

(1977) 04 KL CK 0006

In the High Court Of Kerala

Case No : Unnumbered Writ Appeal of 1977 against O.P. No. 1901 of 1976 (I)

Vasudevan Embraudiri and Others

APPELLANT

Vs

Cherpu Service Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 06-04-1977

Acts Referred:

Citation : AIR 1977 Ker 203

Hon'ble Judges : V.P. Gopalan Nambiyar, Acting C.J.; George Abraham Vadakkell, J

Bench : Division Bench

Advocate : N.K. Sreedaran, M.A.T. Pai, M.C. Gopi and P.K. Venugopalan, for the Appellant; P.C. Balakrishna Menon, V.P. Mohankumar and K.P. Sreekumar, for the Respondent

Judgement

Gopalan Nambiyar, Ag. C.J.

1. This matter has come on before us on a note submitted by the Taxing Officer regarding the court-fee payable in this appeal. The writ petition against which the appeal is sought to be filed was by seven petitioners to challenge the decision of the Co-operative Tribunal, Trivandrum. A court-fee of Rs. 25/- was paid on the writ petition. On the writ petition having been dismissed, the seven petitioners sought to file the writ appeal. Objection was taken by the Office that a court-fee of Rs. 700/- was payable on the writ appeal and also on the writ petition. Objection also was taken that a court-fee of Rs. 12/- each on C. M. Ps. filed in the writ petition in which the seven petitioners had joined, was deficient and that the deficit court-fee of Rs. 12/- was payable on the C. M Ps. In all, according to the office-note a deficit court-fee of Rs. 600/- was payable on the writ appeal; Rs. 150/- on the O. P. and Rs. 12 on the C. M. Ps. in the above proceedings.

2. Counsel for the petitioner contended that Rules 146, and 147-A of the Rules framed by this Court under Articles 226 and 227 of the Constitution were not valid and proper and that the High Court had no power u/s 83 of the Court-fees

Act to frame a rule of that type. Rule 147-A is as follows :

"147-A "More persons than one may join in one writ petition as petitioners in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons present separate writ petitions, any common question of law or fact would arise provided that each person joining in such writ petition shall pay the court-fee payable under Article 11 (r) of Schedule II of the Kerala Court Fees and Suits Valuation Act, as if each of them had filed a separate writ petition".

It is unnecessary to deal with this contention of the petitioner, as we are of the opinion that on the provisions of the Court-fees Act themselves, and on the decisions of this Court interpreting the same, the stand taken by the Office is correct. Under Schedule II, Article 11 (r), a petition to the High Court under Article 226 of the Constitution is to be stamped with a court-fee of Rs. 25/-. Under Schedule II, Article 3 (iii) A (2), the court-fee payable for appeals u/s 5 of the High Court Act, is provided for. Such appeals are dealt with in three categories under Sub-clauses (a), (b) and (c). The appeal involved herein, does not fall either in Sub-clause (a) or (b), and therefore falls only under the residuary Sub-clause (c); and hence, a court-fee of Rs. 100/- is payable on the appeal.

3. Counsel for the appellant contended that it could be neither just, nor fair, nor valid to collect multiple court-fee at the rate of Rs. 100/- per each petitioner or appellant joining the appeal. The matter has been considered and decided by this Court on more than one occasion. It is enough to notice the decisions in Kunhi Kader v. State of Kerala 1961 KLT 792 and to the writ appeal (Unnumbered of 1973) against O. P. No. 3701 of 1970; (Ker) and to the decision in Writ Appeal No. 548 of 1969 (Ker). These decisions have clearly considered and recognised the principle that where a plurality of the petitioners or appellants, having separate and individual interest in the subject-matter of the petition or the appeal joined in one action, although only one petition or appeal may be filed, court fee has got to be paid by each one of the petitioners/appellants, having individual interest separately on the petition or the appeal. In the light of these rulings, we are of the opinion that the objection raised by the Office is correct and that the court-fee demanded in the office-note, must be paid. Time for payment of the deficit court-fee -- 6th June, 1977.