

**State of Kerala Vs. Joy**

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**Court :** Kerala

**Decided On :** Aug-29-2003

**Reported in :** AIR2004Ker67; 2003(3)KLT786

**Judge :** K.S. Radhakrishnan and; Pius C. Kuriakose, JJ.

**Acts :** Court Fees and Suits Valuation (Amendment) Act, 2003 - Sections 52 and 73A

**Appeal No. :** A.S. No. 591 of 2002

**Appellant :** State of Kerala

**Respondent :** Joy

**Advocate for Def. :** K. Babu Thomas, Adv.

**Advocate for Pet/Ap. :** K.L. Joseph, Govt. Pleader

**Judgement :**

ORDER

**K.S. Radhakrishnan, J.**

1. Matter has been placed before us since balance court fee has not been paid by the State of Kerala. This appeal was filed on 7.8.2002 and was finally heard by us on 26.6.2003. Appeal was partly allowed and the judgment and decree was

modified. When the appeal was filed the court fee payable was Rs. 11,408/-. State paid one-third of the court fee. Balance court fee payable at that time was Rs. 7,605/-. State paid an amount of Rs. 3,934/-. Since there is deficiency in paying balance court fee of Rs. 3,671/- this matter has been posted before us for appropriate orders directing the State Government to pay balance court fee.

2. Learned Government Pleader Sri. K.L. Joseph submitted that the State is not bound to pay the balance court fee in view of the Kerala Court Fees and Suits Valuation (Amendment) Act, 2003. The Act came into force on 6.3.2003. A new provision 73A was inserted after Section 73 which reads as follows:

'73A. Special provision regarding suits, appeals, revision etc. filed by or on behalf of the Government before the Court:- Notwithstanding anything contained in any other provisions of this Act, where a suit, appeal, revision, review or other pleadings or documents are filed or presented by or on behalf of the Government or its officers in their official capacity before any Court, no court fee shall be chargeable in respect of such suit, appeal, revision, review or other pleadings or documents under the provisions of this Act.'

Learned Government Pleader submitted that in view of the said provision State is not bound to pay any court fee regarding suits, appeals, revision etc. Counsel submitted in the instant case the appeal was filed on 7.8.2002. Appeal came up for admission on 10.4.2003. By the time the Kerala Court Fees and Suits Valuation (Amendment) Act, 2003 came into force and consequently State Government is not bound to pay balance court fee in the matter.

3. Court fee payable in an appeal is under Section 52 of the Court Fees Act. Second proviso to Section 52 stipulates that one third of the fee payable in an appeal shall be paid at the stage of admission of first appeal or second appeal as the case may be and the balance shall be paid within such period, not later than fifteen days from the date of such admission as may be specified by the court in case the appeal is admitted. In the instant case State has already paid one-third of the court fee when the appeal was presented on 7.8.2002. Question that has come up for consideration is whether the State should pay balance court fee as demanded by the Registry. We are of the view the relevant date for reckoning

payment of court fee as per second proviso to Section 52 is at the stage of admission. When the case came up for admission before this Court evidently State has already paid one-third of the court fee. When the matter came up for admission on 10.4.2003 Kerala Court Fees and Suits Valuation (Amendment) Act, 2003 has already come into force by 6.3.2003 and no court fee is payable by the State Government. We are therefore of the view State Government is not bound to pay court fee after 6.3.2003. Section 73A was also found to be valid by this Court in Human Rights Protection Forum v. State of Kerala and Anr. (2003 (3) KLT 436 = (2003) 2 KLJ 472). We therefore uphold the contention of the learned Government Pleader and hold that State is not bound to pay balance court fee.

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