
(2015) 10 KL CK 0052
In the High Court Of Kerala
Case No : Z.R.F.A. No. 154 of 2015

Supran S.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Section 22, 52

Citation : (2015) 5 KHC 340 : (2015) 4 KLT 685

Hon'ble Judges : T.B. Radhakrishnan and Sunil Thomas, JJ.

Bench : Division Bench

Advocate : P.G. Jayashankar and V. Vijitha, for the Appellant; M.P. Madhavankutty, Special Government Pleader, for the Respondent

Judgement

Sunil Thomas, J.—A short legal question arises in the appeal as to whether the plaintiff who suffered the dismissal of the suit for recovery of money is bound to pay court-fee on the future interest claimed on the principal amount, in the light of Explanation III to Section 52 of the Kerala Court Fees and Suits Valuation Act, 1959 (hereinafter referred to as "the Court Fees Act"). The plaintiff laid a suit for recovery of money and damages allegedly based on a work done for the forest department. The suit was valued at Rs. 43,58,153/- with 6% future interest till the date of recovery, under Section 22 of the Court Fees Act. The court-fee remitted was Rs. 3,67,056/-. The defendants resisted the suit and after trial, suit was dismissed. An appeal was levied for the plaint claim valued at the same amount mentioned before the Court below. court-fee payable thereon was quantified at Rs. 3,67,056/- which was same as that quantified before the Court below. The court-fee on the future interest claimed @6% was not quantified. The Registry raised an objection that the future interest claimed in the suit and the interest that has accrued pending the suit shall form part of the subject-matter, in the light of Explanation III of Section 52 of the Kerala Court Fees Act, except when it is relinquished. Learned Counsel for the plaintiff replied that since there was a dismissal of the suit, the requirement of inclusion of interest up to the date of decree does not arise and in the facts of the case, explanation III of Section

52 of the Kerala Court Fees Act does not apply for consideration. In the light of above reply, the matter was placed before the Bench for a decision on this crucial point.

2. To understand the controversy involved in the present case, it is essential to refer to Section 52 and explanation thereto, as found in the Kerala Court Fees Act. Section 52 with the relevant explanation reads as follows:

"The fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal.

Explanation 1.- xxxx xxxx xxxx

Explanation 2.- xxxx xxxx xxxx

Explanation 3.- In claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished.."

3. Adv. P.G. Jayashankar, learned Counsel for the appellant tried to strike a different note from the legal position as considered and explained in the earlier decisions of this Court as well as the Supreme Court to contend that Explanation III applies only to appeals filed challenging granting of decree and not when the plaintiff suffers the dismissal of the suit and challenges it in appeal. It was contended that the phrase used in Explanation III is "interest accrued, which, according to the Counsel, indicates that only if the suit is decreed, there can be accrual of interest. It was contended by learned Counsel relying on the authorities that being a fiscal Statute, it calls for a strict interpretation in favour of the subject-matter and in favour of the person liable to pay court-fee. Learned Counsel relied on *Diwan Bros. Vs. Central Bank of India, Bombay and Others*, wherein it was held by the Honourable Supreme Court that in the case of fiscal Statute, the provisions must be strictly interpreted giving every benefit of doubt to the subject and lightening, as far as possible, the burden of court-fees on the litigant. Thus, where an adjudication given by a Tribunal could fall within two provisions of the Court Fees Act, one of which was onerous for the litigant and the other one liberal, the Court would apply that provision which was beneficial to the litigant. The Court relied on an earlier decision of the Supreme Court in *A.V. Fernandez Vs. The State of Kerala*, to support the legal position. Learned Counsel relied on the earlier decision of the Supreme Court in *State of Maharashtra Vs. Mishri Lal Tarachand Lodha and Others*, wherein a five Judges Bench of the Honourable Supreme Court, referring to interpretation of Statute, held that the Court Fees Act being a fiscal Statute, its provisions must be construed strictly, in favour of the subject litigant. Subsequently, the Supreme Court in *Commissioner of Income Tax-III Vs. Calcutta Knitweaves, Ludhiana*, while dealing with the Interpretation of Statute relating to taxation laws followed the same view. It was held that normally the language of a taxing Statute ordinarily be read understood in the sense in which it is harmonious with the

object of the Statute to effectuate the Legislature. It should be strictly construed; common sense approach, equity, logic, ethics and morality have no role to play. Nothing is to be read in, nothing is to be implied; one can only look fairly at the language used and nothing more and nothing less.

4. Evidently, the law is settled that the taxation Statute will have to be interpreted strictly and in case, where two interpretations are possible, the provision absolving the liability and that favours the litigant should be adopted. Wherever two Sections are applicable, the section which is beneficial to the litigant should be adopted. The present legal position has to be analyzed in the above background.

5. It was contented by the learned Counsel for the appellant that when a decree is refused, there is no question of interest accruing and consequently there cannot be relinquishment of the claim. Learned Counsel, relying on the earlier decisions touching upon this point or on the ancillary issues, contended that the question as to whether Explanation (3) to Section 52 of the Kerala Court Fees Act applies to an appeal, at the instance of the plaintiff was not specifically considered and wherever it was considered and rejected, it requires a reconsideration since it did not lay down the correct law. It was further contended that appeals preferred by the plaintiff and the defendant stand on different footing and has to be considered accordingly. It was further contended that Explanation (3) uses the term "interest accrued" and not "interest accruable" or "interest to be accrued". According to the learned Counsel, it can only point to cases where there is an actual accrual of interest by granting of a decree and only then there can be a relinquishment. It is pertinent to note that this contention is not sustainable for the reason that Explanation (3) use the term interest accrued during the pendency of the suit and not the "interest adjudged" or "awarded". Further, a defendant, who challenges a money decree against him, cannot relinquish the interest which can be only at the instance of a plaintiff. Evidently, the accrual of interest during the pendency of the proceeding is automatic with the passage of time and the question of right to interest is a matter to be adjudicated by the Court. It is clear that in the case of the defendant, there cannot be any relinquishment of a claim for interest, since it can only be at the instance of the person claiming it, the plaintiff.

6. The learned Counsel relied on the decision reported in *State of Maharashtra v. Mishra Lal Tarachand*'s case (supra) wherein the Court considered the question whether pendente lite interest decreed was to be included in the amount of value of the subject-matter in dispute in appeal, as provided under the Bombay Court Fees Act. The question whether the amount of interest decreed for the period subsequent to the institution of the suit comes within the expression "amount or value of the subject-matter in dispute" was considered in that decision. The Court held that the subject-matter in appeal is a real matter in dispute between the parties and not something which must stand or fall within the decision on it. It means the right which is in dispute between the parties and hence, the Court

held that interest accrued during the pendency of the proceedings shall not be included in the subject-matter of any dispute. This decision is not applicable to the facts of the present case, since that was a case wherein the appeal was filed by the defendant and terms used in the Statute was totally different from that used in Explanation (3) to Section 52 .

7. The point came up before the three Judges Bench of this Court in Ratnamma Vs. Karthiyani Pillai, on a reference regarding the correctness of the view expressed in Amma Brahmaniammah and Others v. Gopalan and Another 1973 KHC 161 : 1973 KLT 726 wherein it was held that an appeal filed by a defendant challenging a decree for mesne profits stand on a different footing. Answering the reference, Full Bench held that in a suit for recovery of property with past and future mesne profits, the court-fee on the mesne profit need not be included. Claims which are not based on any asserted right, but dependent on the decision of the disputed right and reliefs which are in the discretion of the Court do not come within the purview of the expression "subject-matter in dispute in plaint or memo of appeal".

8. The question that is now raised was also incidentally considered in that case, wherein the Court referred to a earlier decision of this Court in Ulahannan Kurien v. Uthuppu Varkety 1955 KHC 77 : 1955 KLT 377 : AIR 1954 TC 174. In that case, the suit for recovery of possession of property was decreed with interest at the rate of 4%. The plaintiff had claimed interest at the rate of 12%. The question that came up in the appeal was whether the plaintiff/appellant who had claimed additional 8% interest should pay the court-fee on the difference. This Court held that the plaintiff was bound to pay the court-fee calculated on it. The Full Bench in Ammunni Amma v. Ammalu Ammal (supra) had held that this Court in Ulahannan Kurien's case had correctly held that the plaintiff should pay the court-fee and thereby stamp of approval of the law laid down in Ulahannan Kurien's case was granted.

9. The same point directly came up for consideration in the decision in Padmanabhan Raveendran Vs. Parameswaran Appukuttan, , which was an appeal at the instance of plaintiff. The Division Bench of this Court held that only the plaintiff can relinquish the interest claimed in the suit. The Court also held that in the light of Explanation (3) to Section 52 , the appellant was liable to pay the additional court-fee on the interest claimed pending suit. This was followed by decision in Padmanabhan v. Ouseph 1982 KHC 90 : 1982 KLT 373 : ILR 1982 (2) Ker. 260 : 1982 KLN 400, wherein a Division Bench dealt with the same issue and reiterated the same view. In that case, the appeal was preferred by the defendant. In the subsequent decision reported in Azeez & Co. v. Indian Overseas Bank 1983 KHC 210 : 1983 KLT 935 : ILR 1984 (1) Ker. 480 : 1983 KLN 638 the Division Bench on a question at the instance of the defendant again followed the same principle. This was again considered in Union of India v. Transformers And Electricals Kerala Ltd. 1985 KHC 72 : 1985 KLT 319 : 1985 KLJ 305 : 1985 KLN 215 . The issue came up again before the Full Bench of this

Court in George Vs. Bank of India, . That was a case wherein the question now posed was directly dealt with. The Full Bench of this Court considered the question of relinquishment mentioned in Explanation (3) to Section 52 and considered whether it would apply only to the case of the plaintiff and not the case of the defendant. Relying on the decision of the Division Bench of the Andhra Pradesh High Court in Rai Saheb Seth Gopikrishnan Agarwal v. Union of India 1966 (1) An.W.R. 149 it was held that right to challenge interest pendente lite may be relinquished either by the plaintiff or by the defendant. The Court concluded that on the appeal whether by the plaintiff or by the defendant, Explanation (3) to Section 52 would apply. The above decisions show that this issue had come up before this Court on various occasions and the Court has consistently taken the view that Explanation (3) applies to appeals preferred by the plaintiff also and the court-fee is liable to be paid on the interest accrued notwithstanding whether the decree has been granted or not. We find no reason to take a different view. The statutory provision is also clear to the extent that notwithstanding the fact that the plaintiff had lost before the Trial Court, interest that will accumulate will have to be calculated for the purpose of court-fee and the contention to the contrary is not sustainable. In the light of the above, we hold that the objection raised by the Registry that the plaintiff is bound to calculate the court-fee on the interest that is accumulating is sustainable unless it is relinquished by the plaintiff.

Three weeks time is granted to remit the deficit court-fee.