

(2019) 08 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No. 29493 Of 2019 (GM-RES-PIL)

K.S. Periyaswamy

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 16-08-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 89, 89(1), 100
Karnataka Court Fees and Suits Valuation Act, 1958 — Section 66(1)
Court fees Act, 1870 — Section 16
Legal Services Authorities Act, 1987 — Section 16, 21, 21(1)
Monopolies and Restrictive Trade Practices Act, 1969 — Section 13, 55
Code Of Civil Procedure (Amendment) Act, 1976 — Section 37
Code Of Civil Procedure, 1908 — Section 89

Citation : (2019) 08 KAR CK 0030

Hon'ble Judges : Abhay S. Oka, CJ; Mohammad Nawaz , J

Bench : Division Bench

Advocate : K.S. Periyaswamy, Y.H. Vijay Kumar

Final Decision : Disposed Off

Judgement

1. Heard the petitioner appearing in person and the learned Additional Government Advocate for the respondent.

2. The prayer in the writ petition filed in the nature of a Public Interest Litigation is for issuing a writ of mandamus against the State of Karnataka to grant 100% court fee refund in the cases settled by adopting any of the modes provided in Section 89 of the Code of Civil Procedure, 1908 (for short, 'the said Code'). The petitioner appearing in person, who is a member of the Bar, has invited our attention to the provisions of sub-section (1) of Section 66 of the Karnataka Court Fees and Suits Valuation Act, 1958 (for short, 'the Act of 1958') as amended by the Act No.9 of 2015. He pointed out that by virtue of the said amended provision of sub-section (1) of Section 66 of the Act of 1958, in case of settlement of disputes by any one of the modes of settlement referred to in Section 89 of the said Code, only 75% of the amount of court fees is refundable.

3. The petitioner invited our attention to the fact that several other States have a provision for grant of 100% refund of the court fees in case of such settlement. He also invited our attention to the observations made in paragraph 63 of a well known decision rendered by the Apex Court in the case of Salem Advocates Bar Association, Tamil Nadu .v. Union Of India (2005) 6 SCC 344. He submitted that the Court Fees Act, 1870 (for short, 'the Central Court Fees Act') provides for 100% refund of the court fees paid on a suit which is settled by one of the four modes of settlement of dispute referred in sub-section (1) of Section 89 of the said Code. He submitted that the Apex Court in the aforesaid decision has recommended to all the State Governments to make amendments to the local Court Fees Act for bringing the same in conformity with Section 16 of the Central Court Fees Act.

4. The petitioner further pointed out that the states of Andhra Pradesh, Tamil Nadu and Kerala have made suitable amendments accordingly. He also invited our attention to the amendments made by the states of Maharashtra and Goa by which the local Court Fees Acts have been amended on par with Section 16 of the Central Court Fees Act. He submitted that the State of Karnataka has not taken any measure in this regard as suggested by the Apex Court by providing for 100% refund of the court fees.

5. In support of his contentions, the petitioner has relied upon the following decisions rendered by Division Benches of the Bombay High Court :

(i) W.P. No.4919/2014 decided on 1st October, 2014 in the matter of Sanjeevkumar Harakchand Kankariya .v. Union of India and others and

(ii) W.P. No.9864/2017 decided on 2nd April, 2019 in the matter of Maharishi Shankarrao Mohite Patil Sahakar Sakhar Karkhana Ltd. .v. The State of Maharashtra and others.

He would submit that so far as Lok Adalats are concerned, in view of Section 21 of the Legal Services Authorities Act, 1987 (for short, 'the said Act of 1987'), the provisions of Section 16 of the Central Court Fees Act stand incorporated. Therefore, in the case of a suit which is settled before the Lok Adalat, notwithstanding the provisions of sub-section (1) of Section 66 of the said Act of 1958, 100% refund of court fees will have to be granted.

6. The learned Principal Government Advocate submitted that while exercising power under Article 226 of the Constitution of India, a writ Court cannot issue a writ of mandamus directing the Legislature to amend the legislation in a particular manner. He would, therefore, submit that the relief as prayed for cannot be granted in writ jurisdiction.

7. We have given careful consideration to the submissions made.

8. Section 89 of the Code was brought on the statute book with effect from 1st July, 2002. The objects and reasons of the Act No.46 of 1999 for the introduction of Section 89 are very well known. The object of the Legislature was to ensure

that parties settle the dispute out of the Court and therefore, by way of alternative dispute redressal mechanism, four modes of settlement outside the Court were provided. They are:

- (1) Arbitration,
- (2) Conciliation,
- (3) Judicial settlement including settlement before the Lok Adalat and
- (4) Mediation

In this context, a reference will have to be made to the decision of the Apex Court in the case of Salem Bar Association (*supra*) which dealt with the issue of validity and interpretation of the amendments made to the said Code.

While dealing with the Amendment Acts including the Act No.46 of 1999, the attention of the Apex Court was invited to Section 16 of the Central Court Fees Act which reads as follows:

'16. Refund of fee.

Where the Court refers the parties to the suit to any one of the mode of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 (5 of 1908), the plaintiff shall be entitled to a certificate from the Court authorising him to receive back from the collector, the full amount of the fee paid in respect of such plaint.'

9. After noticing that Section 16 of the Central Court Fees Act was incorporated by the same Act No.46 of 1999, the Apex Court, in paragraph 63 of the judgment, observed thus:

'Regarding refund of the court fee where the matter is settled by the reference to one of the modes provided in Section 89 of the Act, it is for the State Government to amend the laws on the lines of amendment made in the Central Court Fees Act by the 1999 amendment to the Code. The State Government can consider making similar amendments in the State court fee legislation.'

10. What is pointed out by the petitioner appearing in person is that several States have acted upon what is observed in paragraph 63 of the said judgment and have incorporated the provisions which are *pari materia* with the provisions of Section 16 of the Central Court Fees Act, in the local Court Fees Act. As can be seen from the Act No.46 of 1999, the introduction of Section 89 in the said Code and substitution of Section 16 of the Central Court Fees Act, have been simultaneously made. The Central Court Fees Act provides for grant of 100% refund of the court fees in the event there is a settlement of the dispute by one of the modes provided in Section 89 of the said Code. The intention of the Legislature was to encourage the parties to resolve the disputes amicably by taking a recourse to alternative disputes redressal mechanism under Section 89 of the said Code.

11. Out of the four modes of settlement provided in sub-section (1) of Section 89 of the Code, the disputes settled before the Lok Adalat will have to be treated on a different footing, inasmuch as Section 21 has been incorporated in the said Act of 1987 which deals with refund of court fees in case of settlement before the Lok Adalat in the form of an Award. Section 21 of the said Act of 1987 reads thus:

'21. Award of Lok Adalat.

(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of Section 20, the court fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.'

(underline supplied)

12. As noted earlier, Section 16 of the Central Court Fees Act which is incorporated in sub-section (1) of Section 21 of the State Act of 1987 provides for full refund of the court fees paid on a plaint in a suit which is settled in one of the four modes provided under sub-section (1) of Section 89 of the said Code. As can be seen, there is an obvious inconsistency between the provisions of sub-section (1) of Section 66 of the said Act of 1958 and Section 21 of the Act of 1987 read with Section 16 of the Central Court Fees Act insofar as the refund of court fees paid in a suit which is settled before the Lok Adalat by an award.

13. The first question to be considered is whether Section 16 of the Central Court Fees Act stands incorporated in Section 21 of the said Act of 1987. In short, whether the incorporation of Section 16 in Section 21 of the Act of 1987 is an instance of a legislation by incorporation?

14. So far as the legislation by incorporation is concerned, the law is no longer *res integra*. In the case of *Mahindra and Mahindra .v. Union of India*(1979) 2 SCC 529, in paragraph 8 of the judgment, the Apex Court held thus:

'8. The first question that arises for consideration in the preliminary objection of the respondents is as to what is the true scope and ambit of an appeal under Section 55. That section provides *inter alia* that any person aggrieved by an order made by the Commission under Section 13 may prefer an appeal to this Court on 'one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908.' Now at the date when Section 55 was enacted, namely, 27th December, 1969, being the date of coming into force of the Act, Section 100 of the Code of Civil Procedure specified three grounds on which a second appeal could be brought to the High Court and one of these grounds was that the decision appealed against was contrary to law. It was sufficient under Section 100 as it stood then that there should be a question of law in order to attract the jurisdiction of the High Court in second appeal and, therefore, if the reference in

Section 55 were to the grounds set out in the then existing Section 100, there can be no doubt that an appeal would lie to this Court under Section 55 on a question of law. But subsequent to the enactment of Section 55, Section 100 of the Code of Civil Procedure was substituted by a new section by Section 37 of the Code of Civil Procedure (Amendment) Act, 1976 with effect from 1st February, 1977 and the new Section 100 provided that a second appeal shall lie to the High Court only if the High Court is satisfied that the case involves a substantial question of law. The three grounds on which a second appeal could lie under the former Section 100 were abrogated and in their place only one ground was substituted which was a highly stringent ground, namely, that there should be a substantial question of law. This was the new Section 100 which was in force on the date when the present appeal was preferred by the appellant and the argument of the respondents was that the maintainability of the appeal was, therefore, required to be judged by reference to the ground specified in the new Section 100 and the appeal could be entertained only if there was a substantial question of law. The respondents leaned heavily on Section 8(1) of the General Clauses Act, 1897 which provides:

'8(1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.'and contended that the substitution of the new Section 100 amounted to repeal and re-enactment of the former Section 100 and, therefore, on an application of the rule of interpretation enacted in Section 8(1), the reference in Section 55 to Section 100 must be construed as reference to the new Section 100 and the appeal could be maintained only on the ground specified in the new Section 100, that is, on a substantial question of law. We do not think this contention is well founded. It ignores the distinction between a mere reference to or citation of one statute in another and an incorporation which in effect means bodily leaving a provision of one enactment and making it a part of another. Where there is mere reference to or citation of one enactment in another without incorporation. Section 8(1) applies and the repeal and re-enactment of the provision referred to or cited has the effect set out in that section and the reference to the provision repealed is required to be construed as reference to the provision as re-enacted. Such was the case in the Collector of Customs .V. Nathella Sampathu Chetty & Anr. (AIR 1962 SC 316 : (1962) 3 SCR 786) and New Central Jute Mills Co. Ltd. .v. The Assistant Collector of Central Excise [(1970) 2 SCC 820 : AIR 1971 SC 454 : (1971) 2 SCR 92]. But where a provision of one statute is incorporated in another, the repeal or amendment of the former does not affect the latter. The effect of incorporation is as if the provision were written out in the incorporating statute and were a part of it. Legislation by incorporation is a common legislative device employed by the legislature, where the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that

statute instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute. Lord Esher, M.R., while dealing with legislation in incorporation in *In re.Wood's Estate* [(1886) 31 Ch.D.607] pointed out at p.615:

'If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all.'

(underline supplied)

15. In the case of *C.N.Paramasivam .v. Sunrize Plaza*(2013) 9 SCC 460, in paragraph 17 of the judgment, the Apex Court held thus:

'17. Legislation by incorporation is a device to which legislatures often take resort for the sake of convenience. The phenomenon is widely prevalent and has been the subject-matter of judicial pronouncements by courts in this country as much as courts abroad. Justice G.P.Singh in his celebrated work on Principles of Statutory Interpretation, has explained the concept in the following words:

'Incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been bodily transposed into it.' The effect of incorporation is admirably stated by Lord Esher, M.R:

'... If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it....' [*Wood's Estate, In re, ex p Works and Buildings Commissioners*, (1886) 31 Ch.D.607 (CA) at p.615].

Even though only particular sections of an earlier Act are incorporated into later, in construing the incorporated sections it may be at times necessary and permissible to refer to other parts of the earlier statute which are not incorporated. As was stated by Lord Blackburn:

'When a single section of an Act of Parliament is introduced into another Act, I think it must be read in the sense which it bore in the original Act from which it was taken, and that consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant, though those other sections are not incorporated in the new Act.'

[Portsmouth Corpn. .v. Smith, (1885) 10 AC 364 (HL) at p.371]'

(underline supplied)

16. On a plain reading of sub-section (1) of Section 21 of the said Act of 1987, the provisions relating to refund of court fees under the Central Court Fees Act stand incorporated and therefore, Section 16 of the Central Court Fees Act stands incorporated in Section 21(1) of the said Act of 1987. Thus, the provisions of Section 16 of the Central Court Fees Act will apply to a suit settled before the Lok Adalat. The question is, whether Section 21 of the said Act of 1987 will override sub-section (1) of Section 66 of the said Act of 1958.

17. The Central Court Fees Act is a central legislation and therefore, in case of repugnancy between the Central and State Acts, it is the Central Act which will prevail. In the State Act, in case of a settlement before the Lok Adalat, the entitlement for refund is only to the extent of 75%. But under Section 21 of the said Act of 1987, it is 100%. Thus, Section 21 of the said Act of 1987 will prevail. There is no manner of doubt that so far as awards made in the suits before the Lok Adalat are concerned, Section 16 of the Central Court Fees Act will apply and 100% refund of the court fees paid will have to be made.

18. Now coming to the other three modes of settlement provided in sub-section (1) of Section 89 of the said Code, the State Legislature has provided for 75% refund in case of a settlement. As observed earlier, in the case of Salem Bar Association (supra), the Apex Court has recommended to the State Governments to amend the local laws and incorporate the provision which is *pari materia* with Section 16 of the Central Court Fees Act.

19. We must note here that considering the very object of incorporating sub-section (1) of Section 89 of the said Code, the State Government will have to favourably consider incorporating a provision in the said Act of 1958, which is *pari materia* with Section 16 of the Central Court Fees Act. But the learned Principal Government Advocate is right in submitting that a writ Court cannot issue a mandamus directing the Legislature to amend a particular enactment in a particular manner.

20. Now coming back to the settlement of a suit before Lok Adalat, it is obvious that the provision of Section 16 of the Central Court Fees Act shall be made applicable to the court fees paid on a plaint as also a counter-claim, as a counter-claim is in the nature of a cross-suit.

21. Therefore, the petition must succeed in part and we pass the following order:

ORDER

(i) In the case of settlement of suits culminating into an Award made by the Lok Adalat as provided in Sections 20 and 21 of the National Legal Services Act, 1987, Section 16 of the Central Court Fees Act, 1870, will apply and refund of 100% of the court fees paid on the plaint or counter-claim, as the case may be,

shall be made available, notwithstanding sub-section (1) of Section 66 of the Karnataka Court Fees and Suits Valuation Act, 1958;

(ii) As regards the other three modes of settlement provided in sub-section (1) of Section 89 of the Code, we recommend to the State Government to consider the recommendations made by the Apex Court which we have narrated earlier in the case of Salem Bar Association, and to consider of amending sub-section (1) of Section 66 of the said Act of 1958, providing for 100% refund of court fees in case there is a settlement in a suit by taking recourse to three other categories of alternative dispute redressal mechanism provided in Section 89 of the said Code;

(iii) We are sure that the State Government will consider the recommendation made by the Apex Court in the light of the fact that if 100% refund of is provided, it will encourage the litigants to take recourse to one of the modes of alternative disputes redressal provided under sub-section

(1) of Section 89 of the said Code.

(iv) The petition is disposed of on the above terms.