

Somanathan Vs. State of Kerala

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Court : Kerala

Decided On : Aug-14-2003

Reported in : 2003(3)KLT1148

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

Acts : Kerala Courts Fees and Suits Valuation Act, 1959 - Schedule - Articles 1 and 11

Appeal No. : W.P. (C) Unnumbered of 2003

Appellant : Somanathan

Respondent : State of Kerala

Advocate for Def. : K.T. Sankaran, Adv. and; K.L. Joseph, Government Pleader

Advocate for Pet/Ap. : N. Nagaresh, Adv.

Judgement :
ORDER

K.S. Radhakrishnan, J.

1. These two unnumbered Writ Petitions are placed before us on a reference made by K. Balakrishnan Nair, J. to determine the amount of court fee to be paid when more than one petitioner join together and file a single petition. G.

Somarajan and 7 others filed a Writ Petition on 26.5.2003 before this court under Article 226 of the Constitution of India remitting a court fee of Rs. 800/-. A separate direction petition was also filed by them along with the Writ Petition by paying a court fee of Rs. 50/-. Registry pointed out the deficiency of the court fee. Counsel insisted that separate court fee be not levied from each of petitioners for the direction petition. The Registry then made the following note:

'In the direction petition there are 8 petitioners, but only one court fee is paid. CF payable is Rs. 50/- per petitioner'.

Incidental is the issue which arises for consideration in the Writ Petition filed by Varghese Joseph and 5 others. On a request made by the counsel matter was placed before the court and was heard by K. Balakrishnan Nair, J. Counsel brought to the knowledge of the learned Judge the noting by the Registry and the ruling made by P.R. Raman, J. in another case. In that case five petitioners joined together filed a stay petition remitting a court fee of Rs. 10/- only. Registry objected and the matter was placed before the Court. The learned Judge minuted as follows:

'As per Schedule II of the Court Fees and Suits Valuation Act as amended by Act 2003, Rs. 100/- per petitioner is the court fee payable in the O.P. filed before the High Court petitioner has already paid court fee as per the said provision. However, in the case of CMP., item 't' of Schedule II provides for payment of Rs. 10/- (Ten only) for an application or petition to be presented to the High Court and not otherwise specifically provided for.

Hence the Fee payable on an application. Otherwise, provided court fee, payable is only Rs. 10/-. Hence there is no deficit of court fee payable on the CMP'.

Sd/-

P.R. Raman, J.'

Learned Government Pleader submitted before K. Balakrishnan Nair, J. that the learned Judge P.R. Raman interpreted Schedule II Article 11(t) of the Kerala Court Fees and Suits Valuation Act, 1959 without referring to Section 6 (3) and (4) and

submitted since the petitioners claim reliefs individually each of the petitioners has to pay separate court fee. Learned Judge found force in the said submission of the Government Pleader and in view of the conflicting views the matter was referred to a Division Bench for an authoritative pronouncement. Hence both these Writ Petitions are before us along with the direction petitions to determine the requisite court fee to be paid in the direction petitions jointly filed by the petitioners in the Writ Petitions filed under Article 226 of the Constitution of India.

2. The question involved is of considerable importance affecting the litigant public, hence we issued notice to the learned Advocate General as well as the President of the High Court Advocates' Association. We heard Advocate Sri. N. Nagaresh for the Writ Petitioners and the learned Government Pleader Sri. K.L. Joseph for the State Government as well as Sri. K.T. Sankaran for the Kerala High Court Advocates' Association.

3. Court fee is defined to be charged for special service tendered to the litigant public by the State Government for the constitution and organisation of Courts. The constitution and organisation of High Court is an exclusive union subject under Entry 78 List 1. Regulation and organisation of the proceeding in the High Court is a law relating to administration of justice which falls under Entry 11-A of List III. Entry 3 of List II of the VIIth Schedule gives exclusive power to State Legislature to regulate the procedure in rent and revenue courts, court fee taken before the High Court and other Courts. The Supreme Court in *Secretary, Government of Madras v. Zenith Lamps and Electricals*, AIR 1973 SC 724, *Om Prakash v. Giri Raj Kishori*, AIR 1986 SC 726, *Government of Madras v. Sriramulu*, AIR 1996 SC 676 held in order to levy 'court fee' there must a broad co-relationship with the fees collected and the cost of administration of civil justice. For levying court fee the legislature is competent to take into account the value of the subject matter of dispute, the various steps necessary in the prosecution of a suit or matter, the entire costs of the upkeep of courts and officers administering civil justice, the vexatious nature of a certain type of litigation and other relevant matters. The Kerala High Court Act, 1958 was enacted to make provision regulating the business and the exercise of the powers of the High Court of the State of Kerala which has received the assent of the President of India on

6.2.1959. High Court of Kerala by virtue of powers conferred under Article 225 of the Constitution of India, Section 122 of the Code of Civil Procedure, 1908 and all other powers enabling in that behalf has issued a notification dated 8.2.1971 laying down the Rules of the High Court of Kerala, 1971 to regulate the procedures in the High Court. Chapter 11 of the Rules deals with the proceeding under Articles 226 and 227 of the Constitution of which we are now concerned with is Rule 147A as then stood which read as follows:

'147A. More persons than one may join in one Writ Petition as petitioners in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons present separate writ petitions, any common question of law or fact would arise provided that each person joining in such writ petition shall pay the court fee payable under Article 11(r) of Schedule II of the Kerala Court Fees and Suits Valuation Act, as if each of them had filed a separate writ petition.'

Rule 147A was inserted by Order No. D1-3135/74 dated 23.5.1975 which regulate the procedure in the matter of filing of Original Petitions. Article 11(r) of Schedule II of Kerala Court Fees and Suits Valuation Act then existed read as follows:

'Petition to the High Court under Article 226 of the Constitution for a writ other than the writ of Habeas Corpus or a petition under Article 227 of the Constitution Twentyfive rupees' Article 11(r) of Schedule II was later omitted from the Schedule by Act 6 of 1991. By the Kerala Court Fees and Suits Valuation (Amendment) Act, 2003 court fee was again introduced for filing Writ Petition before the High Court. The said provision reads as follows:

'11(1) Original Petitions not otherwise provided for when filed in- (iii) the High Court One hundred rupees per petitioner.' Consequently Rs. 100/- will have to be paid towards court fee by each petitioner if the Writ Petition under Article 226 of the Constitution is filed by more than one petitioner.

4. Now the question to be considered is with regard to the rate of court fee payable if more than one writ petitioner join together and file a petition for identical relief in

respect of or arising out the same act or transaction or series of acts or transactions. In the instant case a petition for direction was filed by more than one petitioner under Rule 150 of the Kerala High Court Rules by paying a court fee of Rs. 50/- in all, but raised a plea that stay petition and direction petition would come only under Article 11(t) of Schedule II of the Kerala Court Fees and Suits Valuation Act and not under 11(h)(ii). However, registry insisted that direction petition, stay petition etc. would fall under Article 11(h)(ii) of Schedule II. Before 2003 amendment 11(h) read as follows:

'(h) Application for arrest or attachment before judgment or for temporary injunction:(ii) when presented to the High Court.. Five rupees'.

The word five rupees was substituted by 'fifty rupees' by the Kerala Court Fees and Suits Valuation (Amendment) Act, 2003. We have indicated that the Registry has taken the view that stay petition and direction petition would fall under the above mentioned Article and the fee payable now is Rs. 50/- per petitioner if more than one petitioner join together and file a stay or direction petition. Petitioners however, took up the stand that the stay petition and direction petition would fall under 11(t) as amended by the Kerala Court Fees and Suits Valuation (Amendment) Act, 2003 which reads as follows:

'(t) Application or petition presented to the High Court and not otherwise specifically provided forTen rupees'

Counsel appearing for the petitioners Sri. Nagaresh as well as Sri. K.T. Sankaran who appeared for Advocates' Association submitted that stay petition and direction petition filed in a Writ Petition would fall only under 11(t) since stay petition or direction petition has not been specifically provided in 11(h) or in any of the other Article of Schedule II. Learned counsel also submitted even if more than one person join together and file a stay petition or a direction petition in a Writ Petition they need to pay a consolidated court fee of Rs. 10/- only and not Rs. 10/- separately for each of the petitioners. Reliance was placed on the decision of the learned Single Judge in Appa v. State of Kerala, 1980 KLT 717 wherein the learned Judge examined the scope of Rule 147A of the High Court Rules and held that when several heirs of a deceased person filing a Writ Petition as a legal entity

only a court fee of Rs. 25/- has to be paid. Reference was also made to the decision in P.N. Sekhara Menon v. Ismail Sait Ummar Sait and Ors., 1968 KLT 619 and submitted that the provisions of the law of court fees which are ameliorative in the sense of enabling a party to pay a lesser court fee should be interpreted liberally. Counsel on either side also referred to some other decisions though directly not applicable to the point in issue such as Kunhi Kader and Ors. v. State of Kerala and Ors., 1961 KLT 792, Mariamma Punnose v. Tahsildar, Kunnathunad, 1979 KLT 327, Vasudevan Embrandiri v. Cherpu Service Cooperative Bank Ltd., 1977 KLT 524, Luka v. State of Kerala, 1958 KLT 387, 1952 KLT 642.

5. We may first examine when more than one petitioner join in one Writ Petition and file a Single Petition seeking relief in respect of or arising out of the same act or transactions should pay court fee individually or whether they need to pay a consolidated court fee of Rs. 10/- or Rs. 50/- as the case may be. We are in this case concerned with a Writ Petition filed under Article 226 of the Constitution of India. We have already indicated that for a Writ Petition the court fee to be paid under 11(1)(iii) before the High Court is Rs. 100/-. By the Kerala Court Fees and Suits Valuation (Amendment) Act, 2003 it has been specifically stated that for original petition if filed in the High Court, court fee of Rs. 100/- has to be paid per petitioner. Legislature used the expression 'per petitioner' to indicate that each of the petitioners should pay Rs. 100/- if an Original Petition is filed before the High Court. However, when a petition for arrest or attachment before judgment or for temporary injunction is presented to the High Court the Amendment Act, 2003 has stipulated that a court fee of Rs. 50/- has to be remitted and not per petitioner. The words 'per petitioner' are conspicuously absent in Article 11(h) as well as in Article 11(t) of Schedule II. We are therefore inclined to take the view that the expression 'per petitioner' has been specifically omitted by the legislature from Article 11(h)(ii) as well as from Article 11(t). We may in this connection refer to the judgment of Justice V.R. Krishna Iyer in B.N. Sekhara Menon's case. The learned Judge has stated as follows:

'Speaking broadly, court fee is a fetter on the assertion of a right or the seeking of a remedy by a party, although a person who is unable to pay court fee may

thereby be deprived of the equal protection of the laws notwithstanding the considerate treatment extended, under Order XXXIII CPC to paupers. The provisions of the law of court fees which are ameliorative in the sense of enabling a party to pay a lesser court fee should be interpreted liberally'.

If the legislature wanted each of the petitioners to pay separate court fee in an application or a petition when presented to the High Court the same would have been indicated in the respective articles of Schedule II, especially when in the case of an. Original Petition filed by more than one petitioner in the High Court it is so provided. In interpreting a fiscal statute like Court Fees Act the Court cannot proceed to make good deficiencies if any. The Court must interpret the statute as it stands and in case of doubt benefit would go to the litigant public. The Apex Court in *Controller of Estate Duty v. Alladi Kuppaswamy*, AIR 1977 SC 2069, *Yashwant Rao v. Commissioner of Wealth Tax*, AIR 1967 SC 135 held that in construing a taxing Act the Court is not justified in straining the language in order to hold a subject liable to tax. The words 'per petitioner' might be an omission from Article 11 (5) or 11 (h), then it is a matter for the legislature to supply the omissions and not for the court. We therefore hold even if all the petitioners join together and file a petition for direction or stay they need pay only the court fee stipulated and not separately. We may also examine whether Section 6 (3) and 4 of the Court Fees Act has any impact on Article 11(t) or 11(h) so far as the issue involved in this case. Section 6 deals with multifarious suits. The word 'suit' is a term of art and ordinarily means a proceeding instituted in a civil court by the presentation of a plaint, unlike a Writ Petition filed before the High Court under Article 226 of the Constitution of India. Section 6(4) would apply to memorandum of appeal, applications, petitions and written statements relating to suits and consequent appeal and therefore not applicable to Writ Petition.

6. We may now examine whether the stay petition or direction petition filed in a Writ Petition would fall under 11(h) or under 11(t) of the Act. Registry has taken the view that stay petition/direction petition would fall under Schedule II Article 11(h)(ii) and not under 11(t). We find it difficult to accept the said stand. Article 11(h) of Schedule II deals with three categories of cases. (1) Application for arrest, (2) application for attachment before judgment and (3) application for temporary

injunction. An application for arrest or attachment before judgment or temporary injunction has got its own well defined meaning in civil jurisdiction. The stay petition or direction petition cannot be equated with an application for arrest or attachment before judgment or temporary injunction. Application for stay or direction as the case may be has got its own meaning. Stay of the operation of an order means that the order which has been stayed would not be operative from the date of the passing of the said order and it does not mean that the order has been wiped out from existence. Direction is normally sought for a command or a demand. Injunction is prohibition or restraint, restriction etc. Injunction is normally a preventive remedy. Further the expression 'temporary injunction' has got its own meaning in civil law which is granted under Order 39 of the CPC. An injunction as per Halsbury's Laws 3rd Edn. Vol. 21, page 343 is a judicial process whereby a party is ordered to refrain from doing or to do a particular act or thing. Interlocutory or temporary injunctions are such as to continue until the hearing of the cause upon the merits or until further orders. The purpose of temporary injunction is to preserve the matters in status quo until the issue between the parties be finally decided.

7. We are of the view a direction petition or stay petition in a Writ Petition cannot fall within the expression 'temporary injunction' under 11(h)(ii) of Schedule II of Court Fees Act. Resultantly it would fall only under Article 11(t) of Schedule II of the Court Fees Act. Article 11(t) is a residuary article in Schedule II. Expression 'not otherwise specifically provided for' is very specific. Unless stay petition/direction petition is specifically provided for in Article II (h) of Schedule II those petitions would fall only under the residuary Article 11(t) of Schedule II, We have already indicated only three categories of cases, ie., application for arrest, attachment before judgment and temporary injunction alone have been specifically provided for under Article 11(h) of Schedule II of Court Fees and Suits Valuation Act. Stay petition and direction petition have not been specifically provided for under Article 11(h) of Schedule II of the Act. In our view they would fall under the residuary Article 11(t) of Schedule II, in the event of which for stay petition or direction only Rs. 10/- need be paid by the writ petitioners. Therefore if more than one petitioner join in a writ petition, move a stay petition or direction petition jointly they need to pay a court fee of only Rs. 10/- and not per petitioner unlike in the

case of an Original Petition filed jointly.

8. We may also in this connection refer to the notification No. D1(A) 34761/2000 dated 29.3.2003 issued by the High Court of Kerala in exercise of the powers conferred by Article 225 of the Constitution of India and Section 122 of the Code of Civil Procedure 1908. In view of the said amendment in admitting the original petition, it shall be competent for the court to pass interim order on motion made for the same as to meet the ends of justice. So also any motion for interim relief at the time of admission shall be made in the application under Article 226 or 227 of the Constitution itself in the relief portion. High Court considered it as expedient that separate petition need not be filed seeking interim relief in the Writ Petition filed under Article 226 of the Constitution. -Consequently if a direction or stay petition is filed along with a Writ Petition under Article 226 of the Constitution no court fee need be paid. However, if a separate petition is filed for stay or direction individually or collectively in Writ Petition under Article 226 of the Constitution of India a court fee of Rs. 10/- alone need be paid.

Reference is answered accordingly.

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