

Jamal Vs. Mohammedkutty

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Court : Kerala

Decided On : Aug-29-2003

Reported in : AIR2004Ker28; 2003(3)KLT803

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

Acts : [Kerala Court Fees and Suits Valuation Act, 1959](#) - Sections 66 and 66(2)

Appeal No. : A.S. No. 760 of 1998

Appellant : Jamal

Respondent : Mohammedkutty

Advocate for Def. : P.K. Suresh Kumar,; M.R. Sreelatha and; K.P. Sudheer

Advocate for Pet/Ap. : K.K. Mohamed Ravuf and; T. Krishnan Unni, Advs.

Disposition : Appeal rejected

Judgement :

K.S. Radhakrishnan, J.

1. Defendant is the appellant. Appeal has been preferred against the decree for money. Matter was posted before us for curing defect. Registry noted that the balance court fee of Rs. 10,386/- has not been paid. Suit valuation is Rs. 2,30,400/-. Court fee payable is Rs. 15,580/-. Counsel appearing for the appellant

submitted that he is not interested in prosecuting the matter and that the appeal may be rejected for non-payment of court fee. Question that arises for consideration is whether in such a circumstance the appellant is entitled to get refund of the entire court fee.

2. The counsel for the appellant brought to our knowledge a Single Bench decision of this Court in *South India Wire Ropes Ltd. v. State of Kerala*, 2003 (2) KLT 668. In that case revision petition was filed against the order in R.A. No. 44 of 2001 in O.S. 514 of 2000 of II Addl. Sub Court, Ernakulam. Plaintiff preferred an application for return of 1/10th court fee. Balance court fee was not paid. Court rejected the plaint for non-payment of balance court fee under Order VII Rule 11 of the Code of Civil Procedure. Question that arose for consideration was whether plaintiff in such a situation is entitled to get refund of the 1/10th of the court fee paid. Learned Single Judge held that under Section 66 of the Act plaintiff is entitled to get the court fee paid. Therefore ordered refund of 1/10th of the court fee. Question that has come up for consideration in this case is since the party does not propose to prosecute the appeal further due to the reason that he is not in a position to pay balance court fee he is entitled to get refund of the court fee paid. Section 66 of the Court Fees Act deals with refund in cases of delay in presentation of plaint etc. Said provision reads as follows:

'66. Refund in cases of delay in presentation of plaint etc.:-

(1) Where a plaint or memorandum of appeal is rejected on the ground of delay in its representation, or where the fee paid on a plaint or memorandum of appeal is deficient and the deficiency is not made good within the time allowed by law or granted by the Court, or the delay in payment of the deficit fee is not condoned and the plaint or memorandum of appeal is consequently rejected, the Court shall direct the refund to the plaintiff or the appellant, of the fee paid on the plaint or memorandum of appeal which has been rejected.

(2) Where a memorandum of appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation, one-half of the fee shall be refunded.'

The above provision says that where a plaint or memorandum of appeal is rejected on the ground of delay in its representation or where the fee paid on a plaint or memorandum of appeal is deficient and the deficiency is not made good within the time allowed by law or granted by the court or the delay in payment of the deficit fee is not condoned and the plaint or memorandum of appeal is consequently rejected, the court shall direct the refund to the plaintiff or the appellant, of the fee paid on the plaint or memorandum of appeal which has been rejected. Section 66(2) stipulates that where a memorandum of appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation, one half of the fee shall be refunded. This is not a case where the appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation. This is a case where the appeal has been preferred in time. Appellant is not in a position to pay the balance court fee and consequently pray for rejection of the appeal and refund of the court fee paid. We are of the view the claim made by the counsel squarely falls under Section 66 of the Act, in the event of which, he is entitled to get refund of the entire court fee.

Under such circumstance this appeal is rejected for non-payment of the balance court fee. Registry would refund the entire court fee paid on the appeal memorandum. This Bench has also taken similar view in A.S. 629 of 2001 as well.

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