

(2000) 07 KAR CK 0103

In the Karnataka High Court

Case No : Regular First Appeal No. 442 of 1998

Gayathri

APPELLANT

Vs

Indira Rajashekar

RESPONDENT

Date of Decision : 14-07-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, Order 41 Rule 16, Order 41 Rule 17

Mysore Court-fees and Suits Valuation Act, 1958 — Section 66 (C)

Citation : (2000) ILR (Kar) 3002 : (2000) 6 KarLJ 80 : (2000) 3 KCCR 2118

Hon'ble Judges : Tirath S. Thakur, J; K.R. Prasad Rao, J

Bench : Division Bench

Advocate : Sri Prabhuling K. Navadgi, for the Appellant; Sri H.R. Anantha Krishna Murthy, for the Respondent

Judgement

1. The only question that arises for consideration is whether the appellant is entitled to refund of 50% of the amount of Court fee paid by her on the memo of appeal in terms of Section 66 of Karnataka Court Fees and Suits Valuation Act, 1958.

2. Aggrieved by a decree granted in favour of the respondent by the City Civil Court, Bangalore, the appellant preferred the present appeal, in which by an interim order dated 10th of August, 1998, she was directed to deposit a sum of Rs. 2,25,000/- within three months to be paid to the decree-holder subject to the condition that in case the appeal succeeded, the amount so received by him shall be repayable with interest at the rate of 12% per annum. The appellant, it appears did not deposit the amount in question with the result the execution proceedings instituted before the Court below continued and were concluded in terms of a settlement between the parties upon payment by the appellant of a sum of Rs. 2,85,000/- in full and final satisfaction of the decree-holders claim under the decree passed in his favour. The Executing Court by its order dated 27th of December, 1999 closed the proceedings accordingly. A memo was thereafter filed before this Court seeking withdrawal of the appeal and a direction

for refund of 50% of the Court fee paid on the same.

3. Mr. Navadgi, learned Counsel for the appellant, argued that the matter having been settled before commencement of the hearing of the appeal, the appellant was entitled to the refund claimed u/s 66(c) of the Karnataka Court Fees and Suits Valuation Act, 1958. In support he placed reliance upon a Single Bench decision of this Court in M.D. Narayan Vs. State of Karnataka and Others, .

4. Section 66 of the Act aforementioned provided for refund of the Court fee on settlement before hearing and runs thus.-

66. Refund on settlement before hearing.--Whenever by agreement of parties.-

(a) any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of claim; or

(b) any suit is compromised ending in a compromise decree before any evidence has been recorded on the merits of the claim; or

(c) any appeal is disposed of before the commencement of hearing of such appeal;

half the amount of all fees paid in respect of the claim or claims in the suit or appeal shall be ordered by the Court to be refunded to the parties by whom the same have been respectively paid".

5. It is evident from a plain reading of the above that two conditions must be satisfied before a refund of Court fee may be claimed on an appeal in terms of clause (c) of Section 66. Firstly, the appeal must be disposed of by agreement of the parties and secondly such disposal must come before the commencement of hearing of such appeal. So far as the disposal of the appeal by agreement of the parties is concerned, the same does not necessarily imply that the respondent must either be present or expressly grant his consent to the disposal of the appeal. Disposal of an appeal by reason of an unconditional withdrawal of the same even before the respondent is notified or appears must in the scheme of Section 66 be deemed to be a disposal with the agreement of the parties. That is so because while the respondent may have a right to object to the modification of the decree passed in his favour he cannot possibly oppose a request for unconditional withdrawal of the appeal. This is true even where the respondent has been notified and has entered appearance. A disposal by reason of withdrawal of the appeal must therefore be construed as a disposal with the agreement of the parties. In the instant case also, the withdrawal is unconditional and without affecting the decree in any manner. As a matter of fact, the respondent has not entered appearance in the appeal so far. In the circumstances, the disposal of the appeal as withdrawn must for purposes of Section 66 be deemed to be a disposal with the agreement of the parties.

6. The next question is whether the second requirement for making an order of refund is also satisfied in the instant case. The requirement as noticed earlier is

that the disposal of the appeal must come before the commencement of hearing of such appeal. The expression commencement of hearing of such appeal appearing in clause (c) of Section 66 has not been defined under the Act. Reference to the provisions of Order 41 of the CPC which deals with appeals and regulates their hearing and disposal should therefore be permissible. Rule 11 of Order 41 empowers the Appellate Court to dismiss an appeal without sending notice to either the respondent or to the Court from whose decree, the appeal is preferred. The only requirement is that the appellant or his Counsel should be heard on the date fixed for that purpose. Sub-rule (2) of Rule 11 empowers the Court to dismiss the appeal if on the day fixed or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called for hearing. The hearing referred to in Rule 11 however is in its very nature a hearing at the preliminary stage of the appeal. Rule 16 of Order 41 deals with procedure on hearing after notice to the respondent and entitles the appellant to be heard in support of the appeal. Sub-rule (2) requires the Court to hear the respondent against the appeal and entitles the appellant to give a reply if the Court does not dismiss the appeal at once. Rule 17 empowers the Appellate Court to dismiss the appeal, where on the date fixed for hearing, the appellant does not appear when the appeal is called on for hearing, and to hear the appeal ex parte if the respondent does not appear. The question then is whether the expression "before the commencement of the hearing" appearing in Section 66(c) of the Court Fees and Suits Valuation Act refers to the hearing at the preliminary stage or that in terms of Order 41, Rule 16 after notice to the respondents. In our opinion, the expression must necessarily relate to a hearing in terms of Order 41, Rules 16 and 17 after notice to the respondents. We say so for two precise reasons. Firstly because, the provisions of the Court Fees and Suits Valuation Act, 1958, are fiscal in nature. If two interpretations of such a statute are possible, one more favourable to the subject than the other, the Court must lean in favour of the interpretation that is more beneficial to the citizen. If commencement of hearing of the appeal is understood to be a hearing in terms of Order 41, Rule 11, it would mean that even when the parties agree to the disposal of an appeal at any stage after notice to the respondent, but before the hearing of such appeal had commenced, the benefit of refund would not be available. That could not, in our opinion, be the intention of the legislature while enacting the beneficial provisions of Section 66, which entitles the litigant to claim refund in certain situations mentioned therein, secondly because a hearing within the comprehension of Section 66(c) must be a hearing in terms of Order 41, Rule 16 excluding the preliminary stages through which the appeal may have passed before coming up for such a hearing. That is so because clauses (a) and (b) of Section 66, which deal with dismissal of suits by settlement outside the Court and decrees passed on the basis of compromise, all stages previous to recording of evidence have been excluded from consideration. On an analogy of the said provisions, it is reasonable to hold that insofar as appeals are concerned, the legislature never intended the hearing at the preliminary stages in terms of Order 41, Rule 11 to constitute a hearing for purposes of a refund of

the Court fee paid by the appellant. The fact that the Court is required to hear the appellant and empowered to dismiss the appeal without notice to the respondents under Order 41, Rule 11 does not, in our opinion, detract from the proposition that the hearing of the appeal u/s 66(c) is relatable to the hearing after notice in terms of Order 41, Rules 16 and 17. The Single Bench decision relied upon by Mr. Navadgi must also be understood to be laying down the same proposition of law.

7. In the result, the memo filed by the appellant is taken on record. The appeal is allowed to be withdrawn and is accordingly dismissed as such with a direction that the appellant shall be entitled to the refund of 50% of the Court fee paid on the memo of appeal by her.