

A.R. Shambulinga and anr. Vs. A.C. Lalitha and ors.

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Court : Karnataka

Decided On : Jan-17-2006

Reported in : ILR2006KAR1335; 2006(3)KarLJ128

Judge : K.L. Manjunath, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 34; ;Karnataka Court Fee and Suits Valuation Act, 1958 - Sections 38 - Schedule - Article 11; Karnataka Arbitration (Proceedings before the Courts) Rules, 2001; Arbitration and Conciliation Act, 1940

Appeal No. : Writ Petition No. 42211 of 2003

Appellant : A.R. Shambulinga and anr.

Respondent : A.C. Lalitha and ors.

Advocate for Def. : Nagaraj Damodar, Adv. for C/R1 and R-2 to R-4 and ;Keshava Reddy, AGA for R-5

Advocate for Pet/Ap. : C.V. Kumar and ;Bhushani Kumar Adv.

Disposition : Appeal allowed

Judgement :

ORDER

K.L. Manjunath, J.

1. The short question that arises for consideration of this Court in this writ petition is that, if an application is filed under Section 34 of the Arbitration and Conciliation Act 1996, whether the petitioners are required to pay Court fee either under Section 38 of the Karnataka Court fee and Suits Valuation Act, 1958 or under Article 11(n) of Schedule II of Karnataka Court Fee and Suits Valuation Act.

2. 4th respondent was appointed as arbitrator and he passed an award in favour of the respondents 1 to 3 herein. Aggrieved by the same, petitioner filed an application under Section 34 of the [Arbitration and Conciliation Act, 1996](#) to set aside the award passed by the 4th respondent, which application has been treated as Arbitration suit 4/2002 by the Civil Court Bangalore. Though it is an application filed under Section 34 of the Arbitration and Conciliation Act, the Court treated the same as Arbitration suit, pursuant to High Court of Karnataka Arbitration (Proceedings before the Courts) Rules, 2001. At the time of riling the petition, petitioners have paid a fixed Court fee of Rs. 100/- by invoking Article 11 (n) (2) of Schedule II of Karnataka Court Fee and Suits Valuation Act.

3. Respondents 1 to 3 raised an objection before the Trial Court contending that the Court fee paid by the petitioners is not sufficient and they are required to pay Court fee under Section 38 of the Karnataka Court Fee and Suits Valuation Act, 1958, since the application filed by the petitioners has been treated as a suit by the Trial Court.

4. The Court below after hearing the learned Counsel for the parties has directed the petitioners herein to file a fresh valuation slip and to pay Court fee in accordance with Section 38 of the Karnataka Court Fee and Suits Valuation Act, 1958. This order is called in question in this Writ Petition.

5. I have heard the Counsel for the parties.

6. According to the learned counsel for the petitioners, though the Court has registered the petition filed by the petitioners under Section 34 of the Act as Arbitration Suit, in view of specific provision under the Karnataka Court Fee and

Suits Valuation Act, the petitioners are required to pay only a fixed Court fee and not the advalorem Court fee as required under Section 38 of the Karnataka Court Fee and Suits Valuation Act, 1958.

7. According to the learned Counsel for the respondents 1 to 3, though the petitioners had filed an application under Section 34 of the Arbitration and Conciliation Act, since the same has been converted as a suit for cancellation of the award of the arbitrator, the prayer of the petitioners falls within the ambit of Section 38 of the Karnataka Court Fee and Suits Valuation Act. Therefore, he justifies the order passed by the Trial Court and requests this Court to dismiss the Writ Petition.

8. Having heard the learned Counsel for the parties, this Court has to examine the relevant provision of the Karnataka Court Fee and Suits Valuation Act, 1958. Article 11(n) of the II Schedule reads hereunder:

Application to set aside an award under the Arbitration Act, 1940-

- 1) If the value of the subject matter of the award does not exceed Rs. 5000/-
- 2) If such value exceeds Rs. 5,000/-

Similarly, Section 38 of the Karnataka Court Fee and Suits Valuation Act, 1958 reads hereunder:

38. (1) in a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declared assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be-

if the whole decree or other document is sought to be cancelled the amount or value of the property for which the decree was passed or other document was executed;

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.

2) if the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiffs share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.

8. Article 11 (n) of the Schedule II of Karnataka Court Fee and Suits Valuation Act, is clear that if an application is filed to set aside an award under the Arbitration and Conciliation Act, 1940 and if the subject matter of the award exceeds Rs. 5000/- fixed Court of Rs. 100 has to be paid. The Arbitration and Conciliation Act, 1940 has been repealed due to enactment of Arbitration and Conciliation Act, 1996, In view of the repealing of the old Act, there is no corresponding amendment to the Karnataka Court Fee and Suits Valuation Act, 1958-Therefore, this court is of the opinion that if an application is filed to set aside the award, the Court fee payable under such circumstances falls within the scope of Article 11 (n) of the II Schedule of Karnataka Court Fee and Suits Valuation Act. Explanation I to Section 38 of the Karnataka Court Fee and Suits Valuation Act, shows that if a suit is filed to set aside the award, the same shall be deemed to be set aside the decree within the meaning of Section 38 of the Karnataka Court Fee and Suits Valuation Act. Scope of Section 38 of the Karnataka Court Fee and Suits Valuation Act and Article 11 (n) of the II Schedule of the Karnataka Court Fee and Suits Valuation Act, are entirely different, In the instant case, the petitioners have filed petition under Section 34 of the Arbitration and Conciliation Act to set aside the award passed by the arbitrator. Therefore, the petition filed by the petitioners cannot be considered as a suit falling within the ambit of Section 38 of the Karnataka Court Fee and Suits Valuation Act. When there is a specific provision under the Karnataka Court Fee and Suits Valuation Act, there is no necessity for the petitioners to file a separate valuation slip under Section 38 of the Karnataka Court Fee and Suits Valuation Act, and they are not required to pay court fee as long as there is no amendment to Article 11 (n) of Schedule II to the Karnataka Court Fee and Suits Valuation Act, 1958.

9. In the result, the writ petition is allowed. The order of the Trial Court is hereby quashed. Considering the fact that the application filed by the petitioners under

Section 34 of the Arbitration and Conciliation Act, in the year 2000 and later on renumbered into 2002, the Trial Court is directed to dispose of the suit within six months (6) from the date of receipt of a copy of this order.

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