

Thomas Vs. State of Kerala

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Court : Kerala

Decided On : Sep-01-2011

Judge : Thomas P. Joseph

Appeal No. : O.P. (C) No.2853 of 2011

Appellant : Thomas

Respondent : State of Kerala

Judgement :

Thomas P. Joseph, J.

1. Petitioner is the plaintiff in O.S.No.518 of 2009 of the court of learned Sub Judge, Irinjalakuda. That was a suit for money filed against the respondent. The case was referred to the Lok Adalath where the dispute was settled and Ext.P1, award was passed on 12.3.2010 for '15 lakhs without interest and costs. The Lok Adalath in Ext.P1, award directed that 1/10th of the court fee paid by the petitioner be refunded. Based on that award, petitioner filed Ext.P2, application before the learned Sub Judge to issue certificate for refund of 1/10th of the court fee paid on the plaint. That application was dismissed as per Ext.P3, order placing reliance on the decision of this Court in John Arthur Henshaw v. Sulochana, 2010 (1) KLT 10.Ext.P3, order is under challenged

2. It is contended that the decision relied on by the learned Sub Judge has no application to the facts of the case since in the reported case there was no order

by the Lok Adalath to refund 1/10th of the court fee but a request was made for the first time in the civil court which was rejected. Learned Government Pleader placed reliance on the decision in John Arthur Henshaw's case and in particular, the observations in para.4 to contend that there is no provision in the Kerala Court Fees and Suits Valuation Act (for short, "the Act") to refund 1/10th of the court fee paid on the plaint.

3. It is not disputed, and Ext.P1 shows that case was settled before the Lok Adalath and in the same award the Lok Adalath directed that 1/10th of the court fee paid on the plaint by the petitioner be refunded to him. Petitioner had paid '15,160/- as 1/10th of the court fee in the civil court at the time of institution of the suit. The question is whether in the light of Ext.P1, award which enables petitioner to get refund of 1/10th of the court fee, the civil court is bound to issue a certificate for release of the said amount.

4. In John Arthur Henshaw's case relied on by the learned Sub Judge, it was a case where the case was settled in the Lok Adalath which declined to refund 1/10th of the court fee which alone was paid on the plaint. The award of the Lok Adalath specifically stated that 1/10th of the court fee cannot be refunded. Plaintiff in that case moved an application before the learned Sub Judge for refund of 1/10th of the court fee. The request was rejected. That order was challenged in this Court. Reliance was placed on the decision in Vasudevan v. State of Kerala, 2003 (3) KLT 993 and Aboobacker v. District Collector; 2006 (3) KLT 670. Learned Judge of this Court distinguished the decisions and held that those cases did not concern a situation where the Lok Adalath had declined to refund 1/10th of the court fee. In the former case parties had agreed in the Lok Adalath that full court fee could be refunded to the plaintiff, that settlement formed part of-the-award and the award permitted plaintiff to approach the civil court for refund of the court fee under law and accordingly, plaintiff requested the civil court for refund the entire court fee paid. Learned Judge while deciding John Arthur Henshaw's case held that so far as the relevant provisions of the Central Court Fees Act are not made applicable to the proceedings before the civil court, refund of entire court fee is not possible. It was held that since the Legal Services Authorities Act. 1987 is a Central Act and provisions therein are binding on the parties to the proceedings

under the Act in the matter of refund of court fee the spirit behind S.21 of the said Act has to be looked into. It was also pointed out that there is no provision in the Act enabling refund of court fee where fee has been paid only to the extent covered by S.4A of the Act at the time of institution of the suit.

5. But Vasudevan's case is a case where, in the Lok Adalath parties agreed that full court fee could be refunded to the plaintiff, that settlement formed part of the award and the Lok Adalath allowed the plaintiff to approach the civil court for refund of the court fee as provided under law. It was held that Lok Adalath was competent to order so under provisions of the Legal Services Authorities Act and Central Court Fees Act. Based on the award of the Lok Adalath, the plaintiff in that case moved an application before the learned Sub Judge. Learned Sub Judge allowed only refund of 50% of the court fee holding that under S.69 of the Act plaintiff is entitled to get refund of only one half of the court fee when the suit is compromised. That order was challenged in this Court (Vasudevan's case). It was held that when a matter is referred to the Lok Adalath by the civil court, provisions contained in the Legal Services Authorities Act shall govern the parties in the matter of resolving the dispute and in the matter of refund of court fee, that there is specific provision in the Legal Services Authorities Act which provides for refund of court fee when the matter is settled as per S.16 of the Central Court Fees Act, the entire court fee paid is liable to be refunded and the court which referred the matter shall issue certificate for collection of such amount.

6. Thus the decisions in Vasudevan's case and John Arthur Hensaw's case (supra) are distinguishable on facts in that in the former, the Lok Adalath empowered by the provisions of the Legal Services Authorities Act and the Central Court Fees Act had accepted the agreement between the parties that the entire court fee be refunded to the plaintiff and permitted him to move the civil court as per the law while in the latter case the Lok Adalath had refused to refund 1/10th of the court fee. In the latter case the question raised was whether it was within the power of the civil court acting under the provisions of the Act to refund 1/10th of the court fee paid under S.4A of the Act. That was found not possible. On the facts of the case the decision in Vasudevan's case should apply and petitioner, in view of Ext.P1, award of the Lok Adalath directing refund of 1/10th of the court fee is

entitled to a certificate for collection of that amount.

Original Petition is allowed. Ext.P3, order is set aside. R.F.A.No.83 of 2010-11 in O.S.No.518 of 2009 will stand allowed. Judge is directed to issue certificate for refund of 1/10th of the court fee paid on the plaint as directed in Ext.P1, award.

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