

Vasudevan Vs. State of Kerala

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Court : Kerala

Decided On : Sep-22-2003

Reported in : AIR2004Ker43; 2003(3)KLT993

Judge : P.R. Raman, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 20 and 89(2); ;[Legal Services Authorities Act, 1987](#) - Sections 21; Kerala Court Fees Act, 1870 - Sections 16 and 69

Appeal No. : W.P. No. 21031 of 2003

Appellant : Vasudevan

Respondent : State of Kerala

Advocate for Def. : Treasa Rani George, Government Pleader

Advocate for Pet/Ap. : R. Surendran, Adv.

Disposition : Writ petition allowed

Judgement :

P.R. Raman, J.

1. The main question arises for consideration in this case is as to whether the petitioner is entitled for refund of the full court fee paid in the suit which was

ultimately referred to the Lok Adalat and settled between the parties.

2. Suit O.S. 293/1999 on the file of the Principal Sub Court, Thalassery was filed by the petitioner as plaintiff for specific performance of the contract. The only contesting defendant was the 8th defendant in the suit; the right of the other defendants having been purchased by the 7th defendant during the pendency of the suit. Petitioner preferred two applications before the Court as 1577/2002 and I.A.1578/2002. I.A. 1577/2002 was an application seeking reference of the suit to the Lok Adalat organised by the Thalassery Taluk Legal Services Committee constituted under the Legal Services Authorities Act. That was allowed and the matter was referred. I.A.1578/2002 was an application filed under Section 16 of the Court Fees Act 1870 as amended by the Code of Civil Procedure Amendment Act, 1999 praying to refund the court fee already paid by him. However, no orders were passed on I.A. 1578/2002 at that time. The matter was settled between the parties as evidenced by Exts. P1 and P1(2) produced in this Writ Petition. Ext. P1(2) is a statement of compromise arrived at between the plaintiff (petitioner) and the 7th defendant in the suit before the Lok Adalat (Legal Services Authority), Thalassery. The statement of compromise shows that the dispute has been settled between the plaintiff and the 7th defendant in the Lok Adalat on 10.8.2002 and in view of the settlement, plaintiff withdrew the suit against the defendants and he does not have any claim against the defendants on the subject matter of the suit. It was also agreed that full court fee paid may be ordered to be refunded. Based on the compromise as referred to above, Ext. P1 order was passed by the Lok Adalat consisting of a Judicial member and two others. The statement of compromise referred to above, was ordered to form part of the award. The order also refers to the fact that the cause referred to the Lok Adalat for settlement of the dispute between the parties after full and frank dissolution of all factual and legal issues arising from the case, and the parties have agreed to settle the dispute and to award a decree in terms of the settlement. Accordingly, it was ordered that the statement of compromise filed on that day shall form part of the award and that the suit be, on the same is dismissed as withdrawn in terms of the compromise without cost. It is specifically ordered that the plaintiff can approach the Court for refund of the court fee under the law.

3. The order was passed on 10.8.2002. Petitioner thereafter moved for passing orders on LA. 1578/2002 which was already pending before the Court claiming refund of the court fee under Section 16 of the Court Fees Act, 1870 as amended by Section 34 of the Code of Civil Procedure (Amendment) Act, 1999. The Subordinate Judge Thalassery, as per Ext. P2 order allowed only 50% of the court fees to be refunded to the petitioner, holding that as per Section 69 of the Court Fees Act, the plaintiff is entitled to get the refund of half of the court fee when the suit is compromised. Aggrieved thereby, petitioner has preferred this Writ Petition.

4. Learned counsel for the petitioners submitted that when the matter is referred to Lok Adalat, the matter relating to refund of the court fee is governed by the provisions of the Legal Services Act read with Section 89 of the Code of Civil Procedure and also Section 16 of the Central Court Fees Act, 1870.

5. The [Legal Services Authorities Act, 1987](#) itself was enacted for the purpose of securing operation of the legal system promoting justice on the basis of equal opportunity and for providing free legal aid by suitable legislation or schemes or in any other way and to ensure that opportunities for securing justice are not denied to anybody because of economic or other disabilities. The Act extends as a whole of India except Jammu & Kashmir. Various authorities are constituted in National, District and State level under the said Act for resolving disputes between the parties. As per Section 19 of the Legal Services Authorities Act, every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising of such jurisdiction and for such areas as it thinks fit. As per Section 19(5) the Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any case pending before or any matter which is falling within the jurisdiction of and is not brought before any court for which the Lok Adalat is organised.

6. It is by virtue of this provision that pending cases are referred to Lok Adalat. Section 20 of the said Act reads thus:

'20. Cognizance of cases by Lok Adalats:- (1) Where in any case referred to in Clause (i) of Sub-section (5) of Section 19-

(i)(a) the parties thereof agree; or

(b) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such Court is prima facie satisfied that there are chances of such settlement; or

(ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat.

the Court shall refer the case to the Lok Adalat:

XXX XXX XXX XXX'

7. Thus, it can be seen that in a suit pending before any court when one of the parties applied for reference of the matter to the Lok Adalat and when the court is satisfied that there are chances of such settlement, the court shall refer the matter to the Lok Adalat. In this case, on an application submitted by the petitioner, the case was referred to Lok Adalat for arriving at a settlement with the Bank and a settlement was also arrived at. The only question is regarding the amount of court fee refundable to the plaintiff.

8. Section 21 of the Legal Services Authorities Act reads thus:

'(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under Sub-section (1) of Section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court Fees Act 1870 (7 of 1870).

XXX XXX XXX XXX'

9. From the above provision, it can be seen that when a matter is referred to Lok Adalat as was done in this case refund of the court fee has to be decided in terms of Section 21 of the Legal Services Authorities Act which in turn states that refund

shall be in the manner provided under the provisions of the Court Fees Act, 1870. Section 16 of the Court Fees Act, 1870 is a provision inserted by Act 46 of 1999. Section 16 of the Court Fees Act, 1870 reads as follows:

'Where the Court refers the parties to the suit any one of the mode of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 (5 of 1908), the plaintiff shall be entitled to a certificate from the court authorising him to receive back from the Collector, the full amount of the fee paid in respect of such plaint'.

10. Section 89(2)(b) of the Code of Civil Procedure also provides that where a dispute has been referred to the Lok Adalat the Court shall refer the same to the Lok Adalat in accordance with the provisions of Sub-section 1 of Section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat.

11. On a careful reading of the above provision, it can be seen that when a matter is referred to Lok Adalat by a civil court, the provisions contained in the Legal Services Authorities Act shall govern the parties in the matter of resolving the dispute and also in the matter of refund of the court fees. There is a specific provision in the [Legal Services Authorities Act, 1987](#) which provides for refund of the court fee when the matter is settled by the Lok Adalat and as per Section 16 of the Court Fees Act, 1870 the entire court fee paid on the plaint is liable to be refunded and the Court which has referred the matter shall issue a certificate to the plaintiff to receive the amount from the Collector.

12. The above being the legal position, Section 69 of the Kerala Court Fees Act has no application in so far as this is a matter referred to the Lok Adalat in terms of the provisions contained in Section 89(2)(b) of the Code of Civil Procedure read with Section 20 of the Legal Services Authorities Act. Accordingly, the refund of court fee is governed by Section 16 of the Court Fees Act, 1870 read with Section 21 of the Legal Services Authorities Act and the whole of the court fee paid is entitled to be refunded.

13. Accordingly, the order of the court below on I.A. 1578/2002 is set aside. The court below is directed to issue a certificate to the plaintiff authorising him to receive the full amount paid by him as court fee in accordance with Section 16 of the Court Fees Act, 1870.

The Writ Petition is allowed as above. In the circumstances, there will be no order as to costs.

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