

(2009) 06 KL CK 0153

High Court Of Kerala

Case No: Writ Petition (C) . No. 7799 of 2009

Dasan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: June 15, 2009**Acts Referred:**

- Constitution of India, 1950 - Article 141
- Kerala Court Fees and Suits Valuation Act, 1959 - Section 39(2), 53, 55, 55B, 76
- Kerala Motor Vehicles Rules, 1989 - Rule 395

Citation: (2009) 3 ILR (Ker) 894 : (2009) 4 KLT 186**Hon'ble Judges:** P.R. Ramchandra Menon, J**Bench:** Single Bench**Advocate:** G. Sreekumar Chelur, Preethi Karunakaran and K.M. Varghese, for the Appellant; C.K. Govindan, Government Pleader, for the Respondent

Judgement

P.R. Ramchandra Menon, J.

The common issue arising in all these cases is, whether the petitioner is entitled to have exemption from the payment of "additional Court Fee" payable at the rate of 0.5 % to the Kerala Legal Benefit Fund, for sustaining appeal before the Tribunal.

2. The petitioners, who challenge the assessment orders passed by the concerned authority, lost the battle before the First Appellate Authority, which led to the proceedings filed before the Tribunal. The said proceedings were noted as defective, for the fact that the requisite "additional Court Fee" as specified above was not paid by the petitioners. True, the petitioners had filed an application for exempting them from paying the "additional Court Fee" as above, but after considering the relevant provisions of law, the Tribunal observed that there was absolutely no power or provision to accede to the request made by the petitioners and accordingly the petitions were dismissed, leading to the natural consequence of dismissing the Appeals as well, which in turn has been subjected to challenge in the present Writ

Petition.

3. The basic question to be answered is whether the departmental authorities can impose the "additional Court Fee" as stated above. The source of power is available from Section 76 of the Kerala Court Fees and Suits Valuation Act. It was in accordance with above, that the S.R.O. 225 of 2002 was issued by the Government, whereby levy of "additional Court Fee" was introduced w.e.f. 16.2.2004 and ever since then, in respect of the assessment years starting from the date of operation of the above prescription, the concerned appellants are made liable to pay the "additional Court Fee" for entertaining the matter before the Tribunal.

4. The sustainability of the legal provisions in this regard, particularly, as to the scope of Section 76 of the Kerala Court Fees and Suits Valuation Act, S.R.O. 225 of 2002 and the relevant provisions of Kerala Legal Benefit Fund Rules, 1991, were subjected to challenge before this Court earlier, contending that there was absolutely no power or jurisdiction to impose any such additional liabilities towards Court Fee. The said contentions were negated by a learned Single Judge of this Court in [Ismail Vs. State of Kerala](#), which was affirmed by the Division Bench as per the decision rendered in [Chackolas Spinning and Weaving Mills Ltd. Vs. State of Kerala](#). This being the position, the rights and liabilities with regard to the stipulation for payment of the "additional Court Fee" stand concluded and it is no more open to challenge.

5. The main contention put forth from the part of the petitioners is, that the proceedings before the Tribunal are more or less akin to the provisions and proceedings before the Civil Court and as such, the relevant provisions of CPC are liable to be made applicable to the proceedings of the Tribunal as well. To put it more clearly, petitioners seek to rely upon the provisions of Order 44 and 33 of the CPC to be made applicable to the proceedings before the Tribunal as well, for enabling them to file necessary proceeding in "forma pauperis". Both the learned Counsels appearing for the petitioners, referring to many a ground raised in the Writ Petitions submit that, the Tribunal is having all the trappings of Civil Court and this being the position, the petitioners ought to have been permitted to pursue the proceedings granting exemption, by virtue of Order 33 of the Civil Procedure Code. Reliance is also placed on the decision of the Apex Court in [State of Haryana Vs. Smt. Darshana Devi and Others](#).

6. The learned Counsel for the petitioners, referring to the powers of the Tribunal, particularly as to the powers conferred under Sections 53, 55, 55B, 39(2) submits that non exercise of the jurisdiction by the Tribunal in considering the request made by the petitioners and in denying the benefit of exemption is without any regard to the provisions contained in the Civil Procedure Code, which in fact could have been and should have been applied in respect of the proceedings before the Tribunal as well.

7. The learned Government Pleader appearing on behalf of the respondents submits that the proceedings before Tribunal are not at all governed by the provisions of the CPC and on the other hand, application of the CPC is only to the requisite and specified extent as given u/s 53 of the K.G.S.T. Act, particularly for, (a) summoning and enforcing the attendance of any person and examining him on oath or affirmation and (b) for compelling the production of any document. The Tribunal being a creature of the Statute, can have only the powers specified under the Statute and cannot assume any wider power contrary to the mandate as given thereby, submits the learned Government Pleader.

8. Admittedly, there is no case for the petitioners that the Act or Rules confer any power upon the Tribunal to grant exemption from paying the requisite "Court Fee/additional Court Fee". The contention of the petitioners is that, the dictum laid down by the Apex Court in [State of Haryana Vs. Smt. Darshana Devi and Others](#), , being the law of the land by virtue of Article 141 of the Constitution of India, shall be made applicable to the proceedings before the Tribunal as well, particularly since, right of the persons to sue in "forma pauperis" is very much recognised under Order 33 and 44 of the C.P.C.

9. With regard to the dictum in the above case, it relates to the rights and liberties flowing under the Motor Vehicles Act, where an Award was passed in favour of the legal heirs of the deceased victim, who was the sole bread winner, in a road traffic accident. Considering the relevant provisions of law, the High Court held that the claimants were very much entitled to pursue the proceedings without paying the requisite court fee, which in turn was challenged by the State by filing SLP before the Apex Court. The "leave" sought for by the State was refused, however making some observations. The opening paragraph of the verdict itself speaks about the scope of the judgment where, it is observed : "we refuse leave but with a message tag". The message is seen reflected in the last paragraph of the verdict. The last paragraph of the verdict is as follows:

while we dismiss the petition for leave, we hope the Haryana State will hasten to frame rules under the Motor Vehicles Act to enable claimants for compensation to be free from payment of court fee.

From the above observation itself, it is very much clear that the Apex Court, while declining the interference, refusing to grant leave in the S.L.P., alerted the Government as to the necessity to frame relevant rules for granting exemption from the court fee.

10. Another important aspect to be noted is that, in view of the binding judicial precedents, dismissal of SLP will not merge with the verdict passed by the High Court and as such, it cannot be said that the observations made by the Apex Court while dismissing the SLP has to be treated as having the effect of a "precedent" and declaration of the law, to attract Article 141 of the Constitution of India.

11. It is also relevant to note that, in the case dealt with by the Apex Court, there was absolutely no contribution or connection for the victims, in causing the accident, which made them eligible to obtain the compensation as prescribed under the relevant provisions of Motor Vehicles Act. In the case in hand, the position is different; particularly in view of the fact that the petitioners had already effected "sales", collecting the tax from the consumers and it was with respect to the disputed tax liability, that the petitioners were pursuing the matter by filing appeals before the Tribunal.

12. In Kerala, particularly with regard to the cases involving compensation under the Motor Vehicles Act, there is a specific stipulation under the Kerala Motor Vehicles Rules, 1989 as evident from Rule 395, whereby the scope and applicability of the CPC has been specifically dealt with. Obviously, Order 33 or Order 44 is not made a mention in Rule 395 of the Kerala Motor Vehicles Rules. That apart, under Rule 397 of the Rules, a specific stipulation is also provided to grant "exemption of Court Fee" in appropriate cases. Unlike this, neither the K.G.S.T. Act nor the Rules, nor even the "Regulations" made by the Tribunal enable the defaulter to file appeals without paying the additional court fee as involved in the present cases. In the above circumstances, no interference is called for in the present Writ Petitions and they are dismissed accordingly.

However, it is made clear that, the dismissal of the above Writ Petitions will not preclude the rights and interest of the petitioners to proceed with the steps before the Tribunal, by paying the requisite court fee. If the petitioners remit the requisite court fee within a period of one month from the date of receipt of a copy of this judgment, the court fee will be treated as paid within the time and the appeals shall be considered accordingly, on merits.