

(1992) 01 KAR CK 0049
In the Karnataka High Court
Case No : C.R.P. No. 4657 of 1991

Indian Bank

APPELLANT

Vs

Court of Small Causes

RESPONDENT

Date of Decision : 28-01-1992

Acts Referred:

Karnataka Civil Practice Rules, 1967 — Rule 100 (1), 100 (d) (i)

Citation : (1992) ILR (Kar) 663 : (1992) 2 KarLJ 42

Hon'ble Judges : Kedambady Jagannatha Shetty, J

Bench : Single Bench

Advocate : A. Keshava Bhat, for the Appellant;

Final Decision : Allowed

Judgement

Kedambady Jagannatha Shetty, J.—This Revision Petition is directed against the order of the Additional Judge, Court of Small Causes, Bangalore, dated 29th August 1991 in Execution Case No. 4960 of 1991 upholding the office objections.

2. The facts in brief are:-

The petitioner is the decree holder. He filed an execution petition against the respondent-judgment-debtor. In the execution petition, he has claimed the Advocate's fee on the basis of the value of the claim in the petition. The office has raised an objection to the effect that the decree-holder is entitled to Rs. 3/- for cost of decree copy and Rs. 13-37 as Advocate's fee i.e., 50 per cent of the Advocate's fee granted on the value of the decree which is entitled to claim in the execution petition. The Counsel appearing for the execution petitioner filed objections contending therein that the Advocate's fee is to be fixed on the total value of the claim in the execution petition as per Rule 100(d)(i) read with Rule 100(1)(a) of the Karnataka Civil Rules of Practice. But the lower Court has upheld the office objection holding that the decree- holder is entitled to 50 per cent of the Advocate's fee granted in the suit (Small Causes Suit). Further, it has held that if the contention of the Counsel appearing for the decree-holder is

accepted, Advocate's fee in the execution case will be more than the Advocate's fee granted in the suit. It is also observed that perhaps it may not be the intention of the Rule Making Authority in making Rules for Advocate's fee to allow the claim of Advocate's fee more than what is in the decree in the suit.

3. The learned Counsel being aggrieved by the order of the trial Court has preferred this Revision Petition and strenuously contended that Court below has misread the Rule 100 of the Karnataka Civil Rules of Practice. The Court below should have noted that Rule 100(d)(i) of the Rules does not say that the fee fixed in Execution 50% of the fee awarded in the suit. Further, he has argued that Rule clearly states that the fee shall be calculated "on the amount of money or value of relief claimed in the application." i.e., in the execution. Elaborating his arguments he has brought to my notice the relevant provision of Rule 100 of the Civil Rules of Practice, which reads as follows:-

"100. Advocate's fee to be included in the costs awarded by Court to a party in any suit or other proceedings shall be computed in the matter prescribed hereunder:-

(a) In original suits, the fee shall be calculated on the value or the subject matter of the suit which shall be the same as that prescribed by the Karnataka Court Fees and Suits Valuation Act, 1958, for determining the jurisdiction of the Court, according to the following rates:-

On the first sum of Rs. 5,000 at 10 percent.

On the next sum of Rs. 5,000 at 7.5 percent

On the next sum of Rs. 30,000 at 5 percent

On the next sum of Rs. 60,000 at 1 percent

On the balance "remaining thereafter at 0.5 percent provided that the fee allowed in any suit shall not be less than Rs. 100 unless the Court orders otherwise.

xxxx xxxx xxxx (d) In the Execution Case, the fee shall be calculated as follows:-

(i) On the first application at 50 percent of the fee calculated at the rate specified in clause

(a) above on the amount of money or value of the relief claimed in the application."

4. Reading of Clause (d) with Clause (a) of Rule 100 makes it abundantly clear that as per Clause (a) it is provided as to how the fee shall be calculated according to the scales provided therein and Clause (d) pertaining to the Execution Case the fee shall be calculated, no doubt, as per the scale provided under Clause (a), but the fee payable on such execution case has to be calculated on the amount of money or value of the relief claimed in the application. In other words, the scale of fee which is provided under Clause (a) is

the basis for calculation of the fee payable on the relief claimed in the application i.e., execution petition. It does not mean that whatever the claim under the Execution Petition it shall be confined to only in respect of the value of the decree passed in the suit Interpretation placed by the lower Court that only on the value of the decretal amount in the suit is the value on which alone the fee of Advocate be calculated even if the amount of money or value of the relief claimed in the execution application is more than the decree passed in the suit is unwarranted. Such an interpretation would lead to manifest failure to achieve the object for which the Rule is designed. The observation of the lower court that the intention of the Rule Making Authority was not to allow more fee even though the money value of the relief claimed in the execution is more than the value of the suit in which the Advocate fee was allowed on the basis of Rule 100(a) is untenable and uncalled for. The plain reading of Rule 100(d)(i) with Rule 100(a) no other meaning than what is plainly stated that the Advocate's fee in the execution be based on the value of the relief claimed in the execution petition.

5. Suppose a decree which is passed three years back and also carried interest on money due, then naturally the amount or money or value of the relief claimed in the execution petition would be more than what was the decree passed by the Court. In that event, it cannot be said that still it is only the value of the decretal amount when the decree was passed alone, the basis for claiming the Advocate's fee. That is not the intention of the Rule 100(d)(i). The lower Court has grossly erred in exercise of its jurisdiction.

6. In that view of the matter, this Revision Petition is entitled to succeed and the same is allowed. The order passed by the XIII Additional Judge, Court of Small Causes, Bangalore, dated 29th August 1991 made in Execution Case No. 4960 of 1991 is hereby set aside and the claim of the Advocate's fee shown in the execution petition is proper and valid as it is in accordance with law pertaining to the Advocate's fee under Rule 100(a) read with Rule 100(d)(1) of the Karnataka Civil Rules of Practice, 1967.

No costs.