

In Re: Banking Company

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Court : Kerala

Decided On : Dec-21-1956

Reported in : AIR1957Ker57

Judge : Varadaraja Iyengar, J.

Acts : Banking Companies Act, 1943 - Sections 45C (3) and 45D; T.C. High Court Rules; Advocate's Fee Rules, 1952 - Rules 7, 20 and 21; [Bar Councils Act, 1926](#) - Sections 16

Appeal No. : Misc. Ref. No. 1 of 1956 in Banking Company Petitions

Appellant : In Re: Banking Company

Advocate for Pet/Ap. : The Secretary, Advocates' Association,; K.T. Ninan,; C.S

Judgement :

ORDER

Varadaraja Iyengar, J.

1. The question has been raised as to the principle on which Advocate's fee should be calculated in connection with Banking Company claims,
2. In the Rules issued by the High Court in 1952 under Section 16 of the Bar Councils Act XXXVIII of 1926, no specific reference is made in regard to the matter relating to fees payable to Advocates. It was indeed not possible to so refer

because the Rules were framed on 11th March 1952 while the Banking Company Rules were themselves framed on 30-9-1952. Now there are three kinds of litigation which are Possible in these matters. Firstly suits which have been filed in subordinate Courts either as Small Cause Suits or original suits which have not been transferred to the High Court under Sub-section (3) of Section 45 (c) of the Banking Companies Act, secondly suits so filed but which have been transferred to the High Court, and thirdly claims against debtors of the Bank which are included in the lists of debtors to be settled under Section 45D of the Act.

We are not concerned with the first category. In respect of the second and third categories which we have to consider it is contended on behalf of the Advocates that the residuary Clause (c) of Rule 20 of the 1952 Advocate's Fee Rules :

'All other proceedings of an original nature not herein provided for--'

must apply to both, . that is to say, the fee shall in either case be at the discretion of the Judge or Bench disposing of the matter, subject to a minimum of Rs. 25/- and a maximum of Rs. 250/-. The argument was that the second category will not comprise 'suits withdrawn from the subordinate Courts and tried by the High Court' within the meaning of Rule 21, because the withdrawal here is not by the High Court suo motu but only by the exercise of the statutory powers, under the Banking Companies Act and so far as the third category of claims making up lists of debtors was concerned, it was clearly not covered by any specific Rules.

It seems to me however that there is no substance 'in the distinction sought to be made between suits withdrawn for trial to the High Court under the provisions of the Banking Companies Act or otherwise. The second category must, therefore, be held to be covered by Rule 21 which refers us back to Rule 7 which prescribes different scales for :

'(i) Small Cause Suits and Summary Suit not prescribed elsewhere in these rules. At 7 1/2 per cent, subject to a minimum of Rs. 5 : provided that in contested cases the Court may award a higher fee subject to a maximum of Rs. 15

'(ii) Original Suits' (where the fees are graded under different classifications).

In regard to the third category also it seems to me that Rule 7 clause (i) must apply, because the claims concerned are made by Judge's summons and disposed of summarily,

3. It is argued by the Liquidator in connection with the last category, that the total claims covered by particular list must be added up and the aggregate amount arrived at should be taken to be the basis for calculating the overall Advocate's fee in respect of the list concerned. That fee will then be distributed according to the amounts of the respective claims for inclusion in the certificates issued as for each of claims. This argument is rested upon the principle enunciated for the filing of Vakkalattis by Advocates appearing on behalf of the, Court Liquidator in engagements in connection with getting list of debtors settled and looks attractive.

But it seems to me that, that principle as to engagements as per lists has no necessary correlation to the question of Advocate's fee with which we are concerned. Indeed It was held recently in this Court in *Madhavi Amma v Godaru Namboodripad*, 1956 Ker LT 536 : (AIR 1957 Trav-Co. 170 (A), that Advocate's fee must depend upon the amount or value of each separate claim in the suit and not to the amount or value of all the claims taken together and reference was made to the principle underlying Section 11 of the Court Fees Act. It follows that Advocate's fee must be calculated in respect of each of the claims both for purpose of payment to Advocate and for inclusion in the certificates to be prepared as against each debtor.

I hold, therefore, that the scale of Advocate's fee applicable in cases of suits, will be regulated by Rule 7 Clause (i) or (ii) of the Advocate's Fee Rules, 1952, according to the nature of the suit concerned and that in cases of claims (comprised in lists of debtors) Rule 7 Clause (i) will alone apply.