

(2010) 07 KL CK 0013
In the High Court Of Kerala
Case No : C.R.P. No. 368 of 2004

Vice Chancellor and Others

APPELLANT

Vs

Jaisy K. Joseph

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 102, 115, 9

Citation : (2011) 2 ILR (Ker) 59 : (2011) 2 KLJ 114 : (2012) 1 RCR(Civil) 771

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : S. Gopakumaran Nair, S.C. Calicut University, for the Appellant;

Final Decision : Dismissed

Judgement

K.T. Sankaran, J.—The Respondent in the revision, viz., Jaisy K. Joseph was a student in the Vimala College, Thrissur, undergoing her studies for B.Sc. with Mathematics main and Statistics and Physics as subsidiary subjects for the academic year 1991-94. She appeared for the first year examination conducted by the University of Calicut in 1992. She was awarded with 57 marks for Mathematics main paper and 42 marks for Statistics. The student applied for re-valuation of the answer sheets. After re-valuation, the marks awarded for Statistics was changed to 51 instead of 42. However, the marks awarded for Mathematics main paper was not changed on the ground that the answer sheet of Mathematics main paper was not available for re-valuation. The University offered a chance to the student to appear for the next examination which was proposed to be conducted in the year 1995 without paying any further fee.

2. Jaisy K. Joseph instituted O.S. No. 52 of 1995 on the file of the court of the I Addl. Munsiff, Thrissur against the University of Calicut, Controller of Examinations and the Registrar of Calicut University claiming a sum of Rs. 15,000 as compensation. Only the Controller of Examinations appeared and filed a written statement. Defendant Nos. 1 and 3 remained ex parte and they did not file any written statement. The trial court decreed the suit as prayed for. The

Defendants filed appeal as A.S. No. 8 of 2003 before the Principal Sub Court, Thrissur. The lower appellate court confirmed the judgment and decree of the trial court. The Defendants in the suit have filed this Civil Revision Petition u/s 115 of the CPC challenging the concurrent decisions of the courts below.

3. The Plaintiff contended that she was sure of getting higher marks in Mathematics if the answer sheet was re-valued. The marks obtained for the first year examination would also be taken note of for admission to other courses. The Plaintiff stated that she could not secure admission for M.Sc. or B.Ed, in a regular college in Thrissur district and she had to join for B.Ed, in a college at Wynad. She stated that she had to spend a lot of money to complete her studies at Wynad.

4. The second Defendant contended that the Plaintiff could not expect more marks in the first year Mathematics examination since the answer sheet was properly valued. As per clause 7 of Chapter 14 of the Handbook of Calicut University, it is provided that "in the event of answer scripts required for re-valuation/scrutiny not becoming available for any reason, the original valuation will be treated as final and fee remitted in such cases will be refunded".

5. Before the trial court, the Plaintiff was examined as P.W. 1 while D.W. 1, Section Officer, Pareeksha Bhavan was examined on the side of the Defendants. The trial court held that the suit is maintainable and the appellate court confirmed this finding. It has come out in evidence that one Mohammed Koya of Christian College was the examiner and that he did not return the answer sheets after valuation. But, curiously enough, such a contention was not raised in the written statement and the name of the person who was responsible for not returning the answer sheets was not disclosed. The appellate court held thus in this context:

11. Though in the written statement of the second Defendant it is stated that the examiner did not return the answer sheet to the University and hence the Defendants were not able to get it revalued, the name of the examiner is not mentioned in the written statement filed by the second Defendant. It was only when D.W. 1 was examined the name of the examiner revealed. The name of the examiner is stated as Mohammad Koya of the Malabar Christian College, Calicut. Had the second Defendant taken a contention that it was Mohammad Koya who was negligent, the Plaintiff would have got an opportunity to implead Mohammad Koya also in the suit. Since this is not done by the second Defendant, the Defendant cannot now contend that the negligence, if any, is on the part of Mohammad Koya.

6. The trial court noticed that the second Defendant has not cared to point out the person who was negligent. The court below took the view that the transaction between the University and the examiner is confidential in nature and there is no privity of contract between the Plaintiff and the examiner and therefore, the Plaintiff cannot be blamed for not impleading the examiner as a

party. It was also noticed that the relevant details were not disclosed in the written statement and only at the time of evidence, the relevant facts emerged. Non impleadment of the examiner as a party to the suit is therefore not fatal.

7. The contention of the University that in view of the provisions in the Handbook of Calicut University that original valuation will be treated as final in the event of answer sheets becoming not available is not a defence in a suit for damages. A suit for damages is not controlled by the question whether the University should award more marks or should retain same marks in case of loss of answer sheets. What University should do in case of loss of answer sheets is not relevant at all in considering whether the affected party is entitled to compensation. The claim for damages shall be decided on the merits of the claim and it is not Dependent on the question whether the civil court could grant any relief in respect of granting of marks. On the other hand, the very fact that there is no provision in the University Act and other Rules to deal with such a situation is a factor in favour of the Plaintiff that her remedy is to claim damages. No provision of law is brought to the notice of the courts below or before me to show that in such a situation, a suit for damages is not maintainable.

8. The jurisdiction of the civil court to entertain and try a suit of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred, is guaranteed by Section 9 of the Code of Civil Procedure. A bar of the civil suit could be implied, if a special statute, which is a self contained Code, provides for the right as well as the remedy. The right involved may be a common law right or a right conferred by a special statute. If there is an effective remedy under the special statute, jurisdiction of the civil court could be said to be impliedly barred. The suit in the present case is for compensation on the ground that the University was negligent in dealing with the answer papers of the Plaintiff. It is submitted that there is no provision in the Calicut University Act which provides for redressal of the grievance of a party on the ground that the University was negligent and to award compensation for the aggrieved. If so, it cannot be inferred that the jurisdiction of the civil court is impliedly barred. The courts below concurrently held that there was negligence on the part of the University. That finding was arrived at on the basis of the evidence on record. I do not find any ground to interfere with the concurrent findings of fact.

9. There is yet another reason for not interfering with the judgments of the courts below. A Second Appeal is not maintainable in the present case in view of Section 102 of the Code of Civil Procedure, which reads as follows:

No second appeal shall lie from any decree, when the subject-matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees.

Section 102 was substituted by the CPC (Amendment) Act, 1999 (Act 46 of 1999) wherein the amendment sought to be introduced was as follows:

102. No second appeal in certain cases.-No second appeal shall lie from any decree, when the amount or value of the subject matter of the original suit does

not exceed twenty-five thousand rupees.

Subsequently, by the CPC (Amendment) Act, 2002 (Act 22 of 2002) which came into force on 1-7-2002, the amendment proposed to be effected by Act 46 of 1999 was substituted with the present Section 102. As per the amendment of Act 1999, irrespective of the nature of the suit, no Second Appeal would lie against the decision in a suit where the value of the subject-matter is below Rs. 25,000. By the amendment introduced by Act 22 of 2002, the bar u/s 102 is limited to suits where the subject-matter is for recovery of money not exceeding twenty-five thousand rupees. A Second Appeal is maintainable only on a substantial question of law as provided u/s 100 of the Code of Civil Procedure. A Revision u/s 115 of the CPC lies where the subordinate court appears to have exercised jurisdiction not vested in it by law; or to have failed to exercise jurisdiction so vested; or to have acted in the exercise of its jurisdiction illegally or with material irregularity. The question is whether the High Court would be entitled to entertain a Civil Revision Petition, in a case where a Second Appeal is barred u/s 102 of the Code of Civil Procedure, on any ground which is less rigorous than that provided in Section 100 of the Code of Civil Procedure. Even in matters where the valuation exceed Rs. 25,000, a Second Appeal could be entertained only on a substantial question of law. When Section 102 provides that no Second Appeal would lie in respect of a suit where the subject-matter is for recovery of money not exceeding Rs. 25,000, it cannot be assumed the Parliament thought it fit to take such category of cases out of the rigour of Section 100 and to provide a less rigorous remedy in such cases. If so, it is to be taken that a revision u/s 115 cannot be entertained on a ground which is less rigorous than that provided in Section 100 of the Code of Civil Procedure. The purpose of substituting Section 102 CPC was to restrict entertaining Second Appeals in cases where the subject-matter of the suit is for recovery of money not exceeding Rs. 25,000. The purpose sought to be achieved cannot be defeated by entertaining a revision u/s 115 of the CPC on a less rigorous test than that provided in Section 100 Code of Civil Procedure. I am of the view that in cases where no Second Appeal lies in view of Section 102, a Revision can be entertained only if the court is satisfied that the decision of the subordinate court is vitiated by error of jurisdiction and also that a substantial question of law is involved in the case.

For the aforesaid reasons, the Civil Revision Petition is dismissed. No order as to costs.