
(2016) 08 KL CK 0048
In the High Court Of Kerala
Case No : WP(C).No. 26697 of 2016 (J)

M.K. Jose

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 25-08-2016

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Section 4A, 76

Citation : (2016) 4 ILRKerala 321 : (2016) 4 KerLJ 214 : (2016) 4 KLT 227

Hon'ble Judges : Mr. P.B. Suresh Kumar, J.

Bench : Single Bench

Advocate : Sri. T.R. Ravi, Smt. Cissy Mathews, Sri. Jawahar Jose and Sri. V. Vinay Menon, Advocates, for the Petitioner; Government Pleader, Sri. Aravindakumar Babu T.K, Advocate, for the Respondent Nos. 1 and 2

Final Decision : Allowed

Judgement

Mr. P.B. Suresh Kumar, J.—The petitioner seeks a declaration that the one per cent additional court fee payable under Section 76 of the Court Fees and Suits Valuation Act ("the Act" for short) is leviable only in the manner provided for under Section 4A of the Act.

2. Section 76 of the Act providing for constitution of the Legal Benefit Fund had been amended by virtue of the provisions contained in the Kerala Finance Bill, 2016. As per the amended Section 76, the Government is competent to levy an additional court fee, by notification in the Gazette, in respect of suits, at a rate not exceeding one per cent of the amount involved in the dispute in cases where it is capable of valuation and in other cases at a rate not exceeding one hundred rupees for each original suit. In exercise of the power conferred by the amended Section 76 of the Act, Ext.P1 notification was issued by which the Government have authorised levy by the civil courts an additional court fee in respect of each original suit at the rate of one per cent of the amount involved in the dispute in cases where it is capable of valuation and in other cases at a rate not exceeding one hundred rupees for each original suit. The case of the petitioner is that he

intends to file a suit before the Sub Court, Thalassery for realisation of certain amounts allegedly due from the Government and since the civil courts are insisting payment of the additional court fee provided for under Section 76 of the Act in lump sum, as a practise, he is constrained to pay large amounts by way of court fee at the time of institution of the suit itself. According to the petitioner, in the light of the provisions contained in Section 4A of the Act, only one tenth of the additional court fee payable under Section 76 can be levied at the time of institution of the suit and the balance can be levied only as provided for under the said Section. It is specifically pleaded by the petitioner in the writ petition that on account of the aforesaid practise, he is required to pay a sum of Rs. 4,51,225/- towards additional court fee payable under Section 76 of the Act, at the time of institution of the proposed suit itself.

3. Heard the learned counsel for the petitioner as also the learned Government Pleader.

4. Section 76 of the Act, as amended by virtue of the Kerala Finance Bill, 2016 reads thus:

"76. Legal Benefit Fund:- (1) Notwithstanding anything contained in this Act or any other law for the time being in force, it shall be competent for the Government to levy an additional Court-fee, by notification in the Gazette, in respect of original petitions, original applications, appeals or revisions to tribunals or appellate authorities and original suits in civil court at a rate not exceeding one per cent of the amount involved in the dispute in cases where it is capable of valuation and in other cases at a rate not exceeding one hundred rupees for each original suit, original petition, original application, appeal or revision.

(2) There shall be constituted a Legal Benefit Fund to which shall be credited-

(i) the proceeds of the additional Court-fee levied and collected under sub-section (1);

(ii) fifty per cent of the Court-fees levied and collected on mukhtarnama or vakalatnama under Article 16 of Schedule II of this Act.

(3) The fund constituted under sub-section (2) shall be applied and utilised for the purpose of providing an efficient legal service for the people of the State and to provide social security measures for the legal profession.

(4) The mode and manner in which legal service to the people may be made more efficient and social security measures for legal profession may be provided, shall be as prescribed by rules made by Government."

5. A plain reading of Section 76 of the Act would indicate beyond doubt that it provides for constitution of a Legal Benefit Fund making use of a portion of the court fee levied under the Act. True, the statute provides for an additional levy for the said purpose. But, merely for the reason that the statute provides for an

additional levy for constitution of the Legal Benefit Fund, the character of the levy will not be changed. So long as there is no change in the character of the levy, there cannot be any change in the mode of levy also. The mode of levy of court fee under the Act is dealt with under Section 4A of the Act. Section 4A of the Act provides categorically that it applies to every fee chargeable under the Act. Section 4A of the Act reads thus:

"4A. Levy of fee at the time of institution of suit:- Notwithstanding anything contained in any other provisions of this Act, the amount of fee to be paid on plaint at the time of institution of suit shall be one-tenth of the amount of fee chargeable under this Act and the balance amount shall be paid within such period, not later than fifteen days from the date of framing of issues or where framing of issues is not necessary, within such period not exceeding fifteen days as may be specified by the Court:

Provided that the Court may, for sufficient reasons to be recorded in writing, extend the period up to thirty days:

Provided further that if the parties settle the dispute within the period, specified or extended by the Court for the payment of the balance amount, the plaintiff shall not be called upon to pay such balance."

6. In the said circumstances, it is explicit that the additional court fee payable under Section 76 of the Act can be levied only as provided for under Section 4A of the Act. The petitioner, in the circumstances, is entitled to succeed.

7. In the result, the writ petition is allowed and it is declared that the one per cent additional court fee payable under Section 76 of the Act can be levied only in the manner provided for under Section 4A of the Act.