



2024/KER/5566

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 17TH DAY OF JANUARY 2024 / 27TH POU SHA, 1945

OP(C) NO. 2688 OF 2023

IN O.S. NO.1312/2020 OF PRINCIPAL MUNSIFF'S COURT, THRISSUR

PETITIONER(S) /PETITIONER/PLAINTIFF:

SHREE DHANWANTARI CHITS INDIA PRIVATE LIMITED

[REDACTED]

BY ADVS.
N.M.MADHU
C.S.RAJANI

RESPONDENT (S) /RESPONDENTS/DEFENDANTS :

1 BABU

[REDACTED]

2 SARASWATHY

[REDACTED]

3 BABY

[REDACTED]

*ADDL.R4 STATE OF KERALA
REP. BY THE LAW SECRETARY, GOVT SECRETARIAT,
THIRUVANANTHAPURAM.

*(SUO MOTU IMPEADED AS ADDITIONAL 4TH RESPONDENT
VIDE ORDER DATED 5/12/2023)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
17.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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'C.R.'

J U D G M E N TDated this the 17th day of January, 2024

The question raised in this Original Petition pertains to the refund of the court fee collected towards the legal benefit fund. The plaintiff in the suit, O.S No.1312/2020, of the Principal Munsiff's Court, Thrissur, is the petitioner herein. He is aggrieved by Ext.P3 order, which declined the petitioner's application for refund of Legal Benefit Fund, the claim for which was made on account of the settlement arrived at between the parties in mediation. Since the issue involved is refund of legal benefit fund, State of Kerala represented by the Law Secretary was *suo moto* impleaded as additional 4th respondent. Notice to party respondents were dispensed with.



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2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. Learned counsel for the petitioner submits that the matter was referred to mediation and it was settled successfully, wherefore, by virtue of Section 69A of the Kerala Court fees and Suits Valuation Act, 1949 (for short, 'the Act'), the petitioner is entitled to refund of the whole of the court fee paid. It was pointed out that the court fee has been refunded; however, the amount paid towards the legal benefit fund has not been refunded, for the reason that the said amount is not a court fee, that it is levied as an additional court fee only as a mode of collecting the fund and that refund will defeat the purpose for which legal benefit fund is constituted. Learned counsel also placed reliance upon Section 76 of the Act, to point out that the Legal Benefit Fund is also an 'additional court fee' and hence, governed by Section 69A of the Act.



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4. Learned Government Pleader argued in line with the reasoning stated in Ext.P3 order, to refuse refund.

5. Having heard the learned counsel for the respective parties, this Court leans in favour of the submission made by the learned counsel for the petitioner. Section 76 of the Act is extracted herebelow:

"76. Legal Benefit Fund—(1) Notwithstanding anything contained in this Act or any other law for the time being in force and subject to section 4A of the Act and sub-rule (1) of rule 397 of the Kerala Motor Vehicle Rules, 1989 it shall be competent for the Government to levy an additional court fee by notification in the Gazette, in respect of original petitions, original applications, appeals or revisions to tribunals, appellate authorities and original suits in Civil Courts other than in Family Court at a rate not exceeding one percent of the amount involved in the dispute and in other cases at a rate not exceeding one hundred rupees for each original suit, original petition, original application, appeal or revision.

Provided that in the case of appeals under the Kerala State Goods and Services Act,



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2017, (20 of 2017), the Kerala General Sales Tax Act, 1963 (15 of 1963), the Kerala Tax on Luxuries Act, 1976 (32 of 1976) and the Kerala Value Added Tax Act, 2003 (30 of 2004), the maximum limit of additional court fee leviable shall not exceed rupees twenty thousand.

Explanation:- The term " amount involved in the dispute" as specified in sub-section (1), where it is capable of valuation, does not include the amount of valuation for the purpose of court fee, in suits for recovery of possession, partition and suits of similar nature and where fixed court fee is specified under this Act.]

(2) There shall be constituted a legal benefit fund to which shall be credited-

(i) the proceeds of the additional court-fees levied and collected under sub-section (1);

(ii) fifty per cent of the court-fees levied and collected on mukhtarnama or vakalathnama under Article 16 of Schedule II of this Act.

(3) Notwithstanding anything contained in any other law for the time being in force, an amount equal to seventy percent of the Legal Benefit Fund collected under sub-section (2) shall be set apart every year towards the Fund constituted under Section 3 of the Kerala Advocates' Welfare Fund Act, 1980 and an amount equal to thirty percent of the Legal Benefit Fund collected shall be set apart towards the Fund constituted under Section 3 of the Kerala Advocates' Clerks Welfare Fund Act, 2003:

Provided that the amount so set apart shall be transferred to such Funds after retaining an amount equal to ten percent



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each from the amount set apart to the Funds specified in sub-section (3) for providing infrastructure to the litigants.

(4) The mode and manner in which legal service to the people may be made more efficient and social security measures for legal profession may be provided, shall be as prescribed by rules made by Government."

6. Sub-Section(1) to Section 76, only speaks of levying "an additional court-fee" at the rate specified therein. There is no mention, whatsoever, of the legal benefit fund in Sub Section(1). It is Sub-Section(2) to Section 76 which speaks of constitution of the legal benefit fund, to which the additional court fee collected vide Sub-Section(1) has to be credited. It is also important to note that the legal benefit fund is not solely constituted of the additional court fee so collected; instead, it includes fifty percent of the court fees collected on Vakalathnama under Article 16 of Schedule II to the Act. It is true that Sub-Section(3) specifies the purpose for which the fund so constituted has to be applied. Merely



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because a purpose is specified for utilisation of the legal benefit fund, which includes other court fee collected as well, the nature and character of the amount collected under Sub-Section(1) to Section 76 will not cease to be one of court fee, the whole of which is refundable under Section 69A of the Act. If such refund is to be refused for the purpose of constitution of the fund, then, every other court fee levied also has a purpose, wherefore refund becomes impossible in respect of the same as well, which logic defies the mandate of Section 69A and renders it otiose. This Court therefore concludes that the nature and character of the additional fee levied, though for constituting the legal benefit fund, is nothing, but that of a court-fee. It is indeed a misnomer to speak of refund of legal benefit fund. What is sought to be refunded is the additional court fee levied under Section 76(1) of the Act.

7. Section 69A speaks of the refund of "the whole



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court-fee paid" upon settlement by recourse to Section 89 of the Code of Civil Procedure. The obvious purpose behind such refund of the whole of the court fee is to promote settlement of issues amicably between the parties, so as to save the valuable time of the court and to bring in a permanent quietus to the issue, which cannot be lost sight of. Going by the scheme of Section 89 of the Code, such settlement takes place before the court seriously applies its mind to the contentious issues.

8. In the circumstances, this Court is of the opinion that Section 69A covers the additional court fee levied under Section 76(1) of the Act as well, the same being a specie of court-fee, as decipherable from the language employed in Section 76 of the Act.

In the above circumstances, this Original Petition is allowed. Ext.P3 order is set aside. There will



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be a direction to the learned Munsiff to refund the additional court fee collected under Section 76(1) of the Act also to the petitioner.

Sd/-

C. JAYACHANDRAN
JUDGE

Skk



APPENDIX OF OP(C) NO.2688/2023

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 TRUE COPY OF THE DECREE DATED 24.11.2022
IN O.S. NO.1312/2020 ALONG WITH
MEDIATION AGREEMENT DATED 07.11.2022
- EXHIBIT P2 TRUE COPY OF THE REFUND APPLICATION
DATED 01.03.2023 IN I.A. NO. 20/2023 IN
O.S. NO. 1312/2020 ON THE FILES OF THE
II ADDITIONAL MUNSIF'S COURT, THRISSUR.
- EXHIBIT P3 TRUE COPY OF THE ORDER DATED 23.09.2023
IN REFUND APPLICATION NO. 20/2023 IN
O.S. NO. 1312/2020 PASSED BY THE
PRINCIPAL MUNSIF'S COURT, THRISSUR.