

(2003) 11 KAR CK 0007

In the Karnataka High Court

Case No : Regular First Appeal No. 318 of 1991

Karnataka State Financial Corporation

APPELLANT

Vs

K.M. Somashekar and Others

RESPONDENT

Date of Decision : 11-11-2003

Acts Referred:

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

Citation : (2004) ILR (Kar) 50 : (2004) 1 KarLJ 207 : (2004) 3 KCCR 343 SN

Hon'ble Judges : Tirath S. Thakur, J; S. Abdul Nazeer, J

Bench : Division Bench

Advocate : K. Gopal Hegde, for the Appellant; T.S. Ramachandra, for Respondents-1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

1. R.F.A. No. 318 of 1991 was posted for orders on 27-5-1998 for filing of paper books as well as for furnishing fresh process fee and correct addresses for service of notices upon the respondents. At the request of the Counsel for the appellant, two weeks time was granted for that purpose. The appellant it appears did not do the needful with the result that the matter was posted again on 8-10-1998 for orders. On that day, this Court granted 4 weeks further time as prayed for by the appellant for taking steps failing which the appeal was to stand dismissed without any further reference to the bench. The appellant it appears did not comply with the said order also which being peremptory in nature, the failure resulted in the dismissal of the appeal. A civil petition was thereafter filed by the appellant seeking recall of the dismissal order in which it was inter alia pointed out that the matter had been settled by the parties outside the Court and that the appellant was entitled to refund of 50% of the Court fees paid on the memo of appeal u/s 66(c) of the Karnataka Court Fees and Suits Valuation Act. By order dated 16-7-2003, the civil petition was also dismissed with the observation that there was no reason for recall of the dismissal order. The Court however made an observation that the dismissal of the civil petition will not

affect the consideration of the application filed by the appellant for refund of the Court fee in accordance with law. The present application seeking refund of the Court fee has come up for orders in the above background.

2. We have heard Mr. Gopal Hegde, learned Counsel for the appellant and perused the record.

3. Refund of Court fees upon settlement of the dispute before the hearing of the case is governed by Section 66 of the Karnataka Court Fees and Suits Valuation Act, 1958, which runs as under:

"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,

Explanation.--The expression "merits of the claim" shall have the meaning assigned to it in Section 11".

4. A plain reading of the above would show that a refund whether in a suit or in an appeal is permissible only when the suit or appeal is settled or compromised by agreement of the parties. In the case of a suit dismissed as settled out of the Court, such agreement must be arrived at before any evidence had been recorded on the merits of the claim whereas in case of disposal of an appeal, the same must be by agreement of the parties before the commencing of the hearing of such appeal. In the instant case, the disposal of the appeal was not admittedly by agreement of the parties. The disposal was in terms of an order dismissing the appeal for non-prosecution by reason of the failure of the appellant to take steps that were necessary for further progress of the case. Even the civil petition filed for recall of that order was dismissed on merits holding that there was no good reason for recall of the dismissal order. In the circumstances, it is difficult to see how the order of dismissal of the appeal could possibly be treated as a disposal with the agreement of the parties. Mr. Hegde however placed reliance upon a Division Bench decision of this Court in Gayathri Vs. Indira Rajashekar, , in which the provisions of Section 66 of the Act had fallen for interpretation. That was a case where the appeal was withdrawn by the appellant even before the appearance of the respondent. The question was whether the withdrawal of the appeal could be construed as a disposal by agreement of the parties within the meaning of Section 66 supra. This Court took the view that since the appellant

had an unqualified right to seek withdrawal of the appeal to which the respondent could not possibly object even if he had been served and was appearing, the agreement of the respondent to the withdrawal of the appeal must be assumed and the dismissal or disposal of the appeal at the admission stage and even before the appearance of the respondent taken as a disposal with the agreement of the parties. That view stands on an entirely different footing. The present is not a case where the appeal was sought to be withdrawn or was dismissed as withdrawn at the instance of the appellant. It is on the other hand, a case of dismissal by reason of an order passed by this Court to which the appellant had not consented and the recall of which the Court had declined. There was in that view no real agreement vis-a-vis the appellant for the disposal of the matter. Such being the position we find it is difficult to construe the dismissal of the appeal for non-prosecution to be a case of disposal by consent of the parties so as to call for a direction for refund of 50% of the Court fee paid on the memo of appeal. The prayer for refund is therefore not sustainable which is accordingly rejected and the application moved in that regard dismissed.