(1981) 03 KL CK 0007

In the High Court Of Kerala

Case No : S.A. (Unnumbered) of 1980

Padmanabhan Raveendran APPELLANT

Vs

Parameswaran Appukuttan RESPONDENT

Date of Decision : 06-03-1981

Acts Referred:

Citation : AIR 1982 Ker 255 : (1981) 1 ILR (Ker) 729

Hon'ble Judges : P. Subramonian Poti, Acting C.J.;V. Khalid, J

Bench : Division Bench

Advocate : S. Subramonia Iyer, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Khalid, J.—A court-fee question in a second appeal comes up before us on reference by a learned single Judge. The plaintiff it the second appellant. The suit was foe recovery of money due on a promissory note executed by the defendant. Defendant admitted execution bill contended that it was not supported by consideration. The trial Court negatived the contention and decreed the suit. In appeal by the defendant, the appellate Court accepted the defence plea and dismissed the suit. Hence this second appeal.

2. In the second appeal court-fee was paid only on the promissory note amount with interest till date of the suit. Count-fee was not paid for the interest accrued after the institution of the suit. The appellant''s case is that Explanation (3) to Section 52 of the Court-fees Act does not apply in this case because he is not questioning the award of interest and is not seeking to avoid it. The office objected stating that the plaintiff had claimed future interest in the suit and hence the subject-matter of the second appeal should be deemed to include future interest also. The taxing officer referred the case to the Court for hearing as the appellant''s counsel wanted the matter to be decided by the Court.

3. Explanation (3) to Section 52 of the Court-fees Act reads as follows :

"In claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of the decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished."

The submission made is that this Explanation can apply only to a defendant''s appeal since there is no accrual of interest during the pendency of the suit when the suit is dismissed. According to the appellant, the principal amount itself is denied to him wherefore there is no question of any interest having accrued during the pendency of the suit. According to him interest will be deemed to have accrued only when the suit is decreed. In the case of a defendant''s appeal, he has to get the decree for interest avoided.

4. The question came up for consideration directly in Ouseph v. Narayana Pillai (1966) KLT 997 and indirectly in Ratnamma Vs. Karthiyani Pillai, . In the earlier case, Raman Nayar J., as he then was, referred to Explanation (3) to Section 52 and repelled a contention similar to the one raised before us in this second appeal. The learned Judge held that Explanation (3) to Section 52 applied whether appellant was the plaintiff or the defendant.

5. One of us had to consider the same question in an unnumbered appeal, subsequently numbered as A. S. No. 220 of 1979 (Ker). That was a defendant''s appeal against a decree for money with interest at 6% per per annum. The contention put forward there was that no court-fee was payable on the interest decreed since what the defendant wanted was the suit to be dismissed for the principal amount and if the suit was dismissed for the principal amount there was no question of any interest. The appellant also contended that Explanation (3) to Section 52 applied only to a plaintiff''s appeal because of the use of the words ''except where such interest is relinquished''. The contention is that interest can be relinquished only by the plaintiff and not by the defendant. That contention was repelled and the court-fee was directed to be paid for the interest also.

6. The appellant''s counsel submitted that during the pendency of a suit or an appeal, there is no accrual of interest, for, the plaintiff cannot as of right claim such interest. u/s 34 of the Code of Civil Procedure, the Court has discretion either to allow or to disallow the interest accruing during the pendency of a litigation. Since the Court has this discretion it is not a necessary appendage to tile suit amount. Paragraph 6 of the Full Bench case reported in Ratnamma Vs. Karthiyani Pillai,) reads :

"In this regard, we may also advert to Explanation (3) which by a deeming provision has included as part of the subject-matter of the appeal, interest subsequent to the institution of the suit till the date of the decree indicating thereby that in the absence of the deeming provision such interest would not be part of the subject-matter of the appeal."

This means that in view of this Explanation, interest accrued would be part of the subject-matter of the appeal.

7. The words ''except where such interest is relinquished'', in the Explanation give the necessary guideline to understand it. The plaintiff, alone can, relinquish interest claimed in the suit The plaintiff had claimed future interest. He did not relinquish the interest. Hence Explanation (3) directly comes into operation.

The objection raised by the taxing officer has to be upheld. Time for payment of court-fee one month.