

A.S. Mohammed Shareef and ors. Vs. Central Bank of India

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Court : DRAT Madras

Decided On : Apr-20-2006

Reported in : III(2006)BC217

Judge : K Gnanaprakasam

Appellant : A.S. Mohammed Shareef and ors.

Respondent : Central Bank of India

Judgement :

1. The defendants filed appeal as against the final order passed in OA by the DRT-II, Chennai. OA was decreed together with interest for the pendente lite and post-order period. Appellants valued the appeal only for the amount decreed and not for the pendants lite interest and the office raised objection that the appellants should calculate the interest and add the same together with decreed amount and pay Court fee. The appellants are not satisfied with the return and the appeal is posted before the Tribunal for orders.

2. The learned Advocate for the appellants contended that at the lime of filing the appeal, the interest awarded for pendente lite need not be included for the purpose of valuation of the appeal. It is further submitted that no where in the Act or in the rules, it is stated that the interest payable subsequent to the date of filing of application should be included in the subject matter of the appeal. In support of his submission, he relied upon the decision rendered by the Hon'ble Supreme Court, in the case of State of Maharashtra v. Tarachand Lodha 1964 KLT 115. In

the said case, the question arose for the determination was, "Whether the amount of interest decreed for the period subsequent to the institution of a suit comes within the expression 'amount or value of the subject matter in dispute' in Article I of Schedule I of the Bombay Court Fees Act, 1959". During the course of the judgment, Their Lordships of the Hon'ble Supreme Court have observed that "The Act is a taxing statute and its provisions therefore have to be construed strictly, in favour of the subject litigant". Ultimately held, "18. We therefore hold that the amount of pendente lite interest decreed is not to be included in the 'amount or value of the subject matter in dispute in appeal' for the purposes of Article I of Schedule I of the Act unless the appellant specifically challenges the correctness of the decree for the amount of interest pendente lite independently of the claim to set aside that decree. The appellant here has not specifically challenged the decree in that respect and therefore the High Court is right in holding the memorandum of appeal to be sufficient stamped." 3. First of all, the appellants have not produced the Bombay Court Fees Act for reference. But however, we are governed by the Tamil Nadu Court Fees and Suits Valuation Act, 1955 (Act 14 of 1955). Section 52 deals with appeals which states, "The fee payable in an appeal shall be the same as if that would be payable in the Court of first instance on the subject matter of the appeal". Sub-clause (3) of Section 52 states, "In claims which include the award of interest subsequent to the institution of suit the interest accrued during the pendency of the suit till date of decree shall be deemed to be part of the subject matter of the appeal except where such interest is relinquished". This Sub-clause clearly indicates that the interest awarded subsequent to the filing of the suit, i.e. pendente lite period, the said part of the interest accrued, shall be deemed to be part of the subject matter of the appeal. That is, the interest should be included along with principal for the purposes of arriving at the value of the appeal at the time of filing the appeal. But it is the contention of the learned Advocate for the petitioners/appellants that there is no such corresponding provision in the DRT Act, which mandates the petitioners to include the interest also along with the decree amount at the time of filing the appeal. Rule 8 of the DRAT (Procedure) Rules, 1994, prescribes for the payment of fee. Sub-clause (2) of Rule 8 states that the amount of fee payable in respect of appeal under Section 20 shall be as follows: Amount of debt due Amount of fees

payable_____

Rupees 10 lakh or more but Rupees 20,000 less than Rupees 30 lakh3. Rupees
30 lakh or more Rupees
30,000_____

4. The language used in Sub-clause is "Amount of debt due" (Emphasis supplied) for which Court fee is payable. The term debt is defined under Section 2(g) of the Act, which states," 'debt' means any liability (inclusive of interest) which is claimed as due from any person by a Bank or a financial institution...." It, therefore, goes without saying that the debt due means, which is inclusive of the interest awarded pendente lite and, therefore, the appellants should value the appeal not only for the amount for which the decree was passed but also for the interest awarded for pendente lite period. In the judgment relied upon by the appellant, 1964 KLT 115, wherein the Supreme Court has specifically observed that only when the appellant is not challenging the correctness of the decree for the amount of interest pendente lite independently of the claim to set aside the decree, he need not pay Court fee. But in our case, ground No. 11 in the memorandum of appeal, the appellants have challenged the interest awarded by the DRT and hence, it cannot be said that the appellants are not challenging the interest awarded by the Tribunal.

5. Looking from any angle, the appellants are liable to include the pendente lite interest also, along with the decree amount and value the appeal and pay the necessary Court fee thereof.

6. Office is directed to return the appeal papers for proper valuation and for payment of proper Court fee. Time granted two weeks.

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