

(2005) 08 MAD CK 0006

In the Madras High Court

Case No : Summary Suit No. 211 of 2000

Sundaram Finance Services Ltd.

APPELLANT

Vs

Shoba Garments (P) Ltd. and Others

RESPONDENT

Date of Decision : 19-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6

Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 69

Citation : (2005) 4 MLJ 116

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : Krishnan, for Sarvabhauman Associates, for the Appellant; P.E.R. Nambiyar, for Respondent No. 2, Suresh Kumar, for Respondent No. 4, B.K. Sreenivasan, for Respondent Nos. 5 and 6, S. Sivasangarane and Sheela Venkatesh, for the Respondent

Judgement

F.M. Ibrahim Kalifulla, J.—This suit is posted before the Court for withdrawal. Mr. M.S. Krishnan, learned Counsel appearing for the

plaintiff prayed for a direction for refund of the half of the Court Fee inasmuch as the suit claim was settled out of Court.

2. Learned counsel for the plaintiff contended that irrespective of the interim decree granted in A. No. 1361 of 2000 in C.S. No. 211 of 2000 on

4.12.2000 inasmuch as Section 69 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 only postulates the situation where a decree is

dismissed as settled out of Court before any evidence is recorded on the merits of the claim, it should be held that the plaintiff is entitled for refund

of half of the Court fee. However, learned Counsel was fair enough to place before the Court two decisions of this Court Paramasiva Mudaliar v.

Krishnaveni Ammal, 1965 (1) MLJ 169 and Ratnasamy Nadar and Bros v,

Subbuswami, AIR 1967 Mad. 180.

3. In the former case, Justice K.S. Venkataraman held that where the suit was laid for three different claims and while one of the claims came to be

granted by way of an interim decree, since the other two claims remained pending to be adjudicated upon the suit and in the meantime, the plaintiff

wanted to withdraw the suit as settled out of Court, though no refund could be ordered in respect of the claim for which an interim decree came to

be granted, in respect of the other two reliefs, the plaintiff was entitled for refund of half of the Court Fee.

4. In the case on hand, the claims were not separable. Therefore, when in respect of the claim made in the suit, the plaintiff had the advantage of an

interim decree and was able to realize part of the suit claim, even applying the ratio of the decision rendered in *Paramasiva Mudaliar v. Krishnaveni*

Ammal, 1965 (1) MLJ 169 (cited supra), I am of the view that the present suit would be covered by the decision which was rendered in respect

of the claim relating to the one covered by the interlocutory order for which, the learned Judge declined to order refund.

5. As far as the other decision, namely *S.V.K.M. Ratnasamy Nadar and Brothers Vs. K. Subbuswami Iyer and Another*, , that was a case where,

considering the expression ""before any evidence has been recorded as regards the merits of the claim"", the learned Judge took the view that

marking of the two Exhibits as A-1 and A-2 at the interlocutory stage would be sufficient to hold that the said circumstance would come within the

above referred to set of expressions.

6. In the case on hand, reliance was placed on two of the documents at the interlocutory stage, but, no marking was given to those documents as is

the practice in the Original Side of this Court, yet I am of the firm view that mere non-marking of those documents or the practice of not giving any

specific identification to the documents by itself, cannot be taken to mean that those documents were not marked for the purpose of rendering a

decision in the interlocutory application. So long as those documents were relied upon and were considered while granting the interim decree for

payment of certain sum in the application, that should be equated to the situation that was considered by the learned Judge in the judgment

reported in *S.V.K.M. Ratnasamy Nadar and Brothers Vs. K. Subbuswami Iyer and*

Another,

7. Therefore, applying the above said ratio of the above referred to decisions, it will have to be held that in view of the interim decree granted in

favour of the plaintiff in the interlocutory application, there is no scope for applying Section 69 of the Tamil Nadu Court Fees and Suits Valuation

Act, 1955, for ordering refund of half of the Court Fee.

8. Learned counsel for the plaintiff also contended that in a situation where, by virtue of Order 12, Rule 6 of the Civil Procedure Code, if a suit

came to be decreed based on an admission contained in the written statement, could it be held that any evidence is recorded on merits in order to

reject the claim for refund of Court fee u/s 69 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 ?

9. Inasmuch as such a situation has not arisen in this case, I do not wish to deal with the same on hypothetical basis. Therefore, as and when any

such situation arises, that will have to be considered on its own merits.

10. Therefore, based on the facts available in this suit, I do not find any scope to grant an order refunding half of the Court fee as claimed. The suit

is however dismissed as withdrawn.