



2023/KER/80732

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 8TH DAY OF DECEMBER 2023/17TH AGRAHAYANA, 1945

RSA NO. 632 OF 2023

AGAINST THE DECREE AND JUDGMENT DATED 19.10.2020 IN AS 4/2018 OF

ADDITIONAL DISTRICT COURT, OTTAPALAM

DECREE AND JUDGMENT DATED 28.09.2017 IN OS 287/2014 OF MUNSIF

COURT, OTTAPPALAM

APPELLANT/APPELLANT/DEFENDANT:

BABY



BY ADV V.A.VINOD

RESPONDENT/RESPONDENT/PLAINTIFF:

CHANDRAMATHY



BY ADVS.

PRAVEEN K.JOY

T.A.JOY (K/62-A/2009)

E.S.SANEEJ (K-224/2014)

M.P.UNNIKRISHNAN (K/293/2015)

N.ABHILASH (K/000187/2017)

DEEPU RAJAGOPAL (K/001444/2019)

ARDRA ANIL (K/002924/2022)

ALBIN VARGHESE (K/000965/2022)

ABISHA.E.R (K/001032/2023)

FATHIMA SHALU S. (K/2636/2021)

ANUPAMA NAIR (K/001442/2023)

ADITHYA LAL (K/003076/2023)

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 08.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**CR****JUDGMENT**Dated this the 8th day of December, 2023

This Regular Second Appeal has been filed under Section 100 of the Code of Civil Procedure, challenging the decree and judgment dated 19.10.2020 in A.S.No.4/2018 on the files of the Additional District Court, Ottapalam arose out of decree and judgment in O.S.No.287/2014 on the files of the Munsiff Court, Ottapalam. The appellant herein is the defendant in the above suit and the respondent is the plaintiff.

2. Heard both sides.

3. I shall refer the parties in this regular second appeal as 'plaintiff' and 'defendant' for convenience.

4. As per the decree and judgment impugned in A.S.No.4/2018, the appellate court dismissed the appeal as under:

“Balance Court Fee not paid. Appeal dismissed with cost”.

5. It is submitted by the learned counsel for the



defendant that though, as on 28.11.2022, balance court fee remitted and a petition filed under Section 151 of CPC to restore the appeal, the said application also was dismissed. Thereafter, the present appeal has been filed. The learned counsel for the defendant prayed for an opportunity to hear the first appeal on merits, after setting aside the verdict impugned.

6. The learned counsel for the plaintiff submitted that the contention of the defendant lacks bonafides and thereby the appeal was dismissed for non-payment of balance court fee. The attempt of the defendant is nothing but to protract the matter and therefore this second appeal must fail.

7. In this case, when the plaintiff/appellant failed to pay balance court fee, the learned appellate Judge dismissed the appeal for non-payment of balance court fee. Therefore, this appeal stands admitted, formulating the following substantial questions of law.

1. What will be the proper procedure to strike an appeal when the appellant fails to pay balance court fee?



2. Whether the appellate court erred in not following the procedure provided under Order VII Rule 11(c) read with Section 107(2) of CPC?

8. In this connection, it is relevant to refer Order VII Rule 11 of CPC, which deals with *rejection of plaint*. It has been provided in Order VII Rule 11(c) that where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so, the plaint shall be rejected. So, as provided under Order VII Rule 11(c) of CPC, when failure to pay the required court fee, the trial court shall reject the plaint and such rejection of plaint is *decree* as defined under Section 2(2) of CPC.

9. Coming to appeals; Order XLI Rule 3 deals with rejection of appeal, when the memorandum of appeal not drawn up as prescribed under Order XLI Rule 1 and 2 of the CPC. But the said provision does not permit rejection of appeal



for non-payment of balance court fee. Order XLI Rule 19 of CPC deals with re-admission of appeal dismissed for default. Order XLI Rule 17 of CPC deals with dismissal of appeal for appellant's default. Order XLI Rule 17 of CPC does not cover dismissal of appeal for default for non-payment of balance court fee. None of the provisions in Order XLI of CPC directly deal with the procedure to be followed when the appellant fails to pay balance court fee. In this connection, it is apposite to refer Section 107 of CPC which deals with the powers of the appellate court. As per Section 107(1) of CPC, subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power – (a) to determine a case finally; (b) to remand a case; (c) to frame issues and refer them for trial; (d) to take additional evidence or to require such evidence to be taken. Section 107(2) of CPC specifically provides that subject to the powers under Section 107(1) of CPC, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by



this Code on Courts of original jurisdiction in respect of suits instituted therein.

10. In this context, it is apposite to refer Division Bench decision of this Court in **Gopalan Nair v. Bhaskaran** reported in **(2002 KHC 54)**, where this Court held as under:

“The failure to pay the balance court fee may, therefore, be a default inviting certain consequences. What that consequence is, is provided by O.7 R.11(c) of the Code of Civil Procedure and that consequence is the rejection of the plaint or the memorandum of appeal in view of S.107 of the Code of Civil Procedure. This consequence is specifically dealt with by the Code, which provides that a rejection of the plaint would amount to a decree as defined in the Act. If by virtue of S.107 of the Code of O.7 is held to be applicable to appeals. Clearly the rejection of the appeal for non payment of court fee or balance court fee in view of the Explanation to S.52 of the Court Fees Act, can only be understood as a decree giving rise to consequences arising therefrom.”

11. In view of the above decision, the legal position is that the appellate court has the power to reject an appeal for non-payment of balance court fee, as provided under Order VII



Rule 11 (c) read with Section 107(2) of CPC and the proper procedure to strike down an appeal due to failure on the part of the appellant to pay balance court fee is rejection of the appeal and the said rejection of appeal is decree, as defined under Section 2(2) of CPC. Thus, it is found that the appellate court erred in not following the procedure laid down in Order VII Rule 11(c) read with Section 107(2) of CPC, while disposing the first appeal. Therefore, the order passed by the appellate court, dismissing the appeal for non-payment of court fee, is not justifiable.

12. In this case, the appellant already paid the balance court fee on 28.11.2022, though the application for review of the order filed in the form of restoration petition was dismissed.

13. Since the defendant paid the balance court fee, an opportunity shall be given to the defendant to agitate the matter on merits before the appellate court and in view of the matter, the decree and judgment passed by the appellate court dated 19.10.2020 stand set aside. Consequently, the matter



remitted back to the appellate court for disposal of the appeal within a period of two months from the date of receipt/production of a copy of this judgment.

14. The parties are directed to appear before the appellate court on 05.01.2024.

All interlocutory applications pending in this regular second appeal stand dismissed.

Registry shall forward a copy of this judgment to the appellate court for information and compliance.

**Sd/-
A. BADHARUDEEN
JUDGE**