
(1952) 03 KL CK 0005
In the High Court Of Kerala
Case No : A.S. No. 670 of 1951

Kesavan Bhaskaran

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-03-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, 113, 149

Citation : (1952) 03 KL CK 0005

Hon'ble Judges : Koshi, C.J;Gangadhara Menon, J

Bench : Division Bench

Advocate : K. Narayanan Panicker, for the Appellant; Government Pleader, for the Respondent

Judgement

1. In this case an application was filed on 28-4-1124 for leave to file the appeal as a pauper. The application was accompanied by a memorandum of appeal as enjoined under Order XIV, Rule 1, Travancore CPC On 28-6-1951 this Court rejected the application for leave but allowed the Appellant to pay Court-fee on the memorandum of appeal within six weeks. Before the date of this order the Court-fees Act 6 of 1087 which was in force at the time of filing the memorandum of appeal had been repealed and replaced by Act 2 of 1125. In pursuance of the order dated 28-6-1951, the Appellant paid as Court-fee Rs. 81-13-3. The amount paid is correct, if Court-fee is calculated on the scale which was in force on the date on which the memorandum of appeal was filed. But on the scale of fee payable under Act 2 of 1125 the Court-fee paid is deficient. The office has therefore reported that additional Court-fee has to be paid. The question for consideration is whether Court-fee is payable only on the basis of the scale prescribed in the Act which was in force at the time when the memorandum of appeal was filed or whether it is payable as per the provisions of Act 2 of 1125 in force at the time when the order for payment of Court-fee was made.

2. Section 149 of the CPC Code provides:

Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to Court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person by whom such fee is payable, to pay the whole or part, as the case may be, of such Court fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee has been paid in the first instance.

This Section corresponds to Section 113 of the Travancore CPC that was in force before. We think that the expression "the fee prescribed for any document by the law for the time being in force relating to Court-fees" in the above section clearly indicates that the Court fee payable on the memorandum of appeal is in accordance with the scale of Court fee prescribed in the Act in force at the time when the memorandum of appeal was filed. The effect of the order on the application to admit the appeal in forma pauperis, was that the Appellant was granted permission to pay the required Court fee on the appeal memorandum even though no Court-fee was paid on it at the time when it was filed. The Court-fee that he has to pay in compliance with that order is only the fee payable as per the Act that was in force when he filed his memorandum of appeal. The decisions reported in - "Raiyazulnissa Begam v. Mt. Askari Begam" AIR 1932 Oudh 343 : 39 CLR 369 ; and - Kaman Mada and Others Vs. Malli and Another, are in consonance with the above view that we have taken. Accordingly we hold that the amount of Court-fee paid by the Appellant is correct.