

(1999) 07 KL CK 0025
In the High Court Of Kerala
Case No : CRP. 2274 of 1993

Vijayaraghavan

APPELLANT

Vs

Corporation of Calicut

RESPONDENT

Date of Decision : 02-07-1999

Acts Referred:

Citation : (1999) 2 KLJ 708

Hon'ble Judges : G. Sasidharan, J

Bench : Single Bench

Advocate : Prabha R. Menon, for the Appellant;

Final Decision : Dismissed

Judgement

G. Sasidharan

1. This is a revision filed against the judgment of the learned District Judge, Kozhikode, in C.M.A.No.33 of 1989: Petitioner is the owner of a building "Amaravathy" in Kozhikode Taluk. The above building was leased out by the petitioner to one Shyamala for a monthly rent of Rs.450/- on 10-1-1986. The above-said Shyamala executed a Koolikaichit in favour of the petitioner in which the rent of the building is mentioned as Rs.450/- p.m. On 24-11-1988, a notice was issued to the petitioner by the respondent stating that the annual value of the building was increased to Rs.30,000/- from Rs.4,200/- and hence the half yearly property tax was enhanced from Rs.396.50 to Rs.2,831.81. Petitioner filed a petition before the Standing Committee challenging the correctness of the assessment of the annual rental value and the Standing Committee confirmed the assessment by order dated 26-11-1988. C.M.A.No.33 of 1989 was filed in the District Court, Kozhikode, challenging the decision of the Standing Committee. The learned District Judge dismissed the appeal without going into the merits of the case and by saying that the appeal was not competent since the tax the petitioner had to pay as a condition precedent to the hearing the appeal had not been remitted by the petitioner. According to the petitioner, he had satisfied all

the conditions to be fulfilled before hearing of the appeal. It is stated in the revision petition that the appeal was filed within time and notice of intention to appeal had also been given. As regards the payment of tax, the petitioner would say that he had remitted the tax as it stood before the enhancement.

2. Schedule II of the Kerala Municipal Corporation Act contains Taxation Rules. In part V of Schedule II, there is Rule 24(a) which says that an appeal shall lie to the District court having jurisdiction over the City against any decision of the standing committee. It is also provided therein that no such appeal shall be heard by the District Court unless a notice of intention to appeal has been given to the Commissioner within ten days from the date on which such decision was communicated by registered post. There is no case that the above provision has not been complied with by the petitioner. The further provision in Rule 24 is that no appeal shall be heard by the District Court unless the petition of appeal has been presented within fourteen days from the date on which the decision was communicated by registered post and the tax has been paid within the said period. The appeal has been filed by the petitioner within 14 days from the date of communication of the decision of the standing committee. The petitioner paid tax at the rate prevalent before the revision which is questioned here. In the Explanation to sub-clause (a) of Rule 24, it is made clear that in the case of tax leviable by half-yearly instalments the requirements under clause (ii) as to payment of tax shall be deemed to have been satisfied if the half-yearly instalment due under order appealed against has been paid. What the Explanation says is that the payment of tax which is stated as a condition precedent for hearing of the appeal is the payment of half-yearly instalment due under the order appealed against. So the half-yearly instalment of the revised tax has to be paid as per the above-said Explanation.

3. The learned District Judge dismissed the appeal on finding that the present petitioner did not pay the tax before the filing of the appeal. A reading of Rule 24 would make it clear that tax mentioned in clause "(a)(ii)" need not be paid before the filing of the appeal. What the Rule would say is that the tax has to be paid within period of 14 days within which the appeal has to be filed. Even in cases in which appeal is filed before the payment of tax the requirement of the Rule will be complied with if the tax is paid after the filing of the appeal but before expiry of 14 days. What is said in Rule 24(a) is that no appeal shall be heard and the provision is not that no appeal shall be filed. So the conditions mentioned in Rule 24 cannot be said to be conditions which have to be fulfilled before the filing of the appeal.

4. The argument advanced by the learned counsel appearing for the petitioner is that even though there was any defect in the appeal filed for the reason that the tax as mentioned in the Explanation had not been paid by the petitioner, the District Court would have returned the appeal for presentation of the same after curing the defect. The non-payment of tax as mentioned in Rule 24 is not the one which would fall under any of the defects mentioned in Rule 32 of the Civil

Rules of Practise. Even if it is assumed that Rule 32 is applicable in the present case, the District Court need not return the appeal for curing the defect since as stated earlier the payment of tax is not something which has to be made before the filing of the appeal. The Rule only says that the payment of tax has to be made within 14 days granted for filing the appeal. So even if the payment of tax is made after the filing of the appeal the requirement under the Rule can be said to be complied with if the payment of tax is within 14 days of communication of the order. So at the time of filing of the appeal, the District Judge cannot return the appeal for re-presenting the same after curing the defect. There will be defect only after the expiry of 14 days of the communication of the order of the standing committee and there is no meaning in returning the appeal memorandum after expiry of 14 days since the payment of tax the expiry of 14 days cannot be said to be the compliance of the mandate in Rule 24 of the Taxation Rules.

5. The learned counsel appearing for the petitioner would argue that the petitioner is prepared to pay the balance amount of tax which he would have paid as per Rule 24 of the Taxation Rules and time may be given to the petitioner for payment of the same. What the petitioner wants is to give him an opportunity to substantiate his challenge against the revision in building tax. Rule 24 of the Taxation Rules says in clause (b) that the court may for sufficient cause excuse the delay in presentation of the appeal. The period within which appeal has to be filed is 14 days from the date on which the decision of the standing committee is communicated by registered post. There is no separate period fixed for payment of tax at the revised rate. What the provision in the above Rule says that the tax has to be paid within the period mentioned therein for filing of the appeal. The provision for payment of tax made in the Rule is not by way of realisation of tax by the authorities. That is not a general provision which would say that in all cases in which building tax is assessed, payment has to be made within 14 days specified in that Rule. The provision in that Rule is a special provision regarding what a person who intends to file appeal in the District Court has to do. It is in this context that the requirement in the Rule that the tax has to be paid within the period prescribed for filing, of the appeal has to be appreciated. So in cases in which it is found that there are sufficient reason for condoning the delay in filing the appeal, the delay in depositing the tax is caused for the same reason, there is no justification for not condoning the delay in depositing the tax also. There may be cases in which the appeal is filed within time and for sufficient reasons the appellant could not pay the tax within the period prescribed for payment of tax. Then also there is no justification for not condoning the delay in depositing tax if sufficient reasons are shown for the delay. In view of the above fact, even if the appeal is filed in time if there are sufficient reasons for delay in depositing tax, the delay in that regard can be condoned.

6. Here, what the petitioner wants is to give an opportunity to him to substantiate his grounds taken up in the appeal after giving him an opportunity to pay tax as required in Rule 24(a)(ii) of the Taxation Rules. This is a case in

which admittedly the petitioner paid tax at the pre-revised rate. The default on the part of the petitioner is that he did not pay the tax at the revised rate. The petitioner says in the petition that the District Court ought to have given back the appeal and for curing the defect he would have deposited the balance amount and would have represented the appeal in time. Even though the appeal was filed in the District Court in 1989, it was dismissed only on 11-8-1993 on the ground that the tax was not remitted by the present petitioner. A similar question came up for consideration in *Madhavan Nair Jayasree v. Manjeri Municipality* (1999 (2) KLT 359). That was a case in which an appeal provided under the Municipalities Act, 1994, was rejected without hearing the appeal on the ground of non-deposit of arrears of tax within fifteen days from the date of filing of the appeal. There, the Municipality without giving notice of hearing of the appeal, passed an order rejecting the appeal on the ground that the tax was not deposited within the prescribed time and therefore the appeal could not be entertained. Clause (b) of Rule 27 of the Taxation and Finance Rules under Schedule II of the Kerala Municipalities Act provides that no appeal to the council shall be heard unless the tax based on the assessment prevailing in the previous year of the year in question has been deposited at the Municipal office within the period specified in sub-clauses (i) or (ii) of clause (a), as the case may be, or where an appeal is presented for admission under the proviso to the said clause on or before the day upon which the appeal is presented. That was also a case in which the appeal was presented in time. The contention raised by the Municipality was that appeal was not maintainable since the appellant had not complied with Rule 27(b) which says that the appellant has to deposit the tax within 15 days from the date on which the tax becomes payable under S. 104 or under Rule 18. A Division Bench of this court held in the above case that the rejection of the appeal on the ground of non-deposit of tax due, without issuing a notice to the appellant, is not correct and hence an opportunity should be given to the appellant to put forward his contentions at the time of hearing on depositing the tax as assessed in the previous year to the year in question. On the basis of that two weeks time was given to the appellant for deposit of the tax and the appellate authority was directed to hear the appeal again. The facts of this case are similar to the facts of the above case, the only difference being that there the appeal was as per the Rules under the Municipalities Act whereas here the appeal is as per the Rules under the Kerala Municipal Corporations Act. Applying the same principles here also, it is appropriate to give an opportunity to the petitioner herein to deposit the balance amount of tax within two weeks from this date with a direction that on deposit of the tax by the petitioner the District Judge, the Appellate Authority, will hear the present petitioner and dispose of the appeal on merits.

The revision petitioner is directed to deposit the tax within two weeks from today and to produce evidence in the appellate court regarding payment of tax within the above period. In the event of deposit of tax within the time mentioned above, the learned District Judge, Kozhikode, will take the C.M.A. to file and

dispose of the same on merits. If the petitioner fails to deposit the amount within the time specified above, the appeal will stand dismissed.