

(2018) 06 KAR CK 0006

In the Karnataka High Court

Case No : Regular First Appeal No.1475 of 2014

Sri Jagadeeshaiah @APPELLANT@Hash B.Prasannaiah and Anr

Date of Decision : 06-06-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 89, Section 96, Order 41 Rule 11, Order 41 Rule 16, Order 41 Rule 17

Karnataka Court-Fees and Suits Valuation Act, 1958 — Section 66(2)(c), 66(c)

Citation : (2018) 06 KAR CK 0006

Hon'ble Judges : H.G.RAMESH, J;MOHAMMAD NAWAZ, J

Bench : Division Bench

Final Decision : Disposed of

Judgement

1. The question of law that arises for determination in this appeal is as to whether, under Section 66(2)(c) of the Karnataka Court-Fees and Suits

Valuation Act, 1958 as amended by Karnataka Act No.09 of 2015, the appellant is entitled for refund of 75% of the Court fee paid on the

memorandum of appeal in view of unconditional withdrawal of the appeal before commencement of its final hearing? The question is answered in the

affirmative.

2. Learned Counsel appearing for the appellant seeks leave for unconditional withdrawal of the appeal. Leave granted. The appeal is accordingly

disposed of as withdrawn.

3. The learned Counsel, by relying upon Section 66(2)(c) of the Karnataka Court-Fees and Suits Valuation Act, 1958 (â??the Actâ?? for short) as

amended by Karnataka Act No.09 of 2015 submitted that, in view of unconditional withdrawal of the appeal, the appellant is entitled for refund of

75% of the Court fee paid by him on the memorandum of appeal. He submitted that unconditional withdrawal of any appeal, before it is taken up for

final hearing, shall be deemed to be a disposal of the appeal by agreement of parties before the commencement of its hearing. In support of

his submission, he referred to a Division Bench decision of this Court in Gayathri vs Indira Rajashekar [ILR 2000 KAR 3001] and submitted that

interpretation of the earlier Section 66(c) of the Act made in Gayathri will apply to the amended Section 66(2)(c) of the Act as the language employed

in Clause (c) in both the Sections is identical.

4. In the context of the contention that interpretation of the earlier Section 66(c) of the Act made in Gayathri will apply to the amended Section 66(2)

(c) of the Act, it is relevant to refer to the earlier and the present Section 66 of the Act; the Section as it existed prior to Karnataka Act No.09 of 2015

reads as follows:

66. Refund on settlement before hearing. "Whenever by agreement of parties,

(a) any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim; or

(b) any suit is compromised ending in a compromise decree before any evidence has been recorded on the merits of the claim; or

(c) any appeal is disposed of before the commencement of hearing of such appeal;

half the amount of all fees paid in respect of the claim or claims in the suit or appeal shall be ordered by the Court to be refunded to the parties by

whom the same have been respectively paid.

Explanation. "The expression 'merits of the claim' shall have the meaning assigned to it in Section 11."

(Emphasis supplied)

The Section as substituted by Karnataka Act No.09 of 2015 reads as follows:

66. Refund on settlement before hearing.- (1) Where the Court refers the parties to the suit to any one of the modes of settlement of dispute

referred to in section 89 of the Code of Civil Procedure, 1908 and the dispute is settled, seventy five percent of the amount of Court fee paid in

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

(2) In cases not covered by sub-section (1); Whenever by agreement of parties,-

(a) any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim; or

(b) any suit is compromised ending in a compromise decree before any evidence has been recorded on the merits of the claim; or

(c) any appeal is disposed of before the commencement of hearing of such appeal;

Â Seventy five percent of the amount of court fee paid in respect of the claim or claims in the suit or appeal shall be ordered by the court to be

refunded to the parties who have paid such fee.â??

Â (Emphasis supplied)

5. We will now refer to the interpretation of earlier Section 66(c) of the Act made in *Gayathri vs Indira Rajashekar* [ILR 2000 KAR 3001]; it reads as

follows:

â??It is evident from a plain reading of the above that two conditions must be satisfied before a refund of Court fee may be claimed on an appeal in

terms of Clause (c) of Section 66. Firstly, the appeal must be disposed of by agreement of the parties and secondly such disposal must come before

the commencement of hearing of such appeal. So far as the disposal of the appeal by agreement of the parties is concerned, the same does not

necessarily imply that the respondent must either be present or expressly grant his consent to the disposal of the appeal. Disposal of an appeal by

reason of an unconditional withdrawal of the same even before the respondent is notified or appears must in the scheme of Section 66 be deemed to

be a disposal with the agreement of the parties. That is so because while the respondent may have a right to object to the modification of the decree

passed in his favour he cannot possibly oppose a request for unconditional withdrawal of the appeal. This is true even where the respondent has been

notified and has entered appearance. A disposal by reason of withdrawal of the appeal must therefore be construed as a disposal with the agreement

of the parties. In the instant case also, the withdrawal is unconditional and without affecting the decree in any manner. As a matter of fact, the

respondent has not entered appearance in the appeal so far. In the circumstances, the disposal of the appeal as withdrawn must for purposes of

Section 66 be deemed to be a disposal with the agreement of the parties. The next question is whether the second requirement for making an order of

refund is also satisfied in the instant case. The requirement as noticed earlier is that the disposal of the appeal must come before the commencement of hearing of such appeal. The expression commencement of hearing of such appeal appearing in Clause (c) of Section 66 has not been defined under the Act. Reference to the provisions of Order 41 of the Civil Procedure Code which deals with appeals and regulates their hearing and disposal should therefore be permissible. Rule 11 of Order 41 empowers the Appellate Court to dismiss an appeal without sending notice to either the respondent or to the Court from whose decree, the appeal is preferred. The only requirement is that the appellant or his Counsel should be heard on the date fixed for that purpose. Sub-Rule(2) of Rule 11 empowers the Court to dismiss the appeal if on the day fixed or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called for hearing. The hearing referred to in Rule 11 however is in its very nature a hearing at the preliminary stage of the appeal. Rule 16 of Order 41 deals with procedure on hearing after notice to the respondent and entitles the appellant to be heard in support of the appeal. Sub-Rule(2) requires the Court to hear the respondent against the appeal and entitles the appellant to give a reply if the Court does not dismiss the appeal at once. Rule 17 empowers the appellate Court to dismiss the appeal, where on the date fixed for hearing, the appellant does not appear when the appeal is called on for hearing, and to hear the appeal exparte if the respondent does not appear. The question then is whether the expression 'before the commencement of the hearing' appearing in Section 66(c) of the Court Fees and Suits Valuation Act refers to the hearing at the preliminary stage or that in terms of Order 41, Rule 16 after notice to the respondents. In our opinion, the expression must necessarily relate to a hearing in terms of Order 41, Rules 16 and 17 after notice to the respondents. We say so for two precise reasons. Firstly because, the provisions of the Court Fees and Suits Valuation Act, 1958, are fiscal in nature. If two interpretations of such a statute are possible, one more favourable to the subject than the other, the Court must lean in favour of the interpretation that is more beneficial to the citizen. If commencement of hearing of the appeal is understood to be a hearing in terms of Order 41, Rule 11, it would mean that even when the parties agree to the disposal of an appeal at any stage after notice to the respondent, but before the hearing of such appeal had commenced, the benefit of refund

would not be available. That could not, in our opinion, be the intention of the legislature while enacting the beneficial provisions of Section 66, which entitles the litigant to claim refund in certain situations mentioned therein, Secondly because a hearing within the comprehension of Section 66(c) must be a hearing in terms of Order 41, Rule 16 excluding the preliminary stages through which the appeal may have passed before coming up for such a hearing. That is so because Clauses (a) and (b) of Section 66, which deal with dismissal of suits by settlement outside the Court and decrees passed on the basis of compromise, all stages previous to recording of evidence have been excluded from consideration. On an analogy of the said provisions, it is reasonable to hold that insofar as appeals are concerned, the legislature never intended the hearing at the preliminary stages in terms of Order 41, Rule 11 to constitute a hearing for purposes of a refund of the Court fee paid by the appellant. The fact that the Court is required to hear the appellant and empowered to dismiss the appeal without notice to the respondents under Order 41, Rule 11 does not, in our opinion, detract from the proposition that the hearing of the appeal under Section 66(c) is relatable to the hearing after notice in terms of Order 41, Rules 16 and 17. The Single Bench decision relied upon by Mr. Navadgi must also be understood to be laying down the same proposition of law.â??

6. In our opinion, the interpretation of Section 66(c) of the Act made in Gayathri will apply to the amended Section 66(2)(c) of the Act as the language employed in Clause (c) in both the Sections is identical. We see no reason to take any other view in the matter. Hence, in view of unconditional withdrawal of the appeal before the commencement of its final hearing, the appellant, as per Section 66(2)(c) of the Act, is entitled for refund of 75% of the Court fee paid on the appeal memorandum. Registry shall accordingly refund 75% of the Court fee paid on the appeal memorandum to the appellant.

Â Appeal disposed of.