

(1991) 10 KL CK 0057
High Court Of Kerala
Case No: Unnumbered A, S. of 1988

George

APPELLANT

Vs

Bank of india

RESPONDENT

Date of Decision: Oct. 15, 1991**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 34
- Kerala Court Fees and Suits Valuation Act, 1959 - Section 14, 16, 22, 23(o), 33

Citation: (1993) 1 KLJ 702**Hon'ble Judges:** M. Jagannadha Rao, C.J; T.L. Viswanatha Yer, J; K. John Mathew, J**Bench:** Full Bench**Advocate:** C. Kochunnt Nair, G. Sivarajan and S. Satheesh Kumar, for the Appellant;
M.P.R. Nair and Devan Ramachandran, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Jagannadha Rao, C. J.

1. A question of court-fee is raised by the order of reference made by the Division Bench of this Court dated 17-10-1988. the question relates to payment of court fee under explanation (3) to section 52 of Kerala Court Fees and Suits Valuation Act, 1959, hereinafter called the "Act", in respect of pendent-life interest in an appeal preferred by a defendant before the appellate court. The facts of the case are that the respondent. Bank of india, filed a suit for money against the appellants. The transaction included the hypothecation of movables and also an equitable mortgage of 10 cents of, property by the second defendant, who is the wife of the first defendant. The suit, O. S. No. 225 of 1985, was laid by the Bank in the court of III. Additional Subordinate Judge, Ernakulum, for recovery of a sum of Rs.1,53,654,09 The suit was instituted on 12.4.1985, and the decree was passed on 30-6-1987 for recovery of a sum of Rs. 1,53,654,09 with future interest at the rate of 17.5% per annum from the date suit till realisation from the defendants and charged on 10

cents of property comprised in Sy. No. 711/6-7 of Cheranalloor Village, and belonging to the 2nd defendant. The plaintiff was also allowed to realise the amount due to it by the sale of machinery and other movables in the business premises of the first defendant. Costs were also awarded. Against the said judgment and decree, the first defendant and his wife, the second defendant, filed the appeal on 1-6-1988 in this Court, The appeal was valued only at Rs. 1,53,654,09, and the court fee of Rs. 15,346/- was sought to be paid under Sections 22 and 33 read with Section 51 of the Act. The Registry raised an objection stating that the court fee has to be paid on the interest amount decreed from the date of suit to be date of decree also. The appellants' counsel submitted to the Registry that the word "claims" and the word "accrued" read with the words "except where such interest is relinquished" in Explanation (3) to Section 52 will lead to the inference that the provision is applicable only to a case of plaintiff - appellant, and not to a case of defendant - appellant. According to the appellants' counsel, the defendant appellant is only resisting the suit, and if the suit is dismissed, there is no question of paying interest separately. Counsel contended that in the light of the decision of the Supreme Court in [State of Maharashtra Vs. Mishri Lal Tarachand Lodha and Others,](#) the decision of the Division Bench of this Court in Azeez & Co. v. Indian Overseas Bank 1983 KLT 935 which is followed in Union of India v. Transformers & Electricals 1985 KLT 319, require reconsideration. The matter was then placed before the Division Bench, and the Division Bench referred the matter to a Full Bench by order of reference dated 17.10.1988.

2. Section 52 of the Act reads as follows:

Appeals.- The fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal.

Provided that in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by that Court of first instance or by the court of appeal is pending, credit shall be given for the fee paid by such person in the appeal against preliminary decree.

Provided further that one third of the fee payable in an appeal shall be paid at the stage of admission of first appeal and second appeal 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 appeals are admitted:

Provided also that the court may, for sufficient reasons to be recorded in writing, extend the period up to thirty days.

Explanation (I)-Whether the appeal is against the refusal of a relief or against the grant of the relief, the fee payable in the appeal shall be the same as the fee that would be payable on the relief in the Court of first instance.

Explanation (2).-Costs shall not be deemed to form part of the subject-matter of the appeal except where such costs form themselves the subject-matter of the appeal or relief is claimed as regards costs on grounds additional to, or independent of, the relief claimed regarding the main subject matter in the suit.

Explanation (3)-In Claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be part of the subject matter of the appeal except where such interest is relinquished.

Explanation(4) -Where the relief prayed for in the appeal is different from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be payable in the Court of first instance on the relief prayed for in the appeal.

Explanation (5).-Where the market value of the subject-matter of the appeal has to be ascertained for the purpose of computing or determining the fee payable, such market value shall be ascertained as on the date of presentation of the plaint.

In this case we are concerned with the meaning of Explanation (3) to Section 52. That provision states that in claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject-matter of the appeal, except where such interest is relinquished. Learned counsel for the appellants referred to Sections 14, 16, 22, 23 (o) and 33 (4), (5) and (9) to say that the word "claim" is used in the said Sections of the Act to indicate that the Legislature used the word "claim" only to mean the claim of the plaintiff. Learned counsel therefore submits that in explanation (3) to Section 52 the word "claim" must have been intended to apply only to the claim of the plaintiff, and therefore in the appeal preferred by the defendant, the interest accrued against him pendent lite cannot be treated as part of the subject-matter of the appeal for the purposes of court fee. Reliance is also placed on the word "except where such interest is relinquished" occurring in explanation (3) to contend that the question of relinquishment of interest would arise only in the case of the plaintiff and would never arise in the case of the defendant. It is also contended that the word "accrued" in explanation (3) to Section 52 would also indicate the interest accruing pendent lite in favour of the plaintiff, which is to be included in the part of the claim. Reliance is also placed on the decision of the Supreme Court in *State of Maharashtra v. Mishrilal*, (supra) to say that the award of interest pendent-lite is discretionary u/s 34 of the C.P.C. and further the award of interest is incidental to the decree for the principal amount. It is pointed out by the Supreme Court in the above decision while dealing with an appeal by a defendant that the court fee need not be paid on the pendent lite interest in an appeal filed by the defendant unless he specifically questions the award of interest. It is on the basis of the above decision that the learned counsel for the appellants seeks reconsideration of the earlier decisions of this Court

referred to above,

3. in our view, the contention of the appellants' counsel cannot be accepted. A careful reading of Explanation (3) to Section 52 would show that pendent - life interest shall be deemed to be part of the subject matter of the appeal (except where such interest is relinquished). The class of cases in which such a fiction is to be applied relates to "claims" which include the award of interest subsequent to the institution of the suit. in our view, the explanation does not restrict the applicability of the fiction only to "claims" of a plaintiff, which include the award of interest subsequent to the institution of the suit. But the Explanation, in our view, refers to the subject-matter of the appeal arising out of claims which include the award of interest (except where such interest is relinquished) accrued pendent - life. The fiction relates to subject - matter of the appeal, and not to "claims". That in our opinion, is the proper interpretation of the above said Explanation Viewed in that light, it will not, therefore, matter whether the subject-matter of the appeal relates to an appeal preferred by the plaintiff or defendant. All that is required is that the appeal must arise out of a claim which includes the award of interest subsequent to the institution of the suit. Another anomaly, that might arise, if the appellants' contention is accepted, will be that if a suit is dismissed by the trial court and plaintiff's appeal is allowed - the plaintiff having treated the pendent - life interest as the subject-matter of first appeal, the defendant, at the stage of Second Appeal, would be able to exclude the pendent life interest. Such a situation in which the subject - matter would diminish at the second appellate stage cannot, in our view, be allowed in the context of Explanation (3).

4. So far as the decision of the Supreme Court in State of Maharashtra v. Mishrilal is concerned, their Lordships were not dealing with any provision introducing a fiction as in Explanation (3) to Section 52 of the Act. Their Lordships were concerned in that case with the Bombay Court Fees Act, and were interpreting Sch. I Art. I where the words "subject - matter in dispute" alone are used. it was held that in respect of amount of interest decreed for periods subsequent to the institution of the suit, no court fee is payable in the appeal preferred by the defendant. The Supreme Court proceeded on the basis that the award of interest is discretionary, and further it is incidental to the amount claimed. A reading of the Supreme Court decision further shows that in such an appeal the plaintiff need not pay court fee on pendent-life interest, and therefore the defendant also need not pay court fee in respect of pendent-life interest, unless the defendant specifically questions the award of interest. In our view, the said decision of the Supreme Court has no application to a question arising under Kerala Act wherein we have a separate deeming provision in Explanation (3) to Section 52. We are, therefore, of the view that the above said two decisions of this Court holding that in the case of an appeal by a defendant court fee is payable on the pendent-life interest are correct, and do not require any reconsideration.

5. The point is also raised that the word "relinquishment" mentioned in the Explanation would apply only to the case of the plaintiff, and not to the case of the defendant. We may point out that a Division Bench of the Andhra Pradesh High Court consisting of N. D, Krishna Rao, J (as he then was) and-Sharfuddin Ahmed, J. in Rat Saheb Seth Gopikishen Agarwal v. Union of India, 1966 (I) An. W. R. 149, while dealing with a plaintiff's appeal, wherein a contention was raised that Explanation (3) would apply to the case of defendant's appeal, observed as follows;

.....The right to challenge interest pendent life may be relinquished either by the plaintiff or by the defendant.

Even assuming that the word "relinquishment" of a claim would apply only to the case of a plaintiff, and not to the case of a defendant, we are of the view that the Explanation should be construed in a distributive manner by confining the clause "except where such interest is relinquished" to cases where the plaintiff is the appellant. In other words, the Explanation would be applicable to cases of appeals by defendant, all that is required in such circumstances is to omit from consideration the above said clause, namely, "except where such interest is relinquished" when the court is dealing with a defendant's appeal. For the aforesaid reasons, we agree with the objection of the Registry and hold that the appellants have to pay court fee on the pendent-life interest which accrued from the date of the plaint till the date of decree. Time for payment will be two months from today, in case the additional court fee is paid, the appeal will be registered