

1971 KHC 161
Kerala High Court
V. R. Krishna Iyer, J.
MUKUNDAN v. NALINI
S. A. No. ... of 1970
19 August, 1970

Kerala Court Fees and Suits Valuation Act, 1959, Schedule.2 Art.3(iii)A(1)(b)S.17, 23 - S.51 of the Act deals with the fee payable on a memorandum of appeal against an order relating to compensation -- The implication is that where there is no such express provision, an application will attract Court fee only under Schedule.2 and an appeal against an order on an application also only under the appropriate Article in Schedule.2. (Para 4, 5, 7)

AIR 1959 Pat. 186; Referred to

Interpretation of Statutes - Court Fee Act will have to be so construed that the benefit of any serious doubt must go against the levy of fee. (Para 7)

K. Bhaskaran; P. Thankappan; K. Suresh; For Appellants
Government Pleader; For State

ORDER

1 These two second appeals, which remain unnumbered, because the common appellant contests the demand for larger court fee made by the taxing officer, relate to orders on applications under S.10A and 10B of the Madras Marumakkathayam Act, 1933 whereunder, the respondent wife, who was sought to be divorced by the husband, claimed successfully, maintenance pendente lite under S.10A, and later, maintenance till remarriage under S.10B of the Act. Appeals were carried against both the orders, but in vain, and now the husband, or rather the ex-husband, divorce having been ordered, comes up in second appeal challenging the order passed against him under the aforesaid provisions of the Madras Marumakkathayam Act, 1933.

2 These court fee references, I may state right at the beginning, have to be viewed against the constitutional perspective of equal access to courts for all alike which is restricted by the requirement that a pursuit of legal remedies will be conditional on first paying a fee which may be heavy.

3 If court fee -- an onerous sum in this case -- is leviable from the husband, it will be equally leviable from the wife who, destitute and divorced, seeks payment of maintenance from her husband and may well be rebuffed at the outset by a demand of fee for the very institution of the claim; and in many cases this may amount to denial of relief to the down and out divorcee and thus an indirect violation of the rule of law in its larger connotation. A beneficent bit of social legislation would thus be muted and the law in the books fail when it comes to law in the courts!

4 The scheme of the Madras Marumakkathayam Act provides for petitions for dissolution of marriage and where any such proceeding is pending, the poorer of the two, the wife or the husband as the case may be, may move for maintenance during the pendency of the proceeding and also for the payment to the petitioner of the expenses of the proceeding. A court exercising

jurisdiction under the relevant Chapter, may also order the respondent to pay to the applicant for her or his maintenance and support periodical claims. S.10A and 10B of the Madras Marumakkathayam Act, therefore, provide for interlocutory applications in the original petition. Ordinarily, applications of this type fall under Art.11(g), Schedule II to the Kerala Court Fees and Suits Valuation Act, 1959 (for short, called the Act) since that is the residuary provision in the case of applications and petitions. An appeal against an order on an application or petition, not otherwise provided for, I am immediately concerned with such an appeal is covered by Art.3 (iii)(A)(1)(b) of the Second Schedule to the Act, which is the residuary provision relating to appeals from orders. The wife, in the Trial Court, and the husband, in the first appellate court and here, have paid court fee on the aforesaid basis. The demand made now is for payment of court fee ad valorem on the amount computed under S.23 of the Act. There is no dispute that S.23 relates to suits for maintenance and annuities and cannot apply, except by some special process of reasoning, to applications. The process commended to me for acceptance by the Government Pleader is that although only suits for maintenance are covered by S.23, S.17 of the Act attracts S.10 to 14 to petitions and applications and the higher tax becomes exigible. Let us examine the argument.

5 S.17 reads:

"17. Fee payable on petitions, applications etc. The provisions of S.10 to 14 shall apply mutatis mutandis to the determination and levy of fee in respect of petitions, applications and other proceedings in Courts in the same way as they apply to the determination and levy of fee on plaints in suits."

It is apparent that this provision is calculated to import the procedure for correcting errors in the matter of levy of court fee and for certain other matters and does not deal with the rate of fee. S.10 merely states that certain particulars of the subject matter of the suit, bearing on the valuation for purposes of court fee, should be furnished by the plaintiff. May be that a petitioner or applicant must also furnish, in certain situations, similar particulars. S.11 creates a jurisdiction in the High Court to adjudicate upon differences arising between the officer, whose duty it is to see that proper fee is paid, and any party as to the necessity of paying a fee or the amount thereof. May be, when similar doubts and disputes arise in cases of applications and petitions, the same jurisdiction can be invoked on strength of S.11 of the Act. S.12 gives power to the Court to determine the proper fee payable. And S.13 and 14 deal with special situations where a party may become liable to pay additional fee by reason of an issue framed in the suit or may relieve himself of the obligation to pay additional fee by relinquishing a part of his claim. In some far-fetched situations, these provisions may apply, by virtue of S.17, to petitions and applications and other proceedings. The point is that S.10 to 14, read with S.17, relate to the power and the mode of determining and levying fee on plaints and other proceedings and do not speak on the rate or quantum to be fixed. These procedural provisions cannot help to decide whether on an application under S.10A or 10B of the Madras Marumakkathayam Act, an ad valorem court fee under S.23 or a nominal fixed court fee under Art.11(g) or Art.3(iii)(A)(1)(b) of Schedule H of the Act has to be paid.

4. Counsel for the State feebly urged that a party, under S.10A and 10B, seeks to recover amounts by way of maintenance must be made to pay fee as in the case of suits for such relief, and on the same logic for appeals against orders under S.10A and 10B. He also argued that appeals are but continuations of suits and, therefore, must be subjected to the same levy as under S.23 read with S.17.

5. I cannot agree for the obvious reason that S.17 does not deal with the rate of court fee at all, but with the procedure for determination of the court fee, by and large. More ever, applications and appeals from orders on applications are covered by the Articles already referred to and provided for in Schedule II. When the statute wants to levy a higher court fee in the case of appeals against orders, specific provision is made in that behalf. S.51 of the Act deals with the fee payable on a memorandum of appeal against an order relating to compensation. The implication is that where there is no such express provision, an application will attract court fee only under Schedule II and an appeal against an order on an application also only under the appropriate Article in Schedule II. A suit is different from a petition and an appeal in the scheme of the court fee law.

6 There is support from precedents for the stand I have taken. In AIR 1959 Patna 186 a somewhat analogous situation arose. The court was dealing with an application under S.13 of the Hindu Marriage Act, 1955 and court fee was paid under the provisions of Art.1(b), Schedule II of the Court Fees Act, which is more or less similar to Art.3(iii)(A)(1)(b). A higher court fee was demanded, but the court held that there was no scope for importing the words 'plaint' and 'suit' into S.13 of the Hindu Marriage Act which only used the word application. An application requires to be stamped as a mere petition and not as a plaint under the Court Fees Act. On this reasoning, the learned judges of the Patna High Court upheld the lighter levy.

7 In that decision, the court observed that it is settled law that fiscal statutes must be construed strictly and in favour of the subject. While I do not agree that all fiscal measures should be always interpreted against the State and in favour of the tax payer in the new jurisprudence being evolved in the socio-economic context of India, I have no doubt that there is another great principle that should be remembered by courts when interpreting and applying the court fee law. Every jurist will recall to mind the historic document by which, in 1215 A. D., on the meadow of Runnymede, King John agreed to the great rights embodied in the Magna Carta one of which assured 'To no one will we sell, deny, or delay right or justice'. In later centuries, this guarantee blossomed into a constitutional mandate in many parts of the world, including the United States of America and India that every citizen shall be entitled to the equal protection of the laws. In its procedural emanations this right carries the connotation that the rich and the poor may pursue their legal remedies without being inhibited or impeded by the demand for payment of heavy court fee. In a poor country like ours, the court may not be able to render justice to all or effectively ensure the observance of the rule of law if parties can be scared away by demand of heavy sums initially before entry into the temple of justice. This means that the Court Fees Act will have to be so construed that the benefit of any serious doubt must go against the levy of fee, and only if the court, on a strict construction, finds that the proceedings comes squarely within any of the provisions of the Act, will it direct payment thereof. In the present case, I have no doubt that only 75 p. in the Trial Court and Rs. 5 at the appellate level is all that is payable on a reasonable interpretation of the provisions of the Act. The higher demand cannot, therefore, be made. I hold that the court fee paid is sufficient.
