

(1978) 11 MAD CK 0011
In the Madras High Court

M.S. Mani

APPELLANT

Vs

K.N. Velayudham Chettiar

RESPONDENT

Date of Decision : 09-11-1978

Acts Referred:

Court Fees Act, 1870 — Section 22

Court Fees and Suits Valuation Act, 1955 — Section 69

Citation : (1979) ILR (Mad) 344 : (1979) 92 LW 238 : (1979) 2 MLJ 86

Hon'ble Judges : V. Sethuraman, J

Bench : Division Bench

Judgement

V. Sethuraman, J.—This civil revision petition is to revise the order of the learned Subordinate Judge, Nagapattinam, in I.A. No. 735 of

1975 in O.S. No. 6 of 1972, dated 25th September, 1975. The plaintiff is the petitioner herein and was also the applicant in the Court below. He

filed a suit against the defendant for recovery of a sum at Rs. 86,000 and odd and paid court-fee to the tune of Rs. 6,455.25 u/s 22 of the Court-

fees Act. He obtained an ex parte decree. In pursuance of the said decree, E.P. No. 67 of 1974 was filed and there was a realisation of Rs.

19,855. However, the ex parte decree came to be set aside by an order in I.A. No. 613 of 1974, dated 16th April, 1975. After setting aside the

ex parte decree, when the case came up for hearing, it was dismissed as settled out at Court on 28th April, 1975. The petitioner prayed for a

refund of the Court-fee paid in accordance with the provisions of Section 69 of the Court-Fees and Suits Valuation Act. The Court below has held

that the petitioner was not entitled to the refund of the court-fee, and that is how the civil revision petition came to be filed in this Court by the

plaintiff.

2. The only question is whether the petitioner is entitled to refund of the court-fee paid u/s 69 of the Act. Section 69 of the Act is as "follows:

Whenever any suit is dismissed or settled out of Court before any evidence has been recorded on the merits of the claim, half the amount of all

fees paid in respect of the claim or claims in the suit shall be) ordered by the Court to be refunded to the parties by whom the same have been respectively paid.

There is an explanation to this provision and it is unnecessary for our present purpose to extract the same. The case of the petitioner before the

Court below was, and here is, that this is a case which has been settled out of Court before evidence had been recorded on the merits of the claim

as contemplated by the provision extracted above, and that therefore, he is entitled to a refund of the court-fee paid. The Court below has taken

the view that as there has been a recovery of a sum of Rs. 19,855 in execution, the petitioner is not entitled to the refund u/s 69. The correctness of

this view is to be considered now.

3. In *C. Easwaramoorthy Vs. Ramakrishnan*, *N. S. Ramaswami, J.*, considered a somewhat similar question. In that case also, there was an ex

parte decree and before passing the ex parte decree, some evidence had also been recorded. After referring to certain decisions, the learned

Judge observed as follows:

All these decisions proceed on the footing that the ex parte evidence should be treated as non est once the ex parte decree is set aside. I

respectfully agree with that view. If the ex parte decree is set aside, the parties would be in the same position as they were before recording of ex

parte evidence. If the suit is settled out of Court after the ex parte decree is set aside, such settlement is clearly before "any evidence has been

recorded", for, the ex parte evidence originally recorded had been wiped out, as it were, by the setting aside of the proceeding. When the

settlement was reported there was no evidence on record. That means that Section 69 of the Court-fees Act is applicable to this case and the

plaintiff is entitled to refund of half the court-fee.

The only way in which this decision is sought to be distinguished by the respondent is that there has been an execution in E.P. No. 67 of 1974, as a

result of which a sum of Rs. 19,855 was recovered and that this makes a vital

change so that the principle of that decision cannot be applied here.

I do not consider that there is anything in principle which renders the principle of that decision inapplicable to the facts of this case. As a result of

the setting aside of the ex parte decree, the realisation in execution would lose its validity. If necessary, the petitioner might have been ordered to

bring back the said amount to the credit of the suit as there can be no realisation in execution of a decree which has ceased to exist. The fact that

there has been execution of the decree would be of no consequence, and after the decree was set aside the parties would be restored to the

position which they occupied prior to the passing of the decree. I consider that on the facts before this Court the petitioner has clearly made out a

case for a refund of the court-fee in accordance with the provisions of Section 69 of the Act, and the refund is accordingly ordered. The civil

revision petition is allowed. There will be no order as to costs.