

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 8TH DAY OF JUNE 2022 / 18TH JYAISHTA, 1944

OP(C) NO. 674 OF 2020

AGAINST THE ORDER DATED 07.06.2019 IN I.A.NO.149/2019 IN

OS.NO.3/2019 OF SUB COURT, NORTH PARAVUR

PETITIONER/RESPONDENT/PLAINTIFF:

K.K.IBRAHIM,
AGED 60 YEARS,
S/O.KASIM, KAROTHUKUDY HOUSE, PALLIPPURAMKARA,
MARAMPILLY VILLAGE, MUDICAL P.O., KUNNATHUNADU
TALUK, ERNAKULAM DISTRICT, PIN CODE-683 547.
BY ADVS.
SHIBU JOSEPH
SRI.AJITH VISWANATHAN

RESPONDENT/PETITIONER/DEFENDANT:

M/S. COCHIN KAAGAZ (CKL)
HAVING ITS REGISTERED OFFICE AT KARUKUTTY P.O.,
ANGAMALY, ALUVA TALUK, ERNAKULAM DISTRICT, PIN
CODE-683 576, REPRESENTED BY ITS MANAGING DIRECTOR
NALLAMUTHU CHANDRAN.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 25.05.2022,
THE COURT ON 08.06.2022 DELIVERED THE FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

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O.P(C).No.674 of 2020
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Dated this the 8th day of June, 2022

J U D G M E N T

The short interesting question comes forth in this matter is as under;

Mere reference of a party for settlement by recourse to Section 89 of the Code of Civil Procedure would entitle refund of court fee as provided under Section 69A of the Kerala Court Fees and Suits Valuation Act (hereinafter referred to as 'the Act' for short), though the matter not settled finally?

2. The plaintiff in O.S.No.3/2019 on the file of the Additional Sub Court, North Paravur, has filed this Original Petition under Article 227 of the Constitution of India seeking modification of order dated 07.06.2019 passed in O.S.No.3/2019 in

the above Suit, whereby the learned Sub Judge referred the parties in the Suit for arbitration after closing the Suit, without order for refund of 1/10th court fee paid by the petitioner/plaintiff in the Suit.

3. The respondent herein is the defendant in the above Suit.

4. Heard the learned counsel for the petitioner. Nobody appeared for the respondent.

5. It is argued by the learned counsel for the petitioner that the petitioner herein paid 1/10 court fee to the tune of Rs.1,21,840/- at the time of institution of the Suit. Since the parties were referred to arbitration, the plaintiff is entitled to get return of the 1/10 court fee paid by him. When the learned counsel was asked to point out the enabling provisions in the Act, it is fairly submitted by the learned counsel for the petitioner that there is no direct provision in the Act enabling return of 1/10 court fee paid, on mere reference under Section 89 of C.P.C.

6. It is submitted by the learned counsel for the petitioner

further that there is no decision on this point. However, the learned counsel given emphasis to Section 69A of the Act to canvass refund of 1/10 of court fee as contended. As per Section 69A introduced by way of amendment w.e.f 1.4.2013, it has been provided as under:

“69A. Refund of court-fee in case where the dispute is settled under Section 89 of the Code of Civil Procedure:-- Where a suit, appeal or other Proceeding before any Court is settled by recourse to Section 89 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908), the whole court-fee paid on the plaint/Memorandum of Appeal or other Proceedings, except in interlocutory matters, shall be ordered by the Court to be refunded to the parties concerned by whom the court-fee was paid.”

A plain reading of the above provision would make it clear that when a Suit or appeal or other proceedings before any court is settled by recourse to Section 89 of C.P.C, the whole court fee paid shall be refunded except in interlocutory matters. Thus it is clear that Section 69A of the Act would come into play, only when the case is settled by recourse to Section 89 of C.P.C. It is true that settlement of disputes dealt under Section 89 of C.P.C includes

'arbitration' as well. However, Section 69A of the Act makes the position without any iota of doubt that refund of court fee is provided only when a Suit, appeal or other proceedings before any court is settled by recourse to Section 89 of C.P.C and refund is not permissible on mere reference of parties. Thus it is clear that mere reference of parties by different modes of settlement provided under Section 89 of C.P.C is not sufficient to refund the entire court fee paid as contended, and the statutory mandate is settlement of the dispute by recourse to Section 89 of C.P.C. Earlier, before introduction of Section 69A, Section 69 of the Act dealt with refund of court fee in cases of compromise or when Suit is decided on the admission of parties. Proviso to Section 69 of the Act introduced by way of amendment w.e.f 5.12.1990 states that no refund shall be ordered where only one-tenth of the amount of fee on plaint as required Section 4A or one-third of the amount of fee on memorandum of appeal as required by Section 52 has been paid by the parties.

7. While pressing for refund of court fee, the learned counsel for the petitioner placed a Division Bench decision of this Court reported in [2011(4) KHC 568], *Manilal Panicker S. v. Titto Abraham*, to contend that while dealing with impact of Section 69, this Court held that where a compromise or settlement has been arrived at the Lok Adalat in a case referred to it, the entire court fee paid, whether it is 1/3rd, 1/10th or one half, shall be refunded in the manner provided under Central Court Fees Act. The above decision was rendered after referring Section 21 of the Legal Services Authorities Act, 1987, holding that the said provision envisages refund of court fees in the manner provided under the Central Court Fees Act. The said decision further held that full amount of the court fee paid in respect of the plaint in a case where the court has referred the parties to the suit to any one of the ADR mechanisms enumerated under Section 89(1) of C.P.C, is to be refunded on settlement or compromise before it. It has been held specifically that the right to refund the court fee, by virtue of

Section 21 of Legal Services Authorities Act would accrue only on settlement or compromise. Be it so, it cannot be said that mere reference of parties for arbitration or other modes of settlement provided under Section 89 of C.P.C by itself is sufficient to refund the court fee paid by the parties, either in full or 1/10 or 1/3, as the case may be. There shall be a settlement in view of the reference and in such cases alone refund provided under Section 69A of the Kerala Court Fees and Suits Valuation Act can be resorted to.

8. Here the petitioner has not produced any materials to substantiate the fact that on reference to arbitration, the dispute was settled. In view of the matter, the contention raised by the petitioner to the effect that the petitioner is entitled to get 1/10th of the court fee paid merely because the parties were referred to arbitration by recourse to Section 69 of the Act cannot sustain and therefore, the said contention is found against. Consequently, I am not inclined to interfere with the order of the learned Munsiff in any manner.

Accordingly, this Original Petition fails and hence the same is dismissed.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtv/

APPENDIX OF OP(C) 674/2020

PETITIONER'S EXHIBITS

- EXHIBIT P1 TRUE PHOTOSTAT COPY OF THE PLAINT IN OS
NO.3 OF 2019 ON THE FILES OF THE
ADDITIONAL SUB COURT, NORTH PARAVUR.
- EXHIBIT P2 TRUE PHOTOSTAT COPY OF THE SAID IA
NO.149 OF 2019 IN OS NO.3 OF 2019 ON THE
FILES OF THE ADDITIONAL SUB COURT, NORTH
PARAVUR.
- EXHIBIT P3 TRUE PHOTOSTAT COPY OF THE ORDER DATED
07.06.2019 IN IA NO.149 OF 2019 IN OS
NO.3 OF 2019 ON THE FILES OF THE
ADDITIONAL SUB COURT, NORTH PARAVUR.