
(2003) 02 KL CK 0106
In the High Court Of Kerala
Case No : C.R.P. No. 1618 of 2001

State Bank of India

APPELLANT

Vs

Kerala Electricals and Others

RESPONDENT

Date of Decision : 17-02-2003

Acts Referred:

Citation : (2003) 1 KLJ 397

Hon'ble Judges : K.S.Radhakrishnan, J

Bench : Single Bench

Advocate : George Thomas Mevada, for the Appellant;

Final Decision : Allowed

Judgement

K.S.Radhakrishnan

1. Plaintiff, State Bank of India, is the revision petitioner. Suit was instituted by the Bank for realisation of an amount of Rs. 8,87,877/- with future interest and costs. Written statement was filed and respondent herein disputed the averments in the plaint. Issues in the case were framed on 12-07-1999. Suit was included in the list for trial on 18-02-2000. Two of the witnesses of the plaintiff were present on that day. However, the suit was adjourned at the instance of the defendants to 28-02-2000. Adjournment was sought for by the defendants on the said day and the suit was adjourned to 29-02-2000. Defendant also filed I.A. No. 1140/2000 on 29-02-2000 seeking further adjournment. On 29-02-2000 on the side of the Bank P.W. 1 was examined and Exts. A1 to A22 documents were marked. Defendants did not withdraw the contention and were set ex parte. On the basis of the evidence adduced by the plaintiff, suit was decreed with costs. Plaintiff filed the receipt and claimed full fees, but the registry of the court below allowed only half the costs in the suit basically on the footing that the defendants were set ex parte and no enquiry was made before the disposal of the suit. Plaintiff then filed LA. No. 2548 of 2000 before the court below for correcting the costs portion of the decree by incorporating Senior Advocate fee as Rs. 11,028/-

and Junior Advocate fee as Rs. 3,676/- and total costs as Rs. 14,704/-. The said application was however rejected by the court below holding that there is no justification in the claim made by the plaintiff. Aggrieved by the same, this revision petition has been filed.

2. We heard counsel appearing for the Bank. There is no appearance on behalf of the respondent.

3. We find suit was adjourned on several occasions at the instance of the defendants. Ultimately suit was included in the ready list. Even then the matter got adjourned. Then on the side of the Bank P.W. 1 was examined and Exts. A1 to A22 documents were marked. No evidence was adduced on the side of the defendants and consequently they were set ex parte. Relevant portion of Rules regarding Payable to Advocates is Rule 6, which reads as follows :

6. In suits for money, effects or other personal property or for land or other immovable property of any description, fees shall be payable on the following scale:

(1) Small cause suits - at 71/2% of the claim subject to a minimum of Rs. 25.

(2) Original Suits -

(i) If the amount or value of the claim does not exceed Rs. 5,000/- - at 121/2% subject to a minimum of Rs. 50.

(ii) If the amount or value exceeds Rs. 5,000/- but does not exceed Rs. 20,000/- on Rs. 5,000/- as above and on the remainder at 71/2%.

(iii) If the amount or value exceeds Rs. 20,000/- but does not exceed Rs. 50,000/- on Rs. 20,000/- and above and on the remainder at 3%.

(iv) If the amount or value exceeds Rs. 50,000/- on Rs. 50,000/- as above and on the remainder at 1%.

Provided that when a suit is compromised, settled or withdrawn, or is decided solely on the admission of the parties without any investigation or is decided ex parte or dismissed for default before any evidence is recorded, the fee payable shall be one half of the scheduled rate or Rs. 25 in the case of Small Causes suits and Rs. 100 in the case of original suits, whichever is higher.

(emphasis added)

The court below while examining the scope of the above mentioned rule took the view that the term "Investigation" in the above mentioned rule would not include formal evidence adduced on the side of the plaintiff and that the said provision is, not applicable to the facts of the present case. We are afraid, court below has not properly understood the scope of Rule 6(2). Proviso to Rule 6(2) shows that when a suit is compromised, settled or withdrawn or is decided solely on the admission of the parties without any investigation or is decided ex parte or dismissed for default before any evidence is recorded, the fee payable shall be

one half of the scheduled rate or etc. In the instant case, plaintiff had adduced evidence and the defendants were set ex parte after that. PW. 1 was examined and several documents were produced. Evidence was recorded. This is not a case where suit was decided before adducing evidence by the plaintiff. Mere fact that no evidence was adduced on the side of the defendants does not mean that plaintiff is not entitled to the benefit of Rule 6(2).

The court below has also not properly appreciated the decision of a learned single judge of this court in State Bank of Travancore v. Sreepathy Bhat (1986 KLT 22). In the last paragraph of the said decision it is stated that advocate is entitled to full fee even if defendants admit a new claim provided of course that takes place some investigation in the suit. The court is not bound to decree all the suits even if there is no contest. In this case on the side of the plaintiff P.W. 1 was examined and several documents were produced. In the wake of oral evidence given by P.W. 1 and documents produced by the Bank the suit was decreed. In such circumstances I am Of the view court below is not justified in not allowing the claim for advocate fee by the plaintiff. I am therefore inclined to hold that petitioner is entitled to full advocate fee. Revision petition is allowed. Necessary correction be carried out in the decree.