in duplicate and accompanied by two copies of the award appealed against bearing court fee stamps of Rs. 1.50, by such number of additional copies of appeal memorandum and its enclosures as there are respondents, and treasury receipt evidencing payment of the fees prescribed under Rule 123. The said rule does not require the appellant to pay any other fee. On receipt of such appeal, the Secretary of the Tribunal has to examine, under Rule 100, whether the appeal is made within the period of limitation and whether it conforms to the provisions of the Act and Rules. If the Secretary is not satisfied regarding the conformity, he can issue notice in Form No. 19 calling upon the appellant to cure the defects. If the defects are not cured within, the time indicated in the notice, he can issue another notice which should be in Form No. 20 intimating him that the tribunal will hear the matter on the day specified in the notice.

4. Learned counsel for the respondents contended that the appellant''s liability to remit process fee arises under Rule 110 of the Rules. It reads as follows:

All processes, notices or summons directed to be given to any person shall be in writing under the signature of the. Secretary of the Tribunal with seal affixed thereto and shall be served in the manner provided in the CPC for the issue of a notice of summons under that Code by a Civil Court. Every process sent by post shall be registered prepaid for Acknowledgement.

There is no direct insistence in the above rule that the appellant should pay the process fees. Nor could any such obligation be read out from it. Reference to the CPC made in the Rule relates to the manner of service of notice and not be appellant''s obligation to pay process fees. Rule 122 which makes provisions of the CPC applicable to certain matters relating to the appeal says that the provisions shall govern "the scale of fees payable by parties in regard to process other than notice and summons It is important that the rule excludes notice and summons from being governed by the provisions of-the Code of Civil Procedure. This again lends support to the view that the appellant cannot be called upon to pay process fee for notice and summons in appeals.

It is a settled proposition that any ambiguity in a taxing provisions should be construed in favour of the person who has to bear the burden of tax. Unless provision of statute specifically imposes the burden no party shall be subjected to such burden (The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha, ; State of Maharashtra Vs. Mishri Lal Tarachand Lodha and Others,). A Division Bench of this Court has reiterated the position in U. S. Lines Agency v. State of Kerala, 1988 (1) K. L T. 259.

In the absence of any direct provision or rule a party who presents an appeal after payment of the fee provided under Rule 123 cannot be asked to bear the expanse for issuing notice or summons to the opposite party. The Secretary of the Tribunal has obviously acted without power in treating the appeal as defective for the simple reason that the petitioner did not remit the process fee for issuing notice to the. opposite party. Est. P9 is therefore liable to be quashed. I quash it. I direct the Secretary of the Tribunal to register the appeal, and further direct the Tribunal to dispose of the appeal in accordance with law, after affording a reasonable opportunity to the parties concerned as expeditiously as possible

