

(2002) 08 KL CK 0023
In the High Court Of Kerala
Case No : CRP No. 50 of 1999 (H)

St. George Orthodox Cathedral, The Vicar, St. George
Orthodox Cathedral and The Trustee, St. George Orthodox
Cathedral

APPELLANT

Vs

M.M. Reetha

RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Section 4A, 52, 69

Citation : (2002) 2 KLJ 338

Hon'ble Judges : S. Sankarasubban, J;K. Padmanabhan Nair, J

Bench : Division Bench

Advocate : Biju Abraham and B.G. Bhaskar, for the Appellant; M.P. Mohammed Aslam, Sholy K. Francis, Govt. Pleader and P. Jayasankar, for the Respondent

Final Decision : Allowed

Judgement

Sankarasubban, J.—This Civil Revision Petition has come on a reference by one of us (Sankarasubban, J.). Reference was made when the decision of Balanarayana Marar, J. in State Bank of India v. Iqbal Zacharia - 1994 (1) KLT 141 was doubted. The plaintiff filed the suit for recovery of Rs. 38,137.50. 1/10th of the court fee was paid as per Section 4A of the Kerala Court Fees and Suits Valuation Act (hereafter referred to as "the Act").

2. A written statement was filed admitting the claim. The court then passed an order directing the plaintiff to pay the balance court fee. It is challenging the direction to pay the balance court fee that this Civil Revision Petition is filed.

3. Section 4A of the Act states as follows:

"4A. Levy of fee at the time of institution of suit:- Notwithstanding anything contained in any other provisions of this Court, 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 the 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 upto 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".

As per this Section, 1/10th of the court fee has to be paid at the time of institution of the suit and the balance court fee has to be paid within such period not less than 15 days from the date of framing issues or where issues is not necessary, within such period not exceeding 15 days as may be specified by the court. Learned counsel for the petitioner submitted that here is the case where no issues have been framed and hence, the petitioner cannot be called upon to pay the balance court fee. Further, it is stated that the parties have settled the dispute and hence, the court fee need not paid. *State Bank of India v. Iqbal Zacharia* - 1994 (1) KLT 141, was a case where the defendant filed a written statement admitting the claim. Balanarayana Marar, J. took the view that the Second Proviso stipulates that the balance court fee is not payable if the parties settled the dispute within the period specified or extended by the court. According to the learned Judge, the Second Proviso to Section 4A of the Act does not contemplate a situation where a decree is passed on the admission of the defendant. According to us, the reasoning adopted by the learned Judge is not correct. This view is further strengthened, if we read Section 69 of the Act. Section 69 of the Act reads thus:

"69. Refund in cases of compromise or when suit is decided on the admission of parties:- When a suit or appeal is compromised or when a suit is decided solely on the admission of the parties without any investigation, one-half of the court fee paid on the plaint or memorandum of appeal shall be ordered by the court to be refunded to the parties by whom the same have been paid respectively.

Provided that no refund shall be ordered where only one-tenth of the amount of fee on plaint as required by Section 4A or one-third of the amount of fee on memorandum of appeal as required by Section 52 has been paid by the parties".

The Proviso shows that no refund shall be ordered where 1/10 of the court fee on plaint as required by Section 4A or one third of the amount of fee on memorandum of appeal as required by Section 52 has been paid by the parties. A reading of both Sections together will show that where the suit is decided merely on the admission of party, it is not necessary to direct the plaintiff to pay the balance court fee and then direct refund. The only thing in such case is that if the suit is decided on admission of parties, before the payment of the entire court fee, the plaintiff will not be entitled to get refund of the 1/10th of the amount already paid. According to the learned Judge, it is only when the suit is

compromised or settled out of court that the plaintiff need not be called upon to pay the balance court fee. In the view taken by us, it is not necessary to find out the meaning of the word "settlement". As already stated, if we read Section 4A read with Section 69 of the Act, it becomes clear that it is not necessary to direct the plaintiff to pay the balance court fee in which the suit is decided on admission of the parties. Even though the learned Judge has referred to Section 69 of the Act, sufficient importance has not been given by the learned Judge to the Proviso.

In the above view of the matter, the order of the court below is set aside. Civil Revision Petition is allowed.

Order on CMP 77/99 in CRP 50/99

Dismissed.