

(2004) 06 KL CK 0049

In the High Court Of Kerala

Case No : Unnumbered Regular Second Appeal 2004

Veebros Freight Carriers

APPELLANT

Vs

Eshita Agency

RESPONDENT

Date of Decision : 03-06-2004

Acts Referred:

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

Citation : AIR 2004 Ker 307 : (2004) 3 ILR (Ker) 549 : (2004) 2 KLJ 1 : (2004) 2 KLT 666 : (2004) 4 RCR(Civil) 827

Hon'ble Judges : Pius C. Kuriakose, J

Bench : Single Bench

Advocate : K.N. Sivasankaran and Sunil Sankar, for the Appellant;

Judgement

Pius C. Kuriakose, J.—The office refuses to register the second appeal on the ground of insufficiency of the court fee paid. The defendants against whom the trial Court passed a decree for a sum of Rs. 45,414/- with interest from date of suit till date of realisation at the rate of 18% per annum preferred appeal to the lower appellate court impugning the trial court's decree. The lower appellate court dismissed the appeal confirming the trial court decree in all respects. According to the appellants as their appeal before the lower appellate court stands dismissed they are aggrieved and the valuation of a Second appeal is the same as the valuation of a first appeal which include the principal amount decreed plus interest due under the trial court decree from date of suit till date of that decree. According to the registry, going by Explanation 3 to Section 52 of the court Fees and Suits Valuation Act it is necessary that the second appeal should be valued calculating interest upto the date of the appellate decree. Though the learned counsel for the appellants Mr. Sunil Sankar maintains that since the second appeal is directed against the dismissal of the first appeal it is sufficient that the second appeal is valued for a sum equal to the valuation of the first appeal, I am inclined to agree with the registry. Going by Section 52 of the Court Fees and Suits Valuation Act, the court fee payable in any 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 3 to the section 52 says that 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 the decree shall be deemed to be part of the subject-matter of appeal except where such interest is relinquished. The instant second appeal is obviously directed against the decree of the lower appellate court under which as on the date of that decree the appellant is obliged to pay interest from date of the trial court decree till date of the appellate court decree also. The appellants obviously challenge their liability to pay that portion of the interest forming part of the decree debt payable by them on account of the decree of the trial court as confirmed by the lower appellate court. In other words, the appellants' liability to pay that portion of the interest also forms subject matter of the second appeal. The expression decree employed in Explanation 3 to Section 52 certainly means the decree which is impugned in the second appeal which undoubtedly is the decree of the lower appellate court.

I uphold the objections of the registry and grant the appellants' seven days lime more from today for correcting the valuation portion of the appeal and for paying the deficit court fee.