
(2012) 09 MAD CK 0246
In the Madras High Court
Case No : C.R.P. (NPD) (MD) No. 1948 of 2012

N. Shankar

APPELLANT

Vs

S. Soundaravathani

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152, 3

Citation : (2013) 1 CTC 497

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : D. Nallathambi, for the Appellant;

Final Decision : Allowed

Judgement

S. Palanivelu, J.—This Revision is directed against the order dated 20.7.2012 passed in I.A. No. 177 of 2012 in O.S. No. 54 of 2010 on the file of the Subordinate Court, Virudhunagar. The Revision Petitioner is the Defendant in O.S. No. 54 of 2010. The Suit was filed for declaration and injunction. After the Suit was dismissed with cost, the learned Counsel for the Revision Petitioner filed a Cost Memo fixing his Advocate fee at Rs. 12,000/- and arriving at the total cost as per his calculation at Rs. 12,005/-. However, the learned Subordinate Judge, Virudhunagar fixed Rs. 750/- alone as Advocate Fees against his claim of Rs. 12,000/-. In the decree, the total cost payable to the Petitioner has been mentioned as Rs. 755/-.

2. Aggrieved against the said fixation, the Petitioner filed an Application in I.A. No. 177 of 2012 u/s 152 of the CPC praying to amend the cost in the decree in accordance with the fees fixed by the Advocate in the Cost Memo. According to the Legal Practitioners' Fees Rules, 1973, the Revision Petitioner fixed Advocate fee at Rs. 12,000/- and claimed as such. However, it was reduced to Rs. 750/- by the Court. Hence, he prayed that the amendment may be made in the decree with regard to the cost payable to the Petitioner.

3. After hearing the Petitioner, the learned Subordinate Judge dismissed the Application by observing that the cost was fixed at Rs. 755/- only and thereafter, the cost was incorporated in the decree, and as such, it is not a clerical or arithmetical mistake nor an error due to accidental slip or omission and therefore, no amendment is necessary. Challenging the said order, the Petitioner is before this Court.

4. Mr. D. Nallathambi, learned Counsel appearing for the Petitioner would contend that in as much as the Advocate Fee was rightly fixed as permissible under the Legal Practitioner's Fees Rules, 1973, in the Cost Memo but without any basis, the Presiding Officer of the Trial Court has reduced the Advocate's fee and it is not sustainable.

5. This is a contested Suit. Rule 3 of the Legal Practitioners' Fees Rules, 1973 governs this subject. This is with reference to the fees to be charged by an Advocate appearing in Courts Subordinate to the High Court. Clause (1) of Section 3 prescribes fee for Small Cause Suits at 10 per cent of the claim, subject to a minimum of Rs. 50/- [100 (AP)]. Clause (2) of Section 3 is with reference to Original Suits (a) for money based on negotiable instruments and loans, and (b) for other Original Suits not falling under sub-clause (a) of clause (2). The tabulation of fees which can be charged by an Advocate as pleader's fee is as follows:

3(2)(b) Other original Suits not falling under sub-clause (a) of Clause (2):

(i) If the amount or value of the claim does not exceed Rs. 5,000.00 at 15 per cent subject to a minimum of Rs. 500.00.

(ii) If the amount or value exceeds Rs. 5,000.00 but does not exceed Rs. 30,000.00, on Rs. 5,000.00 as above and on the remainder at 10 per cent.

(iii) If the amount or value exceeds Rs. 30,000.00 but does not exceed Rs. 50,000.00 on Rs. 30,000.00 as above and on the remainder at 7 per cent.

(iv) If the amount or value exceeds Rs. 50,000.00 but does not exceed Rs. 1,00,000.00 on Rs. 50,000.00 as above and on the remainder at 5 per cent.

(v) If the amount or value exceeds Rs. 1,00,000.00 but does not exceed Rs. 2,00,000.00 on Rs. 1,00,000.00 as above and on the remainder at 3 per cent.

(vi) If the amount or value exceeds Rs. 2,00,000.00 but does not exceed Rs. 3,00,000.00 on Rs. 2,00,000.00 as above and on the remainder at 2 per cent.

(vii) If the amount or value exceeds Rs. 3,00,000.00 on Rs. 3,00,000.00 as above and on the remainder at 1 per cent."

6. Along with the Affidavit, the Petitioner's Counsel has appended a Calculation Memo enlisting various costs to be charged in accordance with Rule 3(2)(b) of the Legal Practitioners' Fees Rules, 1973. The Calculation Memo as tabulated by the Advocate is as follows:

7. The Advocate's fees is arrived at Rs. 12,380/- but it was restricted to Rs. 12,000/-. Since the Plaintiff has valued the Suit at Rs. 3,23,000/-, the calculation is more appropriate. The Court below without any basis nor statutory background nor any Rules framed as per the procedure has brought down the Advocate's fee from Rs. 12,000/- to Rs. 755/-, which is unsustainable and impermissible. Since it is a contested suit as per the above said Rules, the Trial Court should have entertained the Cost Memo. The quantum of cost as mentioned in the Cost Memo should have been incorporated in the decree. In such view of this matter, the order challenged before this Court is liable to be set aside and it is accordingly set aside. In fine, this Civil Revision Petition is allowed and the Trial Court is directed to incorporate the cost in the decree as claimed in the Cost Memo. No costs.