
(2015) 02 KL CK 0135

In the High Court Of Kerala

Case No : I.A. 1933 of 2010 in Cross-Objection No. 77 of 2008 in L.A.A. No. 404 of 2008

Mathew V.O. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Section 3, 4A, 52, 70

Citation : (2015) 2 ILR Ker 224 : (2015) 2 KHC 165

Hon'ble Judges : C.K. Abdul Rehim, J.;K. Surendra Mohan, J.

Bench : Division Bench

Advocate : Jacob P. Alex and Joseph P. Alex, for the Appellant

Final Decision : Allowed

Judgement

1. This is a petition filed by the cross-objector in cross-objection No. 77/2008. The cross-objection was dismissed at the stage of admission on 25/05/2010. According to the petitioner herein, at the time of filing the cross-objections he had paid the entire court-fee that was payable on the cross-objections, by mistake. Since the cross-objections were dismissed at the stage of admission, as per law it was necessary for him to have paid only 1/3rd of the court-fee payable. Therefore, he claims that he is entitled to refund of the excess court-fee paid. According to Advocate Jacob P. Alex the entire court-fee was paid by mistake. Since the cross-objections was dismissed at the stage of admission the petitioner is entitled to have the excess court-fee paid refunded. According to the counsel, as per Section 52 of the Kerala Court Fees and Suits Valuation Act, 1959 ("Court Fee Act" for short) the court-fee payable at the time of filing an appeal is only 1/3rd of the actual court-fee. The remainder is to be paid only if the appeal is admitted. Since the stage for payment of the balance court-fee had not arisen in the present case, it is contended that the claim of the petitioner is justified. Reliance is also placed on the decision of this Court in Ayisha Beevi Vs. District Collector, to contend that, the petitioner is entitled to the relief that is sought.

2. The learned Government Pleader opposes the contentions of the counsel for the petitioner. Objections have also been filed. It is contended that, the permission to file an appeal by paying only 1/3rd of the court-fee payable is not available to a person who prefers a cross-objection. Reliance is placed on Section 4A of the Act. It is also contended that the payment that was made in the present case was not as a result of any mistake as contended by the petitioner.

3. Heard. As already noticed above, the cross-objections preferred by the petitioner in the present case did not cross the stage of admission. The same was dismissed at the stage of admission on 25/05/2010. According to the petitioner, he had made payment of the entire court-fee due on the cross-objections, by mistake. The first contention of the learned Government Pleader who opposes the claim of the petitioner is that the expression "appeal" does not include cross-objections. The said contention cannot be sustained for the reason that Section 3 of the Act defines an appeal to include a cross-objection also. The said provision is reproduced hereunder:--

"3. Definitions.-- In this Act, unless the context otherwise requires;-- (i) Appeal.-- "appeal" includes a cross-objection;" 4. Section 52 of the Act provides that, the court-fee payable on an appeal shall be the same as the fee that will be payable in the Court of first instance on the subject-matter of the appeal. The second proviso to Section 52 provides that 1/3rd of the fee payable in an appeal shall be paid at the stage of admission of the first appeal or second appeal as the case may be and the balance shall be paid within such period not later than 15 days from the date of such admission as may be specified by the Court, "in case the appeal is admitted". The above provision was considered by this Court in *Ayisha Beevi v. District Collector* (supra). Considering Section 52 of the Act Abdul Gafoor, J. has held as follows in paragraphs 5, 6 and 7 of the judgment:--

"5. The second proviso to Section 52 of the Act reads as follows: "Provided further that one third of the court-fee payable in an appeal shall be payable at the stage of admission of the first appeal or the second appeal as the case may be and the balance shall be paid within such period not later than fifteen days from the date of such admission as may be specified by the Court: in case the appeal is admitted."

(Emphasis supplied).

6. Liability to pay balance court-fee arises only when the appeal is admitted as per the said proviso. In this case, the appeal was not admitted. In terms of the proviso, at the time of filing the appeal, an appellant need pay only one third of the court-fee payable on the appeal.

7. As per the main provision in Section 52 of the Act, the rate of court-fee payable on a plaint, as provided in Article 1 in Schedule 1 to the act is, made applicable to appeals. Necessarily following the dictum in *Kochupappu*, the newly introduced rate was applicable to the appeal filed by the petitioners. Out of the total fee so payable on the appeal, they were liable to pay only one third of the

court-fee payable "at the stage of admission" of the appeal going by the second proviso to Section 52 of the Act. The balance is payable only "in case the appeal is admitted". The appeal was not admitted. So the liability to pay the balance did not arise at all. When the petitioner did not have, thus, the liability to pay the balance two third of the court-fee payable on their appeal, it cannot be recovered from them."

We are in agreement with the above dictum.

In the present case the cross-objections were dismissed at the stage of admission. Therefore, it was sufficient for the petitioner to have paid only 1/3rd of the amount of court-fee. Instead, he paid the entire amount of court-fee. According to the learned Government Pleader the said payment was not the result of a mistake. However, Section 70 provides for refund court-fee paid either by mistake or inadvertence. Section 70 is to the following effect:--

"70. Refund of fee paid by mistake or inadvertence.--The fee paid by mistake or inadvertence shall be ordered to be refunded." The wording of the above provision is clear to the effect that, payment of court-fee made either by mistake or inadvertence shall be ordered to be refunded. Even if it is presumed that the payment of court-fee in the present case was not due to mistake, it was certainly due to an inadvertence which is also a sufficient ground for ordering refund of the excess court-fee paid. Therefore, we are satisfied that this is a case in which the petitioner is entitled to refund of the excess amount of court-fee that he has paid while preferring Cross-Objection No. 77/2008.

In view of the above this petition is allowed. Since the petitioner is no more and his legal representatives have been brought on the party array a cheque for the amount of refund shall be issued in favour of one of the legal heirs to be authorised by the others.