

(1981) 11 MAD CK 0048
In the Madras High Court
Case No : C.R.P. No. 3210 of 1980

India Overseas Bank, Komaralingam

APPELLANT

Vs

G. Ramalinga Gounder and Others

RESPONDENT

Date of Decision : 12-11-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 2
Legal Practitioners (Fees) Rules, 1973 — Rule 3(2), 3(3)

Citation : AIR 1983 Mad 91 : (1983) ILR (Mad) 376 : (1982) 95 LW 410

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : B. Dominique, for the Appellant; V. Nicholas, for the Respondent

Judgement

Swamikkannu, J.—In the instant case, the only point raised on behalf of the petitioner by Miss B. Dominique is that the fees ought to have been awarded as per the provisions of the Rules framed under the Legal Practitioners' Fees Rules, 1973 (R. O. C. No. 1032/64-F 1).

2. By virtue of the powers conferred by Art. 227 of the Constitution of India read with S. 27 of the Legal Practitioners' Act, 1879 (Central Act XVIII of 1879), and all other powers there unto enabling and in supersession of all rules relating to the fees payable to Legal Practitioners' and incorporated in Sec.C , Chapter X, Part II of the Civil Rules of Practice and Circular Orders Vol. I (1941 Edition), the High Court had framed the rules (R. O. C. No. 1032/64. F1) and these rules are known as Legal Practitioners' Rules, 1973. These had come into vogue by virtue of the previous approval of the Governor of Tamil Nadu.

Rule 3 (2) (v) provides that if the amount or value of the suit exceeds Rs. 50,000, but does not exceed Rupees 1,00,000. fee should be calculated on Rs. 50,000, as above and on the remainder at 2 per cent. There is a proviso under cl. (c) of sub-cl. (2) of S. 3 of these Rules which provides that in the case of suits the are mentioned in cl. (2), namely, original suits, when such suits are settled, withdrawn, compromised, decided on confession of judgment or dismissed for

default after the commencement of trial but before judgment, the fee payable shall be one half of the fee calculated under that clause, subject to the minimum prescribed and to a maximum of Rs. 1000/-.

3. In the instant case, it is submitted by Miss B. Dominique, learned counsel for the petitioner that in the affidavit accompanying the petition I. A.No. 865 of 1979 in O. S. 60 of 1978 filed before the court of the learned Subordinate Judge Udumalpet, it was specifically mentioned that the defendants have submitted to a decree, after the commencement of trial and before judgment, that the trial commenced on 15th June, 1979 that exhibits were marked and P. W. 1 was examined in chief and that it was adjourned for further evidence to 18th June, 1979. It is also stated in the affidavit that on 18th June, 1979, the defendants submitted to a decree. Therefore it is contended by the lower court in O. S. No. 60 of 1978 after commencement of trial but before judgment.

4. In an application under S. 152 C.P.C. in I. A. No. 865 of 1979, the prayer was that the lower court had to amend the preliminary decree by substituting the figures Rs. 1000 and Rs. 333 for the figures Rs. 744 and Rs. 248 respectively in the cost portion of the decree. The lower court had dealt with this I.A. 865 of 1979 on 21-8-1979 and had held that this is a case where the decree was passed after framing of issues but before commencement of trial. It is pointed out by Miss Dominique that it is common ground that P. W. 1 was examined in chief and that it was adjourned for further evidence on 18th June 1979 and certain exhibits were also marked and that it was only thereafter that on 18th June, 1979 the defendants have submitted to a decree. So, according to the learned counsel for the petitioner, the trial had commenced and therefore it is half the fee prescribed, that has to be awarded and included as advocate's fee in the learned counsel for the petitioner, the lower court had erred in its order in I.A. No. 865 of 1979 in not properly following the rules of the High Court, namely, the Legal Practitioners' Fees Rules 1973.

5. The point that arises for consideration in this civil revision petition is when can it be said that the trial had commenced in a court of law? What is trial? A trial is a procedure that is adopted by a court of law in accordance with the procedural law of the land after the very Court itself had gone through the pleadings completely and exhaustively, framed the issues therefore and thereafter allowed any one to go into the box and depose about the case which the said party had stated in the pleadings. Therefore, even if a witness had gone into the box and had deposed his deposition and the same had been actually started to be reduced to writing by the court, then it is to be construed and held that the trial had commenced. But when once a witness had been let in to go into the box by the authority concerned with the permission of the court and that witness had commenced his deposition and that the same had been started to be reduced to writing by way of evidence by the court, then it can certainly be held that in that case, the trial had commenced.

In the instant case, before it is specifically stated in affidavit sworn to,

accompanying the petition I. A. 865 of 1979, not only the witness has gone into the box and deposed in the course of his chief examination, but certain documents were also filed through himself. Therefore, it is needless to say that the trial had commenced in the instant case. Therefore the lower court ought to have held that the trial had commenced and as such, it is only one half of the advocates' fee that is legitimately to be incorporated in the decree towards advocate's fee. The decision arrived at contra to the rules by the lower court in I. A. No. 865 of 1979 is certainly within the purview of the revisional jurisdiction of this court under S. 115 C.P.C. Therefore, the order under revision is revised. The advocate's fee prescribed under Rules 3 (2) (c) proviso (3) will be incorporated in the decree and the lower court's decree will be modified accordingly. The civil revision petition is allowed. But in the circumstances there will be no order as to costs.

Petition allowed.