

Thressia Vs. K.S.E.B.

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Court : Kerala

Decided On : Mar-08-2006

Reported in : 2006(4)KarLJ94

Judge : C.N. Ramachandran Nair, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 35 - Order 30A, Rule 1 - Order 33, Rules 10, 11, 11A, 12 and 18; [Constitution of India](#) - Articles 221 and 227; Civil Practice Rules - Rule 195

Appeal No. : O.P. No. 6124 of 2001

Appellant : Thressia

Respondent : K.S.E.B.

Advocate for Def. : P. Santhalingam, Adv. and; T.R. Ravi, Government Pleader

Advocate for Pet/Ap. : George Thomas and; Mevada, Advs.

Disposition : Appeal allowed

Judgement :

C.N. Ramachandran Nair, J.

1. Petitioner is challenging Ext. P2 revenue recovery proceedings initiated for recovery of Rs. 17,040/-, towards court fee payable in respect of suit, O.S. No.

219/1995 filed originally by the petitioner along with her husband against KSEB claiming compensation for the death of their 17 year old daughter on account of the electric shock from electric line. During the pendency of the suit, petitioner's husband died and consequently children of the petitioner are impleaded as additional plaintiffs in the suit.

2. The suit filed by the petitioner and her children as indigent persons was decreed vide Ext. P1. As against the claim of Rs. 2.5 lakhs towards compensation, an amount of Rs. 85,500/- with 9% interest from the date of the suit was granted. The 2nd plaintiff in the suit was awarded a cost of Rs. 3,140/- which includes the stamp duty of Rs. 10/- paid on the plaint.

3. Even though the civil court passed Ext. P1 decree, it did not calculate the amount of court fee payable and the party by whom it is payable in terms of Order XXXIII Rule 10 C.P.C.. However, the civil court forwarded the decree to the District Collector for realising the court fee.

4. According to the petitioner, initiation of revenue recovery proceedings is without jurisdiction, as the decree does not authorise the District Collector to recover court fee from the petitioner, who was the 2nd plaintiff in the suit.

5. I have heard Sri George Thomas, counsel appearing for the petitioner, Mr. Santhalingam appearing for 1st respondent-KSEB and the Government Pleader appearing for respondents 2 and 3.

6. Counsel for the petitioner contended that petitioner, 2nd plaintiff in the suit, has substantially succeeded in the suit and therefore the court fee, if at all payable, is to be recovered from the 1st respondent-KSEB, who is the 1st defendant in the suit because court fee is part of the cost recoverable from the 1st defendant.

7. Counsel for 1st respondent and the Government Pleader submitted that since petitioner succeeded only partly in the suit, petitioner has to pay court fee in proportion to the extent of claim disallowed by the civil court.

8. I find the problem arose because Ext.P1 passed by the civil court was incomplete in as much as the civil court in decreeing the suit has not complied with

the mandatory provisions of Order XXXIII Rule 10 of the Code of Civil Procedure. Under this Rule, where an indigent person succeeds in the suit, the court shall calculate the amount of court fee which should have been paid by the plaintiff had the plaintiff not been permitted to sue as an indigent person. Besides the duty to calculate the amount of court fee, the Rule further says that the court should state the party from whom the State Government can recover the court fee. In the absence of determination of actual amount of court fee payable in respect of suit and the person from whom the same has to be recovered by the State Government by the civil court in Ext.P1 decree, revenue recovery proceedings initiated for recovery of the court fee from the petitioner is unauthorised. If the civil court fails in its duty to determine the amount of court fee payable and the person from whom it has to be recovered in terms of Order XXXIII Rule 10 CPC, the District Collector has no authority to step into the shoes of the civil court decreeing the suit and determine the court fee payable and the person from whom it has to be recovered.

In the absence of any finding by the civil court in this regard, it is for the District Collector to make an application under Order XXXIII Rule 12 CPC before the court which passed the decree, to pass an order for recovery of the court fee in terms of the relevant Rule, including Order XXXIII Rule 10 which is the relevant Rule in this particular case.

9. Even though this Original petition could be disposed of by setting aside revenue recovery proceedings, with direction to the District Collector to make application under Order XXXIII Rule 12 CPC to the civil court to pass orders, I feel the same will cause further delay, because this Original petition itself was pending in this Court for over five years. Therefore, the parties were heard on their respective claims on merits of the case for this Court to dispose of the case in exercise of the powers under Article 221 of the [Constitution of India](#), modifying the decree to the extent required in regard to recovery of court fee.

10. The case of the petitioner is that since the suit was decreed with costs, court fee being component of costs, is payable by the 1st respondent against whom decree is passed. Counsel for petitioner specifically pointed out that the court fee

to the extent paid by the petitioner i.e. Rs. 10/-, is ordered to be reimbursed to the petitioner in the form of costs by the civil court vide Ext.P1 decree. Therefore, according to him, in principle, the civil court has accepted petitioner's claim for entitlement of court fee as part of costs, so much so if at all the civil court has exercised its discretion under Order XXXIII Rule 10 CPC, it would have ordered payment of full court fee from the 1st respondent, the 1st defendant in the suit.

11. The Government Pleader for respondents 2 and 3 relied on the decision of a Division Bench of this Court in *Dev v. Chief Secretary, Government of Kerala* : AIR2004 Ker11 and contended that court fee payable in respect of suit filed by an indigent person is recoverable from the parties in proportion to the success or failure of each party. In other words, according to him, while the 1st defendant in the suit, should pay the court fee in proportion to the decree amount, petitioner/2nd plaintiff should pay the court fee on the amount of suit claim disallowed by the civil court. On going to the decision above referred, I find, this Court has not taken into account Section 35 of the Code of Civil Procedure, which gives authority to the court to award costs in a suit.

12. Counsel for petitioner relied on an earlier Division Bench decision of this Court reported in *Malabar Motor Transport Co-op. Society Ltd. v. Amu* 1985 KLT 107 D.B. wherein this Court held that normally costs should follow cause and it should be in proportion to the success or failure of the parties is a well accepted principle. That does not, however, mean that this is an invariable rule leaving no discretion to the court. The Division Bench accordingly held that under Section 35 CPC, the court has complete discretion in the matter of costs and it can order recovery of court fee from the defendants in respect of suit claim disallowed by the civil court in the suit filed by an indigent person. I am in complete agreement with this earlier decision of the Division Bench, which held that Section 35 applies to a suit filed by an indigent person also. Even though the costs referred to in Section 35 CPC on the face of it appears to be the costs borne by the plaintiff in the filing and prosecution of the suit, details of which are available in Order XXX-A Rule 1 CPC and Rule 195 of the Civil Rules of Practice, and the liability for court fee in the case of suit filed by an indigent person will depend on the decree passed by the civil court under Order XXXIII Rule 10 CPC or in terms of Rule 11 or Rule 11A of

Order XXXIII, I feel, court fee in such cases is also a cost incidental to the suit which is also covered by Section 35 CPC. In other words, even though court fee is not prepaid in a suit filed by an indigent person and the liability is determined by civil court depending on the result of the suit as provided in the above Rules of Order XXXIII, still the civil court can under Section 35 CPC make it as part of the costs and order the party who should pay the costs. Order XXXIII Rule 10 CPC covers a situation of the indigent person succeeding in the suit which can be partial and therefore part success and part failure of the suit also is covered by Rule 10 wherein the court is left with complete discretion to fix as to which party or both, to pay the court fee in full or part or proportionately as decided by the court.

13. Counsel for KSEB and the Government Pleader contended that Rule 11 covers the case of part success and part failure of the suit, and there is absolute liability on the plaintiff to pay court fee attributable to the suit claim disallowed. However, I do not think, Rule 11 applies to a case of part failure in a suit because the court under the said Rule has no discretion except to order the plaintiff to pay full court fee which would have been paid by the plaintiff, had he not been permitted to sue as an indigent person. If this argument is accepted, then, in a suit filed by an indigent person and partly disallowed, the court has to order recovery of court fee from plaintiff alone which goes against the powers of the court as contained in Section 35 CPC read with Order XXXIII Rule 10. Therefore, I am of the view that Order XXXIII Rule 10 CPC applies to a case of full success of the plaintiff and part success and part failure in the suit filed by indigent person and liability of court fee is to be determined only under Rule 18 Order XXXIII CPC and it is absolutely within the discretion of the court, to decide as to the party or parties from whom it is to be recovered by the Government after fixing the actual court fee payable on the plaint.

14. The parties have no dispute about the actual court fee in this Court payable which is Rs. 17,040/-. The suit was initially filed by the petitioner as 2nd plaintiff and her husband as 1st plaintiff, claiming compensation for the death of their 17 year old daughter caused due to the negligence of the 1st respondent-KSEB. The compensation claimed was for Rs. 2.5 lakhs, and the civil court decreed Rs. 85,500/- towards compensation with interest at 9% from the date of filing of suit.

Decree has become final and the decree amount is recovered by the petitioner in execution proceedings. Balance left is only court fee which should have been determined and the party identified for payment by the court decreeing the suit in terms of Order XXXIII Rule 10. Even though decree is incomplete in this regard, the District Collector is still entitled to make an application under Order XXXIII Rule 12. The matter is pending for the last over five years in this Court. In principle, the trial court has held that court fee is part of the costs and the plaintiff is entitled to recover the same from KSEB. Since petitioner has not paid full court fee, it is only a matter of ordering payment of balance court fee and to decide whether defendant should pay it as part of costs. The decision reported in Malabar Motor Transport Co. op. Society's case 1985 KLT 107 DB is a case where suit, claim of compensation of Rs. 1 lakh on account of death due to motor accident was ultimately decreed by the civil court in an indigent suit for Rs. 20,000/-. On the facts, the Division Bench of this Court held that even though normally the court fee should be borne by the parties in proportion to success or failure, still the court has discretion under Section 35 CPC to award costs on equitable ground on any party.

15. Even though counsel for 1st respondent and the Govt. Pleader submitted that the plaintiff should have suffered court fee in respect of the claim not decreed by the civil court, I find such an order will be justified only for exorbitant or fanciful claim without any bona fides and when suit claim is made in a callous and indifferent manner. Even though 20% of the suit amount is decreed by the trial court in the above case decided by the Division Bench still this Court found that the claim of Rs. 1 lakh was not exorbitant, so much so, the defendant was called upon to pay balance court fee. In this particular case, the claim was only Rs. 2.5 lakhs, that too for the death of a teen aged girl on account of electrocution and the amount awarded is only Rs. 85,500/- with interest. Therefore on facts, I find, the compensation claim was not unreasonable and so much so it would be unfair to order payment of court fee by the plaintiff which will indirectly reduce the compensation awarded which itself in absolute terms is very low considering the loss suffered by the petitioner and family members.

16. In the circumstances and in view of the principles laid down by the Division Bench in the above referred decision and in exercise of the jurisdiction under

Article 227 of the [Constitution of India](#), I modify the decree by fixing the court fee at Rs. 17040/- with direction to the 1st respondent to pay the same on or before 30-9-2006 without any interest or other charges. The O.P. is allowed as above. No costs.

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