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Prashi and Others Vs. Syndicate Bank and Others

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Court : Karnataka

Decided On : Mar-03-1992

Reported in : AIR1993Kant63; ILR1992KAR1113; 1992(4)KarLJ642

Judge : K.A. Swami and; L. Sreenivasa Reddy, JJ.

Acts : Karnataka Court-fees and Suits Valuation Act, 1958 - Sections 49 and 96, Article 3; Civil Procedur Code, 1908 - Order 21, Rule 43-A

Appeal No. : R.F.A. No. (FR) 2548/88 and 138/92

Appellant : Prashi and Others

Respondent : Syndicate Bank and Others

Judgement :
ORDER

Swami, J.

1. This appeal is preferred under S. 96 read with O.21, R.43A of the Civil P.C. against the order dated 20th November 1987 passed by the learned II Additional Civil Judge, Mangalore on I.A.VII filed in O.S. No. 146/83. The aforesaid suit was filed by the first respondent against respondents 2 to 6. The appellants 1 and 2 herein are not parties to the suit. The appellant No. 3, though he was a party to the suit and a decree was passed against him, with the permission of the Court has

been transposed as respondent No. 6. Thus this appeal is by appellants 1 and 2 who were not parties to the suit. The trial Court decreed the suit against respondents 2 to 6 herein who were defendants 1 to 5 in the suit for a sum of Rs. 6,01,287-35 Ps being the amount due to the plaintiff-bank. During the pendency of the suit the fishing boat in question was ordered to be seized as it was hypothecated to the plaintiff-bank and was entrusted to appellants 1 and 2 and the 6th respondentherein. During the pendency of the suit the plaintiff-bank made an application (I.A.VII) requesting the Court to forfeit the bonds under O.21 R. 43A(2) of the C.P.C. (hereinafter referred to as the 'Code'). This application was also heard and decided along with the suit. The trial Court allowed the application, forfeited the bonds and directed the sureties (the appellants 1 and 2 herein) and also the 5th defendant to pay to the plaintiff-bank a sum of Rs. 6,00,000/- being the value of the boat entrusted to their custody. The suit was also decreed against all the defendants as prayed for by the plaintiff with costs.

2. Now the point for consideration is as to whether the appellants are liable to pay the Court-fee on the sum of Rs. 6,00,000/- or under Art. 3(iii) of the II Schedule to the Karnataka Court-fees and Suits Valuation Act, 1958 (hereinafter referred to as 'the Act'). Under Clause (c) of sub-rule (2) of R. 43A of O.21, the order passed determining the liability of the sureties is appealable as a decree. Therefore, the office has raised an objection that the order is deemed to be a decree passed in the suit valued at Rs. 6,00,000/- and as such the appellants are liable to pay Court-fee on the sum of Rs. 6 lakhs on the Memorandum of Appeal.

3. The proceeding contemplated under R.43A(2) of O.21 of the C.P. Code is not a 'suit' though it is intended to determine the liability of the custodian of the attached property, in case the property is not in the same condition as it was when it was entrusted to him. However, the order determining such liability is made appealable as a 'decree'. Thus only for the purpose of preferring an appeal, the order is deemed as a 'decree'.

4. On the application to be filed under R. 43 A(2) of O.21 of the Code, a court fee of Re. 1/- only is required to be paid under Art. 11(a) of Schedule II of the Act. S. 49 of the Act provides that save as provided in S. 48, 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. The proviso and explanations 2 to 5 to S. 49 of the Act are not relevant as the same are not applicable to the present case.Therefore it is not necessary to refer to those provisions. Explanation-1 to Section 49 provides that whether the appeal is against the refusal of a relief or against the grant of therelief, the fee payable in the appeal shall be the same as the fee that would be payable on the relief in the court of first instance. But this has to be read with Article 3(iii) of Schedule II of the Act which reads as follows:

'

Article	Particulars	Proper fee
3.	Memorandum of appeal from a decision or an award or order inclusive of an oder determining any question under Section 47 or Section 144 of the Code of Civil Procedure 1908, and not otherwise provided for when presented.-	
	i) xx xx	
	ii) xx xx	

iii) to the High Court

1) Where the order was passed

by a subordinate court or

other authority.-

a) If the order relates to a

suit or proceeding, the

value of which exceeds

one thousand rupees fifteen rupees

b) In any other case Eight rupees.'

The appellant has paid a court fee of Rs. 15/-on the Memorandum of Appeal.

5. Though the application in question has been decided along with the suit and the order on the application forms part of the judgment and decree passed in the suit but nevertheless, for the purpose of court fee payable on the Memorandum of Appeal preferred against the order determining the liability of the custodian of the attached property entrusted to his custody cannot be treated as part of the judgment and decree passed in the suit though it relates to the suit property because the basis for determining the liability and the basis for deciding the suit claim is different. The basis for determination of the liability of the custodian is the damage caused to the attached property entrusted to him whereasthe basis for determination of the suit claim is the ground on which the relief is sought in the suit. Therefore, S. 49 of the Act does not apply to the case on hand. It is Art. 3(iii)(1)(a) of Schedule II of the Act which applies to the appeal preferred against

the order passed under sub-rule (2) of R. 43A of O.21 of the Code. As stated above, the appellants have paid a court fee of Rs. 15/- on the Memorandum of Appeal which is sufficient.

6. Accordingly, the office objection is over-ruled and it is held that the court fee paid by the appellant on the Memorandum of Appeal is adequate.

7. Register the appeal if there are no other objections.

8. Order accordingly.

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