

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 12<sup>TH</sup> DAY OF JANUARY 2023 / 22ND POUSHA, 1944

OP(C) NO. 2463 OF 2019

OS 4/2018 OF SUB COURT, KASARAGOD

**PETITIONER/PETITIONER:**

S.SURENDRAN,  
AGED 56 YEARS  
S/O.R.SADASIVAN, SOPANAM, DWARAKA NAGAR,  
KASARAGOD - 671 121.

BY ADV SRI.M.SASINDRAN

**RESPONDENTS/RESPONDENTS:**

- 1 STATE OF KERALA,  
REPRESENTED BY THE DISTRICT COLLECTOR, KASARAGOD, PIN -  
671 001.
- 2 BRANCH MANAGER, THE KERALA STATE FINANCIAL ENTERPRISES  
LTD.,  
BIG BAZAR BUILDING, KASARAGOD, KASARAGOD (P.O.),  
KASARAGOD TALUK, KASARAGOD DISTRICT, PIN - 670 001.
- 3 MANAGING DIRECTOR,  
THE KERALA STATE FINANCIAL ENTERPRISES LTD., CORPORATE  
OFFICE BHADRATHA, MUSEUM ROAD, THRISSUR DISTRICT, PIN-  
680 001.

BY ADV SRI.SALIL NARAYANAN K.A., SC, KSFE LTD.

SRI. V. MANU, SENIOR GOVERNMENT PLEADER

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 12.01.2023,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“C.R.”**

**Dated this the 12<sup>th</sup> day of January, 2023**

**JUDGMENT**

Can court fee be refunded after the suit is decided on merits is the question that arises for consideration?

2. The plaintiff in O.S. No.04/2018 of the Court of the Subordinate Judge, Kasaragod, has filed the original petition challenging Ext.P6 order. The respondents are the defendants in the suit.

3. The skeletal facts leading to Ext.P6 order are as follows:

(i) The petitioner had filed the suit against the respondents for a decree for damages.

(ii) By Ext.P1 judgment, the court below dismissed the suit.

(iii) The petitioner filed I.A. No.127/2019 (Ext.P2) for the refund of the court fee and the legal benefit fund stamps.

(iv) As there was a delay on the part of the court

below in disposing Ext.P2 application, the petitioner filed O.P(C) No.1690/2019 before this Court. This Court orally observed that the petitioner's remedy is to seek for the return of the plaint, plaint documents and court fee.

(v) Accordingly, the petitioner filed I.A. No.170/2019 (Ext.P3) for the return of the plaint, plaint documents, court fee and legal benefit fund stamps.

(vi) By Ext.P5 judgment, this Court had directed the court below to dispose Ext.P3 application within 15 days.

(vii) The court below, by the impugned Ext.P6 order, dismissed Ext.P3 application.

(viii) Ext.P6 is patently erroneous and wrong. Hence, the original petition.

4. Heard; Sri.M.Sasindran, the learned Counsel appearing for the petitioner, Sri.V Manu, the learned Senior Government Pleader appearing for the first respondent/State and Sri.Salil Narayanan, the learned Counsel appearing for the respondents 2 and 3.

5. Sri.M.Sasindran reiterated the contentions in the

original petition. He drew the attention of this Court to Order 7 Rule 11 (d) of the Code of Civil Procedure (in short 'Code') and the decision of this Court in **Janaki Amma v. Krishnan** [1978 KLT 463] and argued that although the court below had dismissed the suit on the finding that the suit is barred by law, the dismissal is essentially a rejection of the plaint under Order 7 Rule 11 (d) of the Code. Thus, the court below has committed a mistake in dismissing the suit. Consequently, the court below should have allowed Ext.P3 application and refunded the court fee and legal benefit stamps under Section 70 of the Kerala Court Fees and Suits Valuation Act, 1959 (in short, 'Act').

6. Sri.V.Manu drew the attention of this Court to Order 7 Rule 11(d) of the Code and contended that only when it appears from the statement in the plaint that the suit is barred by law, the provision of Order 7 Rule 11(d) of the Code gets attracted; otherwise, the courts are obliged to proceed under Order 14 Rule 2 of the Code,

frame issues and then determine the suit. If the court proceeds under Order 14 Rule 2 of the Code, then a decree must be drawn as contemplated under Section 33 of the Code. Once a decree is passed, it is appealable under Section 96 of the Code. He placed reliance on the decision in **Thulaseedharan P.C. v. Renie Fernandez and Another** [2022 (4) KHC 417], wherein a Division Bench of this Court has laid down the law on the above-argued lines. He further argued that once the court completes the adjudicatory process, a party is precluded from aspiring for the return of the plaint and refund of the court fees. The court below has rightly passed Ext.P6 order, which is justifiable and does not warrant any interference by this Court. Hence, the original petition is liable to be dismissed.

7. Sri.Salil Narayanan endorsed and supported the submission of Sri.V.Manu. He argued that it was up to the petitioner to have withdrawn the suit after the respondents had filed their written statement contending

that the suit was not maintainable. Instead, the petitioner adopted a wait-and-watch policy. After the suit was dismissed, the petitioner filed Ext.P3 application for the return of the plaint and refund of the court fee, which is alien in law. The petitioner's remedy is to file a right royal appeal challenging the decree, instead of resorting to the present experimental course. The original petition is meritless.

8. The suit was filed for a decree for damages. The respondents resisted the suit by filing their written statements, inter alia, contending that the suit was not maintainable in law.

9. The court below had formulated seven issues. After the petitioner remitted the balance court fee, the parties went to trial. The petitioner examined PWs1 to 5 and marked Exts.A1 to A21 on his side, and the respondents examined DW1 and marked Exts.B1 to B16 and X1 on their side in evidence.

10. After analysing the pleadings and evidence on

record, the court below deemed it fit to frame additional issue No.8, i.e., whether the court has the jurisdiction to entertain the suit in the light of Section 64 (3) of the Chit Funds Act, 1982 and Rule 47 of the Kerala Chit Funds Rules, 2012.

11. After hearing both sides, the court below dismissed the suit by answering issue No.8 against the petitioner and holding that suit was hit by Section 64 (3) of the Chit Funds Act, 1982.

12. Undisputedly, Ext.P1 judgment and decree have not been challenged by the petitioner and have attained finality.

13. Subsequently, the petitioner filed Ext.P3 application for the return of the plaint, the plaint documents and the refund of the court fee of Rs. 8,18,400/- and the legal benefit fund stamp of Rs.1,00,000/-.

14. The court below, after considering Ext.P3 application, passed Ext.P6 on the following lines :

“5. The point: The petitioner is the plaintiff. He filed the above suit seeking for a decree to realise compensation for damages to the tune of rupees one crore from defendant Nos. 1 to 3. The first defendant is the State of Kerala represented by the District Collector, Kasaragod. The second defendant is the Branch Manager of Kerala State Financial Enterprises Ltd., Kasaragod and the third defendant is the Managing Director of the Kerala State Financial Enterprises Ltd., Thrissur. It could be seen from the records that this court framed issues after filing the written statement. Thereafter, on conducting a full fledged trial and examining PWs 1 to 5 from the side of plaintiff and marking of Ext.A1 to A21 documents and marking the documents produced from the side of defendants as B1 to B16 and also marking of Ext.X1 and upon hearing finding that the civil court jurisdiction is ousted and the civil court has no jurisdiction to entertain the suit. There was no order as to costs. The suit was dismissed on 23-2-2019. The plaintiff has filed the above application on 28-6-2019. The claim of the petitioner is that since the court has dismissed the suit on the ground that it is a lacking jurisdiction in entertaining the suit, he is entitled to get refund of the court fee. It is an admitted fact that this court has passed the judgment and decree after adjudicating the real question in dispute between the parties. After passing the decree the court has no control over the matter except when a review petition is filed or an execution petition is to execute the decree passed by the court. It is true that the defendant Nos.2 and 3 had taken a contention in the written statement that the jurisdiction of the court is ousted by virtue of the provisions under the Chits Act. The refund and remission of court fee is governed by section 66 to 77



of the Kerala Court Fees and Suit Valuation Act. The learned counsel has relied on the decision in Simi Salim and Anr. v. M/s. Tip Top Furniture industries and Ors. reported in 2016 (1) KHC 643 for claiming refund of court fee and substantiate his claim. It could be seen that the above decision relied on by the petitioner is not applicable to the present case, as this court has passed a judgment and decree on merits after adjudicating the real question in controversy between the parties. The remedy available for the petitioner on getting knowledge of the fact that the jurisdiction is barred was to file an application for returning the plaint. It is not at all proper for the petitioner to make personal comments in a proceeding filed before the court against a Presiding Officer who has passed the judgment and decree on merits.

6. Even after taking notice of the contention raised by the defendants in the written statement, the plaintiff proceeded with the trial of the case and waited till a decision has passed by this court for seeking a relief for returning the plaint and refund of court fee. The judgment and decree passed by this court can only be corrected in appeal. The petitioner could have filed a review against the judgment and decree if there is sufficient ground available for the same. The ground urged by the petitioner for refund of court fee is not legally sustainable. Therefore, the application is to be dismissed.

In the result, the petition is dismissed. Considering the circumstance of the case, there is no order as to costs.”

15. The sheet anchor of the learned Counsel for the

petitioner is that in **Janaki Amma v. Krishnan** (supra), this Court, has held that the dismissal of a suit under Order 7 Rule 11 of the Code will only tantamount to a rejection of the plaint and, therefore, the court below has committed a mistake. Hence, the petitioner is entitled to the refund of the court fee.

16. The decision in **Janaki Amma v. Krishnan** was rendered by this Court in a case where the plaint was rejected under Order 7 Rule 11 (c) of the Code.

17. It is profitable to extract Order 7 Rule 11 of the Code of Civil Procedure for the sake of understanding the provision, which reads as follows:

**11. Rejection of plaint.**— The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

**(c) where the relief claimed is properly valued, but the plaint is returned 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;**

**(d) where the suit appears from the statement in the plaint to be barred by any law;**

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

18. A reading of clauses (c) and (d) of the above provision demonstrates a marked difference. Obviously, if the requisite stamp paper is not supplied within the prescribed time period, the courts have no other option but to reject the plaint under Order 7 Rule 11 (c), which would always be before the parties go to trial. That is not the case in a rejection under Order 7 Rule 11 (d). If the said provision is to be invoked, the suit should appear from the statement in the plaint to be barred by any law.

19. In **Popat and Kotecha Property v. State Bank of India Staff Assn.**, [(2005) 7 SCC 510], the Honourable Supreme Court held as follows:

“10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears

from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force”.

20. While dealing with a case of an identical nature, the Honourable Supreme Court in ***Pawan Kumar v. Babulal***, [(2019) 4 SCC 367] held thus:

“13. In the present case, the controversy has arisen in an application under Order 7 Rule 11 CPC. Whether the matter comes within the purview of Section 4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. **Going by the averments in the plaint, the question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject-matter of assessment at the stage when application under Order 7 Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the parties. It cannot be said that the plea of the appellant as raised on the face of it, was barred under the Act.** The approach must be to proceed on a demurrer and see whether accepting the averments in the plaint the suit is barred by any law or not. We may quote the following observations of this Court in *Popat and Kotecha Property v. SBI Staff Assn*”.

21. Thus, it is trite if the suit does not appear to be barred from the statement in the plaint, then the court is to proceed to the next stage as laid down under the Code and then adjudicate the suit after a full-fledged trial.

22. In the instant case, the court below initially formulated seven issues and proceeded with the trial. It is after the completion of the trial, it appeared to the court below that the suit was barred by law. Accordingly, the court below framed additional issue No.8, heard the parties and then dismissed the suit, holding that the suit was hit by the Chit Funds Act, 1982.

23. Without challenging the decree, the petitioner filed Ext.P3 application for the return of the plaint, the plaint documents, for the refund of the court fee, alleging that the court below has committed a mistake in dismissing the suit instead of rejecting the plaint. Hence, the petitioner is entitled to a refund of the court fee under Section 70 of the Kerala Courts Fees and Suits Valuation Act, 1959.

24. Sections 66 to 70 of Chapter VII of the Act deal with refunds and remissions.

25. Section 70 of the Kerala Courts Fees and Suits Valuation Act, 1959, reads thus:

**“70. Refund of fee paid by mistake or inadvertence.-** The fee paid by mistake or inadvertence shall be ordered to be refunded.”

26. Interpreting Section 70 of the Act, a Division Bench of this Court in **Linsaraj v. State of Kerala** [2018 (1) KLT 626] has, in unequivocal terms, held that Section 70 of the Act comes into play only when there is no adjudicatory process. A similar view has been taken in **Thanappan v. Hassan Kappor** [2003 KHC 370 and **Abdul Azeez v. Nedungadi Bank Ltd. & others** [2017 (2) KHC 389].

27. Ext.P1 is a judgment rendered after a full-fledged trial and a complete adjudicatory process. Thus, the judgment falls squarely under Section 33 of the Code and was followed by a decree. A decree passed under Section 33 of the Code is appealable under Section 96 of the

Code. Without challenging the decree, the petitioner has filed Ext.P3 application with a seemingly innocuous prayer for the return of the plaint, the plaint documents, the court fee and legal benefit fund stamps. The said course is untenable and impermissible in law, mainly because the petitioner has consciously paid the balance court fee, participated in the trial and has suffered a decree.

28. The reason why court fee is levied from litigants is lucidly explained by the Honourable Supreme Court in **Secy. to Govt. of Madras v. P.R. Sriramulu [(1996) 1 SCC 345]**.

29. I don't find any mistake or inadvertence committed by the court below, as alleged by the petitioner. The attempt in Ext.P3 was purely experimental in nature, which has been rightly rejected by the court below by Ext.P6 order. The court below has not overstepped its authority or powers, warranting interference by this Court under Article 227 of the

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Constitution of India. The original petition is meritless and sans substance, and is hence dismissed.

SD/-

**C.S.DIAS, JUDGE**

rmm12/01/2023



APPENDIX OF OP(C) 2463/2019

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE JUDGMENT DATED 23/02/2019 IN O.S.NO.04/2018 ON THE FILE OF SUBORDINATE JUDGE, KASARAGOD.
- EXHIBIT P2 TRUE COPY OF THE PETITION DATED 20/05/2019 AS I.A.NO.127/2019 IN O.S.NO.04/2018 PENDING BEFORE THE SUBORDINATE JUDGE, KASARAGOD.
- EXHIBIT P3 TRUE COPY OF THE PETITION DATED 28/06/2019 IN I.A.NO.170/2019 IN O.S.NO.04/2018 PENDING BEFORE THE SUBORDINATE JUDGE, KASARAGOD.
- EXHIBIT P4 TRUE COPY OF THE JUDGMENT DATED 12/07/2019 IN O.P.(CIVIL) NO.1690/2019.
- EXHIBIT P5 TRUE COPY OF THE JUDGMENT DATED 08/08/2019 IN O.P.(CIVIL) NO.2108/2019.
- EXHIBIT P6 TRUE COPY OF THE ORDER DATED 30/08/2019 IN I.A.NO.170/2019 IN O.S.NO.04/2018 ON THE FILE OF SUBORDINATE JUDGE OF KASARAGOD.