

Nadesan Vs. Dinesan

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Court : Kerala

Decided On : Jun-20-2002

Reported in : AIR2003Ker7

Judge : J.B. Koshy and; M. Ramachandran, JJ.

Acts : [Kerala Court Fees and Suits Valuation Act, 1959](#) - Sections 4A and 69 - Order 12, Rule 6 - Order 23, Rule 3

Appeal No. : C.R.P. No. 31 of 1993

Appellant : Nadesan

Respondent : Dinesan

Advocate for Def. : Roy Chacko, Government Pleader

Advocate for Pet/Ap. : V.N. Swaminathan, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

J.B. Koshy, J.

1. Doubting the correctness of the interpretation given by a Single Judge of this Court in State Bank of India v. Iqbal Zacharia (1994 (1) KLT 141) regarding the

scope and effect of Section 4A of the Kerala Court-Fees and Suits Valuation Act, 1959 (hereinafter referred to as 'The Act'), this revision petition was referred to the Division Bench. Before going into the merits of the case we may look into Section 4A of the Act, which reads as follows:

'4A. Levy of fee at the time of institution of suit:-Notwithstanding anything contained in any other provisions of this Act, the amount of fee to be paid on plaint at the time of institution of suit shall be one-tenth of the amount of fee chargeable under this Act and the balance amount shall be paid within such period, not later than fifteen days from the date of framing of issues or where framing of issues is not necessary, within such period not exceeding fifteen days as may be specified by the Court:

Provided that the Court may for sufficient reasons to be recorded in writing extend the period upto thirty days.

Provided further that if the parties settle the dispute within the period specified or extended by the court for the payment of the balance amount, the plaintiff shall not be called upon to pay such balance.'

Section 4A was inserted by the Amendment Act 6 of 1991.

2. Section 4A allowed the plaintiff to institute a suit on payment of one-tenth of the court fee and to pay balance within fifteen days of framing of issues or within the time allowed by the Court. If the matter is settled by the parties within the time allowed to pay the balance court fee, no further court fee need be paid. In other words, if there is settlement between the parties before the time fixed for payment of balance court fee, the Legislature thought it fit that the parties be relieved from the obligation to pay balance court fee leviable on the plaint as the court need not adjudicate the issue further. Another section granting the relief in the matter of court fee is Section 69 of the Act. Section 69 of the Act reads as follows:

'69. Refund in cases of compromise or when suit is decided on the admission of parties:-When a suit or appeal is compromised or when a suit is decided solely on the admission of the parties without any investigation, one-half of the Court fee

paid on the plaint or memorandum of appeal shall be ordered by the Court to be refunded to the parties by whom the same have been paid respectively.

Provided that no refund shall be ordered where only one-tenth of the amount of fee on plaint as required by Section 4A or one-third of the amount of fee on memorandum of appeal as required by Section 52 has been paid by the parties.'

3. There are three major differences between Section 4A and Section 69:

(1) Section 69 speaks of refund and not exemption from payment of balance court fee.

(2) Under Section 4A matter should be settled or compromised before the date fixed for payment of court fee or with in such extended date as fixed by the court. Under Section 69, compromise can be after the date fixed for payment of balance court fee but before the adjudication. If balance court fee is not paid within the time allowed by the court, suit will be dismissed. Therefore, application of Section 69 is always after the payment of full court fee. That is why provision makes it clear that if only one-tenth of the court fee is paid, refund of 50% of that will not be ordered. If the matter is compromised or settled before the dated fixed for payment of balance court fee on a suit instituted on payment of one-tenth of the court fee, Section 69 is not attracted at all but Section 4A will apply.

(3) Section 4A is attracted only when there is compromise or settlement which is reported before the date fixed by the court for payment of balance court fee and does not apply when the case is to be decreed on admission of parties. Under Section 69, half of the full court fees paid can be refunded even without a settlement or compromise, if the decree is passed solely on admission of parties.

4. A compromise can be entered by both parties jointly. Word compromise includes settlement also. Compromise according to Chambers Twentieth Century Dictionary means 'a settlement of differences by mutual concession'. However, filing of a compromise petition is not necessary under Section 4A. It is enough that the counsel even orally reports that matter is settled out of court. As held in *Fr. Antony v. Clariat & Convent E. Society* (1998 (I) KLT 299) parties settling the

dispute pending suits need not always record the settlement. A recording of the settlement by court is necessary only when the parties to the litigation desire the help of the Court to pass a decree in terms of settlement'. In such cases compromise or settlement signed by the parties has to be filed by the parties jointly as provided under Order XXIII Rule 3. If the balance Court fee is not paid within the time allowed by the Court, suit can be dismissed. At the first hearing itself (before the time fixed for payment of balance court fee) if it is submitted before court that the matter is settled and parties are not at issue (see Order XV Rule 1) or in view of the settlement, plaintiff withdraws or abandons the plaint (see Order XXIII R. 1), or file a compromise petition and request for a decree in terms of compromise (Order XVIII Rule 3), there is an end to the suit. If any of the above happens before the date fixed for payment of balance court fee, Section 4A of the Act will apply and no further court fee need be paid. If the compromise petition is filed after the date fixed for payment of court fee or suit is decreed on admission of parties. Section 4A will not apply. However, in such cases where compromise petition is filed after the last date fixed for payment of balance court fees or suit is decreed on admission of parties, without compelling the court for further adjudication of the matter, parties can claim refund on the basis of Section 69 of the Act. Section 4A is not applicable if there is no settlement or compromise. Mere admission in the written statement or otherwise is not settlement or compromise between the parties. In the absence of separate definition given in the Act the word settlement include compromise also but if a decree is to be passed on the basis of compromise or settlement procedure under Order XXIII Rule 3 has to be followed. Judgment on admission can be as provided under Order XII Rule 6. But if judgment is passed on admission alone without settlement, Section 4A of the Act is not applicable.

5. In *State Bank of India v. Iqbal Zacharia* (1994 (1) KLT 141), Court only held that if no settlement is reported and Court passes a decree on admission of the claim by the defendant, Section 4A is not applicable. It does not lay down a proposition as contended by the Government Pleader that Section 4A is applicable only when suit is withdrawn or not pressed by the plaintiff on settlement. Section 4A is applicable even if a decree is to be passed on the basis of a settlement or compromise filed before Court, if such settlement or compromise is before the last

date allowed by the Court for payment of balance court fee. The decision in 1994(1) KLT 141 only lays down the proposition that if no settlement is reported or compromise is filed and suit is decreed on the basis of admission of the defendant in the written statement, Section 4A is not applicable. This was so held because passing of decree on admission of the parties is not specifically mentioned in Section 4A. In fact, court recommended an amendment to remove the anomaly. Position is different if it is reported even orally that matter is settled and prays that decree can be passed as prayed for without any dispute or plaintiff is not pressing the suit as matter is settled or files a settlement or compromise with a request to pass a judgment in terms of the above settlement, before the last date fixed for payment of the balance court fee. In the above decision, court only held that mere admission of the claim in the written statement is not enough to attract Section 4A. On the basis of the words used in that section, the above view in 1994 (1) KLT 141 is correct. Stamp Act is essentially a taxing statute and as Rowlatt, J. held in *Cape Brandy Syndicate v. IRC* (1921(1) KB 64) 'in a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about tax. There is no presumption as to tax. Nothing is to be read on, nothing is to be implied. One can only look fairly at the language used'. In *A.V. Fernandez v. State of Kerala* (AIR 1957 SC 657) the Supreme Court held as follows:

'In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substances of the law. If the Revenue satisfied the Court that the case falls strictly within the provisions of the law, the subject can be taxed, if, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of then Legislature and by considering what was the substance of the matter'.

Passing judgment on mere admission of parties without a settlement either written or oral is not contemplated in second proviso to Section 4A of the Act. Similarly, it is not stated in 2nd proviso to Section 4A that if a decree is to be passed in terms of settlement it will not apply. Second proviso to Section 4A will apply to all cases

where parties settle the dispute before the date fixed for payment of court fee, whether a decree in view of settlement is to be passed or not.

6. Now we may look into the facts of this case. Suit was instituted on payment of one-tenth of the court fee. Written statement was filed on 28.7.1992 admitting the plaint claim. The case was adjourned to 7.8.1992 for payment of balance court fee. Before the date allowed by the Court to pay balance court fee (7.8.1992) a compromise petition (I.A. No. 972 of 1992) was filed on 3.8.1992 for passing a decree as per the compromise. Court insisted that before passing the decree and accepting the compromise petition balance court fee shall be paid and after hearing the parties and impugned order was passed directing that balance court fee should be paid. We are of the opinion that the above view is incorrect. Here before the date fixed by the court for paying balance court fee, settlement was reported and compromise petition was filed for passing a decree in terms of compromise. Therefore judgment and decree have to be passed not merely on the basis of admission in the written statement, but on the basis of settlement, consequent to the filing of compromise petition between the parties. The matter is settled before the date fixed for payment of balance court fee and Section 4A of the Act is squarely applicable. Therefore, impugned order is set aside and we direct the court to pass judgment and decree after considering LA. No. 972 of 1992 (compromise petition).