
(1993) 11 KL CK 0036
In the High Court Of Kerala
Case No : C.R.P. No. 675 of 1993

State Bank of India

APPELLANT

Vs

Iqbal Zacharia and Another

RESPONDENT

Date of Decision : 24-11-1993

Acts Referred:

Court Fees Act, 1959 — Section 4A, 52, 69

Citation : (1994) 1 KLJ 39

Hon'ble Judges : K.P. Balanarayana Marar, J

Bench : Single Bench

Advocate : K.K. Chandran Pillai, for the Appellant; T.H. Abdul Azeez, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Balanarayana Marar, J.—The question that arises in this revision petition is whether Plaintiff is liable to pay the full Court fee in a case of admission of the claim by the Defendant. The suit was filed since the introduction of Section 4A in the Court Fees Act by which a Plaintiff was permitted to present a plaint by paying one-tenth of the amount of Court fee chargeable under the Act on the plaint claim. The Defendant on appearance in pursuance to the summaries filed written statement admitting the claim. Plaintiff was directed to pay the balance, Court fee. This order is under challenge in this revision.

2. Section 4A was introduced by the Amendment Act 6 of 1991. That Section reads:

4A. Levy of fee at the time of institution of suit. Notwithstanding anything contained in any other provisions of this Act, 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 of 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 up to 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.

This section enables the Plaintiff to pay one-tenth of Court fee payable on the plaint at the time of institution of the suit and the balance nine-tenth within the time prescribed, i.e. not later than fifteen days from the date of framing, of issues or where issues is not necessary within such period not exceeding fifteen days as may be specified by the Court. Power to grant extension of time not exceeding upto thirty days is conferred on the Court by the first proviso to the section. 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. The interpretation of the second proviso arises in this civil revision petition.

3. Framing of issues arises only if a Defendant appears and files his written statement in which case the suit can be compromised. Even before that the matter can be settled between the parties with or without entering into a compromise and presentation of such a compromise is not contemplated in the second proviso whereas reporting of settlement by itself will be sufficient. In other words, the parties only need report to the Court about the settlement of the dispute either within fifteen days from the date of framing of the issues or within such period not exceeding fifteen days as may be specified by the Court or where framing of issues is not necessary or within the extended period granted by the Court. If there has been some settlement between the parties the suit could be withdrawn by the Plaintiff as settled between the parties. In that case, the balance Court fee representing nine-tenth of the Court fee calculated on the plaint claim need not be paid by the Defendant.

4. The second proviso to Section 4A does not contemplate a situation where a decree is passed on the admission of the Defendant. So long as the proviso envisages such a situation also, Plaintiff cannot be relieved of his liability to pay the balance Court fee. There is no indication in Section 4A to suggest that the Legislature contemplated exoneration of Plaintiff from paying the balance Court fee in such a case. The phrase "if the parties settle the dispute within the period specified or extended by the Court" does not include within its scope an admission by the Defendant and a decree on such admission. No provision was brought to my notice by learned Counsel for revision Petitioner to persuade me to take a different view. Moreover there is indication in the Court Fees Act itself to the contrary in Section 69 of the Act relating to refund. That section is titled "refund in cases of compromise or when the suit is decided on the admission of parties". After the amendment by Act 6 of 1991 the section reads:

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.

5. Section 69 therefore contemplates two situations. (i) A compromise and (ii) a decree solely on the admission of parties without any investigation. In either case one-half of the Court fee paid on the plaint has to be refunded to the Plaintiff. The first part can be said to have been provided in the second proviso to Section 4A by referring to settlement of a dispute, though Section 69 speaks of a compromise. A compromise can be entered into only by both the parties jointly whereas a settlement can be arrived at even without a compromise and in order to avail the benefit of Section 4A it is sufficient if the settlement is reported to the Court. Whatever that be, the second part, viz. decree on admission of parties is conspicuously absent in the second proviso and that makes all the difference. The result is that the benefit now claimed by Plaintiff cannot be availed of by him in the absence of specific provision in the second proviso extending the benefit to cases of admission of the claim by the Defendant and decree on such admission. The plea of learned Counsel for revision Petitioner that the phrase "if the parties settle the dispute" includes an admission of the claim by the Defendant and a decree on such admission is therefore unsustainable.

6. It is pointed out by learned Counsel that Plaintiff is driven to a situation where he has to pay the entire balance Court fee payable on the plaint claim and get a refund of the Court fee paid on the plaint on the suit being decreed on such admission. Section 69 provides for refund of half Court fee paid on the plaint on the suit being decreed solely on the admission of the parties without any investigation. That is the right of the Plaintiff under that Section and the Court has no discretion in the matter. This has to be done even without a request for refund. In other words, it automatically follows from the grant of the decree and has to be provided in the decree. An anomalous situation is therefore created by which Plaintiff has to pay the entire balance nine-tenth of the Court fee payable on the plaint and thereafter get a refund order for five-tenth or one-half of the total amount of the Court fee paid on the plaint. It is for the legislature to remove this anomaly by making suitable amendments to Section 4A. As the section stands at present does not envisage a situation of a decree granted solely on the admission of parties the benefit of the second proviso cannot be extended to a case of admission of the claim by the Defendant. No illegality or impropriety has been committed by the learned Subordinate Judge in directing the Plaintiff to pay the balance Court fee.

For the reasons stated above the revision is found to be devoid of merits and is hereby dismissed but without costs.