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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 19TH DAY OF APRIL 2022 / 29TH CHAITHRA, 1944

OP(C) NO. 1124 OF 2021

(IN O.S.No.232 OF 2013 OF THE ADDITIONAL SUB COURT-II, KOTTAYAM)

PETITIONER:

MITHUN T. ABRAHAM
AGED 40 YEARS
THOTTATHIL HOUSE, KOTTAYAM P.O., KOTTAYAM VILLAGE,
KOTTAYAM TALUK, KOTTAYAM, KERALA - 686 002.
BY ADVS.
SRI. SHYAM PADMAN
SRI. JOSEPH ABRAHAM (KOTTAYAM)
SRI. HARISH ABRAHAM

RESPONDENTS:

- 1 THE SUB-COURT OF JUDICATURE, KOTTAYAM
REPRESENTED BY SHERISTADAR, KK ROAD, P.O, COLLECTORATE,
KOTTAYAM, KERALA - 686 002.
- 2 M.K. THOMAS
MOOZHUPERUMATHU, CHERUKULANJI P.O., VEDASSERIKKARA, RANNI,
PATHANAMTHITTA - 689 661.
- 3 SIBY JOSEPH
MANIMALETHU HOUSE, VECHOOCHIRA P.O., CHETHACKAL, RANNI,
PATHANAMTHITTA - 689 667.
- 4 MOBIN ABRAHAM
MALIEKAL, THRUTHICAD P.O., KALLOOPARA, MALLAPALLY,
PATHANAMTHITTA - 689 583.
- 5 K.M. PUNNOOSE
KUTTIYIL, MAZHUKKEER P.O., THIRUVANMADOOR, CHENGANOR,
ALAPPUZHA - 689 121.
- 6 OMANA CHACKO
(W/O.LATE THOMAS CHACKO), MANIMALETHU HOUSE, VECHOOCHIRA
P.O., CHETHACKAL, RANNI, PATHANAMTHITTA - 684 511.
- 7 KUNJAMMA MATHEW
(W/O.LATE M.P.MATHEW), MANIMALETHU, KUMPALATHAMON P.O.,
VADASSERIKKARA, RANNI, PATHANAMTHITTA - 689 661.
- 8 BINO MATHEW
(S/O.LATE M.P.MATHEW), MANIMALETHU, KUMPALATHAMON P.O.,
VADASSERIKKARA, RANNI, PATHANAMTHITTA - 689 661.

- 9 TECIL CHEMICALS AND HYDRO POWER LIMITED
 CHINGAVANAM, KOTTAYAM, (HEAD OFFICE AS EMPIRE HOUSE, 3RD
 FLOOR, 214, DR.D.N.ROAD, FOR MUMBAI - 400 001), RE. BY
 CHAIRMAN AND MANAGING DIRECTOR SRI.S.B.SOMANI,
 SHRINIKETHAN, 5TH FLOOR, MARINE DRIVE, MUMBAI - 400 002.
- 10 KAYALTHEERAM BUILDINGS AND REALTORS INDIA PRIVATE LIMITED
 REP. BY GENERAL MANAGER AND AUTHORISED REPRESENTATIVE,
 SRI.SHAJI MATHEW, KALLADAYIL, KUMARAMPEROOR, VADAKEKKARA,
 CHITAR SEETHATHODU VILLAGE, CHITAR SEETHATHODU P.O.,
 RANNI, PATHANAMTHITTA - 689 661.
- 11 KOSAMATTAM FINANCE LTD. KOTTAYAM
 (REGISTERED OFFICE AT KMC BUILDING, ML ROAD, KOTTAYAM)
 REP. BY ITS MANAGER MATHEW K. CHERIAN, KOSAMATTOM,
 MANGANAM P.O., VIJAYAPURAM, KOTTAYAM - 686018.
- *12 STATE OF KERALA
 REPRESENTED BY LAW SECRETARY

*(ADDITIONAL R12 IS SUO MOTU IMPEADED VIDE ORDER DATED
24.08.2021)

OTHER PRESENT:

SRI. S. UNNIKRISHNAN, GOVERNMENT PLEADER

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22.11.2021, THE
COURT ON 19.04.2022, DELIVERED THE FOLLOWING:

'CR'

JUDGMENT**Dated this the 19th day of April, 2022**

The petitioner is the 6th plaintiff in O.S.No.232 of 2013 of the Additional Sub Court-II, Kottayam. The suit was filed for realisation of amounts due from the defendants. The dispute was settled amicably, pursuant to a reference to the Lok Adalat under Section 89(1) (c) of the Code of Civil Procedure. Thereupon, Ext.P1 award, incorporating the terms of the settlement, was passed by the District Legal Services Authority, Kottayam. As per Clause 4.6 of the award, the court fee paid in the suit was to be returned to the petitioner and the other plaintiffs. Accordingly, the petitioner submitted Exts.P2 application seeking refund of an amount of Rs.5,042/- paid in excess of the court fee payable and P3, for refund of Rs.44,98,400/- paid towards court fee. By Ext.P4 certificate, an amount of Rs.41,83,512 was

ordered to be refunded after deducting Rs.3,14,888/-.

This original petition is filed aggrieved by the deduction of Rs.3,14,888/-, which according to the petitioner is without authority and hence, illegal.

2. Adv. Harish Abraham, learned Counsel for the petitioner, contended that Section 21 of the Legal Services Authorities Act, 1987 ('the Act', for short) read with Section 16 of the Court-Fees Act, 1870, makes it obligatory to refund the entire amount of court fee paid. To bolster the contention, reliance is placed on the decision in ***Vasudevan V. A v. State of Kerala and others [AIR 2004 Kerala 43]***.

3. Learned Government Pleader contended that the practice being followed is to deduct 7% of the court fee, even in matters settled before the Adalat.

4. In the report was called for from the learned Sub Judge to ascertain the reason for deducting 7% of the court fee, it is stated that deduction was made in tune with the proviso to Rule 14 of the Kerala Court Fees & Suits Valuation (Board of Revenue) Rules,

1960. It is stated that the printed form in 'Civil Register 69 (Rule 373)', dealing with refund of court fees contain a column for deducting 7%. Moreover, the usual practice followed in the civil courts at Kottayam is to deduct 7% from the court fees, even if the dispute is settled before the Lok Adalat.

5. Section 89 (1) (c) empowers the civil courts to refer the terms of a possible dispute for judicial settlement through Lok Adalat. As per section 89(2) (b), such reference shall be in accordance with the provisions of sub-section(1) of Section 20 of the Act. Upon such reference, all other provisions of the Act will apply in respect of the dispute referred to the Lok Adalat. As per Section 21 (1), every award of the Lok Adalat shall be deemed to be a decree of a civil court and when a compromise or settlement is arrived at by a Lok Adalat, in a case referred to it under Section 20 (1), the court fee paid in such case shall be refunded in the manner provided under the Central Court Fees Act, 1870. Section 16 of the Central Court Fees Act,

1870, being the corresponding provision is extracted hereunder;

"16. Refund of fee - Where the court refers the parties to the suit to any one of the mode of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 the plaintiff shall be entitled to a certificate from the court authorizing him to receive back from the Collector, the full amount of the fee paid in respect of such plaint."

6. From a conjoint reading of the above provisions it is apparent that, when a dispute in a pending civil case is referred to the Lok Adalat and settled, the entire court fees paid is liable to be refunded. The settlement of dispute, passing of award and consequential refund of court fees being governed by the provisions of the Legal Services Authorities Act and the Court Fees Act respectively, deduction of 7% of the court fee paid by placing reliance on the Kerala Court Fees and Suits Valuation (Board of Revenue) Rules, 1960 is clearly unsustainable. The legal position in this regard is laid down in **Vasudevan V.A**(*supra*), reads as

under;

“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.”

It can therefore be unhesitatingly held that refund of court fee in the instant case is governed by Section 16 of the Court Fees Act, 1870 read with Section 21 of the Legal Services Authorities Act and hence the whole of the court fee paid is liable to be refunded.

7. Incidentally, it may be worthwhile to note that the Kerala Court Fees and Suits Valuation (Board of Revenue) Rules 1960 is formulated in

exercise of the power conferred by Section 84 of the Kerala Court Fees and Suits Valuation Act, 1959. Section 84(h), which is contextually relevant, is extracted hereunder for easy reference.

'Section 84. Power of Board of Revenue to make rules- (1) The Board of Revenue may, with the previous sanction of the Government, make rules consistent with this Act to provide for or regulate all or any of the following matters, namely:-

(a) xxxxxxxx

(b) xxxxxxxx

(h) the circumstances in which stamps may be held to be damaged or spoiled;

(i) xxxx

(j) xxxxx

Provided that, in the case of stamps used in the High Court such rules shall be made with the concurrence of the Chief Justice.'

The corresponding Rule 13 of the Kerala Court Fees and Suits Valuation (Board of Revenue) Rules, 1960 provides for renewal of used damaged or spoiled court fee stamps. Rule 14 empowers the Collector or other officer to give other stamps of the same description and value in lieu of the used, damaged or

spoiled court fee stamps and, if the applicant so decides to refund the same amount or value in money. As per the first proviso to Rule 14, in cases where the value is paid in cash, a deduction of 7 naye paise for each rupee or fraction thereof shall be made. Therefore, Rule 14 of the Kerala Court Fees and Suits Valuation (Board of Revenue) Rules 1960 has nothing to do with the refund of court fee paid in a suit settled before the Lok Adalat.

8. It would also be apposite to note that Rule 373 of the Civil Rules of Practice only prescribes the Form in which the certificate for refund is to be issued. Merely because the prescribed form contains a column for deduction of portion of the court fees to be refunded, it would be preposterous to take a stand that, irrespective of the dictate of the substantial provision under which the refund is to be made, court fees has to be deducted, so that the column is not left unfilled.

In the result, the writ petition is allowed. The

deduction of Rs.3,14,888/- from the court fee paid is declared to be illegal and the Additional Sub Court-II, Kottayam is directed to issue requisite certificate for releasing the balance amount of court fees paid in O.S.No.232 of 2013.

Sd/-

V.G.ARUN

JUDGE

NB

APPENDIX OF OP(C) 1124/2021

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE SETTLEMENT AWARD DATED 08/06/2020 OF THE LOK ADALAT IN O.S NO.232/2013 AND A COPY FORWARDED TO THE ADDL. SUB COURT-II, KOTTAYAM.
- EXHIBIT P2 TRUE COPY OF THE I.A.NO.2/2020 DATED 22/09/2020 FOR EXCESS COURT FEE PAID.
- EXHIBIT P3 TRUE COPIES OF THE I.A.NO.3/2020 DATED 22/09/2020 FOR THE COURT FEE.
- EXHIBIT P4 TRUE COPY OF THE RELEVANT PAGES OF CIVIL REGISTER NO.33, REGISTER FOR REFUND OF COURT FEES, REFUND ORDER NO.ACS/RB.12/20-21 DATED 23/09/2020 FOR RS.44,98,400/-.
- EXHIBIT P5 TRUE COPY OF THE RELEVANT PAGES OF CIVIL REGISTER NO.33, REGISTER FOR REFUND OF COURT FEES, REFUND ORDER NO.ACS/RB-12/20-21 DATED 23/09/2020 FOR RS.5042/-.
- EXHIBIT P6 TRUE COPY OF THE ACKNOWLEDGMENT ISSUED BY THE DISTRICT TREASURY, KOTTAYAM DATED 25/11/2020 FOR REFUND OF RS.41,83,512/-.
- EXHIBIT P7 TRUE COPY OF THE ACKNOWLEDGMENT ISSUED BY THE DISTRICT TREASURY, KOTTAYAM DATED 25/11/2020 FOR REFUND OF RS.5042/-.

RESPONDENTS EXHIBITS: NIL

TRUE COPY
P.A. TO JUDGE