

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

OP(C).NO. 3802 OF 2013 (O)

**AGAINST THE JUDGMENT IN CMA 92/2013 OF ADDITIONAL DISTRICT COURT -IV,
THRISSUR DATED 23-09-2013**

**AGAINST THE ORDER IN OS 996/2013 OF III ADDITIONAL MUNSIFF COURT,
THRISSUR DATED 17-07-2013**

PETITIONER/APPELLANT/PLAINTIFF:

**SURESH, AGED 38 YEARS
S/O KUNJU, VELLANCHERY HOUSE, MULAMKUNNATHUKAVU DESOM
KILLANNUR VILLAGE, (P.O. M.G.KAVU), THRISSUR TALUK
THRISSUR DISTRICT-680581.**

**BY ADVS.SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA**

RESPONDENT/RESPONDENT/DEFENDANT:

**MUTHOOT FINANCE LTD.
REP. BY MANAGER, WEST PALACE BRANCH
(P.O. THRISSUR CITY), THRISSUR TALUK
THRISSUR DISTRICT-680020.**

BY ADV. SRI.HANSON.P.MATHEW

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 10-08-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

AS

OP(C).NO. 3802 OF 2013 (O)

APPENDIX

PETITIONER'S EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE PLAINT IN O.S.996/13 OF 3RD ADDL. MUNSIFF COURT, THRISSUR.
- EXHIBIT P2: TRUE COPY OF ORDER DATED 17.7.13 IN O.S.996/13 OF 3RD ADDL. MUNSIFF COURT, THRISSUR.
- EXHIBIT P3: TRUE COPY JUDGMENT DATED 23.9.13 IN C.M.A.92/2013 OF IVTH ADDL. DISTRICT COURT, THRISSUR.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

'C.R.'

A.HARIPRASAD, J.

O.P.(C).No.3802 of 2013

Dated this the 10th day of August, 2015

J U D G M E N T

Is Section 24 or Section 50 of the Kerala Court Fees and Suits Valuation Act, 1959 (in short 'the 1959 Act') applicable for payment of court fee in a suit for redeeming the goods pledged by a pawnor? In such a suit, if the plaintiff seeks a relief of permanent prohibitory injunction against the pawnee from selling the pledged goods, should the suit be valued under the proviso to Section 27(c) of the 1959 Act? These questions arise in this petition.

2. Petitioner is the plaintiff in a suit for following reliefs:

“A] Allowing the plaintiff to redeem the gold ornaments pledged with the defendant with 12% interest for the principal amount from 15/10/2010 to 07/04/2011;

B] A permanent prohibitory injunction restraining the defendants from

implementing the notice dated 22/02/2013 and also from taking any further steps in the matter till the disposal of suit.

C] Directing the defendants to pay cost of this proceedings to the plaintiff.

D] Grant such other relief, which this court deems fit and proper in the circumstances of the case."

3. Relevant facts in short are that the plaintiff (petitioner) borrowed a sum of ₹38,87,600/- from the defendant (respondent), an incorporated Company, mainly engaged in the business of gold loans. The borrowal was on 15.10.2010. Petitioner pledged gold ornaments to secure the loan. According to him, the agreed rate of interest payable was 12%. Admittedly, there was a default on the part of the petitioner in repaying the money borrowed. It is his case that when approached, the respondent demanded 30% interest for the amount. Hence, he filed the suit for the reliefs.

3. As per Ext.P2 order, the trial court ordered to return the plaint under Order 7 Rule 10 (a) of the Code of Civil Procedure, 1908 (in short 'the Code'). Reasoning

adopted by the trial court is that the decree of permanent prohibitory injunction claimed in the suit was incorrectly valued at ₹500/-. The court below opined so as it found that the relief was in respect of movable properties (gold ornaments) worth more than ₹60 lakhs. According to the court of first instance, the court fee paid, therefore, was insufficient. Besides, the relief of injunction sought, viz; prohibiting the respondent from taking any steps to sell the pledged goods worth about ₹60 lakhs, is beyond the pecuniary jurisdiction of the Munsiff's court. Hence, the plaint was ordered to be returned.

3. The order was challenged in a Civil Miscellaneous Appeal before the District Court. Ext.P3 is the judgment passed by the Additional District Judge. Learned Additional District Judge too found that the court fee paid on Ext.P1 plaint was not correct. For prayer A, court fee should have been paid under Section 24 of the 1959 Act. Appellate court found that the order to return the plaint was perfectly legal and therefore refused to interfere.

4. Heard Shri.Santhosh P. Poduval, the learned counsel for the appellant. Respondent, though served stayed away.

5. On the following grounds, the judgments of the courts below are challenged. Observations made by the lower appellate court that court fee should have been paid under Section 24 of the 1959 Act is incorrect. According to the learned counsel for the appellant, the said Section has no application to the facts in this case. Section 24 of the 1959 Act is in respect of a suit for movable property. On a reading of the Section, it can be seen that the first part of the Section deals with a suit for movable property other than documents of title. Sub Section (2) of the said Section is relating to a suit for possession of documents of title. The relevant portion of Section 24 of the 1959 Act is quoted hereunder:

*“24. **Suits for movable property.**-(1) In a suit for movable property other than documents of title, fee shall be computed-*
(a) where the subject-matter has a market value, on such value; or
(b) where the subject-matter has no market

value, on the amount at which the relief sought is valued in the plaint.”

6. Settled proposition is that for computation of court fee, the entire averments in the plaint should be considered. It is the case pleaded by the petitioner that he pledged gold ornaments for availing a loan from the respondent. When he approached the respondent to settle the liability, latter demanded unconscionable rate of interest. In that context, a prayer was made in the plaint to allow the petitioner to redeem the gold ornaments pledged with the respondent with the rate of interest specified in the plaint. It is true that the gold ornaments have a market value. But, the question is if the gold ornaments can be termed as the subject matter of the suit? Considering the scope of the suit, it can only be held that the subject matter is the petitioner's right of redemption on discharging the loan liability. It is so because none of the parties have a case that the gold pledged does not belong to the petitioner. Besides, the petitioner cannot make a claim to redeem the gold without clearing off the liability. So, his right to redeem

the gold is directly connected to the discharge of his liability. Viewing from that perspective, it can be seen that the suit is more in the nature of a suit for accounts. Section 24 of 1959 Act apparently deals with a suit for movable property to be delivered to the plaintiff from the possession of the defendant. Here, there is no dispute about the petitioner's right to redeem gold ornaments after paying off the liability to the respondent. In other words, the petitioner (plaintiff) is not entitled under law to claim possession of the pawned articles before discharging the liability. The rights and obligations of the parties arise out of the provisions in the Indian Contract Act 1872 (in short 'the Contract Act'). Section 172 of the Contract Act defines the terms 'pledge', 'pawnor' and 'pawnee'. It reads as follows:

"172. 'Pledge', 'pawnor' and 'pawnee' defined- *The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'. The bailor is in this case called the 'Pawnor'. The bailee is called the 'pawnee.'*"

7. Section 176 of the Contract Act deals with the

pawnee's right where pawnor makes default. It is quoted hereunder for clarity.

“176. Pawnee's right where pawnor makes

default.- *If the pawnor makes default in payment of the debt, or performance; at the stipulated time or the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security, or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.*

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.”

8. The Section shows that if the pawnor makes a default in payment of debt, at the stipulated time in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral

security. Yet another option available to him is to sell the thing pledged, on giving the pawnor a reasonable notice of the sale. It is well settled that the notice before sale is a condition precedent.

9. Section 177 of the Contract Act protects pawnor's right to redeem. It reads as follows:

"177. Defaulting pawnor's right to redeem.-If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them, but he must, in that case, pay, in addition, any expenses which have arisen from his default."

10. A reading of the Section shows that the right to redeem can be exercised right up to the time when the actual sale of the goods pledged takes place. It is axiomatic that the sale should be in conformity with the provisions of Section 176 of the Contract Act. Bomaby

High Court in **Official Assignee v. Madholal Sindhu** (AIR (34) 1947 Bombay 217) held that if the sale is not in conformity with Section 176 of the Contract Act, the equity of redemption in the pawnor will not be extinguished. In the light of these discussions, it is discernible that the suit is not one falling under Section 24 of the 1959 Act as the suit cannot be termed as one for recovery of movable property. However, Section 35 of the 1959 Act may be attracted in this case. The said Section deals with suits for accounts. It says that in a suit for accounts, fee shall be computed on the amount sued and as estimated in the plaint or on rupees one thousand which ever is higher. In Ext.P1 plaint, the petitioner valued relief-A at ₹1,000/-. If at all he has not paid court fee under Section 35 of the 1959 Act, it is only a curable irregularity.

11. Prayer B in Ext.P1 plaint is for a permanent prohibitory injunction restraining the respondent (defendant) from implementing the notice of sale of gold ornaments. As rightly pointed out by the learned counsel for the petitioner, in a suit with a prayer in the nature of

settling the accounts, a relief of prohibitory injunction could have been claimed in Interlocutory form. Unnecessarily, a prayer is seen made in the plaint for a permanent prohibitory injunction not to implement the notice of sale. It is curious to note that the prayer for permanent prohibitory injunction sought for is only to last upto the disposal of suit. When all these matters are considered together, it can be seen that the relief of permanent prohibitory injunction could not be treated as a substantive relief. For the reason stated above, it can be seen that the relief of permanent prohibitory injunction claimed in the suit will not fall within the proviso to Section 27(c) of the 1959 Act. To attract the proviso to Section 27(c) of the 1959 Act, the relief sought by the plaintiff in the suit must be in respect of money sought to be recovered from him. In such a situation, the relief should not be valued at an amount less than one half of the amount sought to be so recovered. The case on hand does not fall within that category. Therefore, the reasoning of the trial court for returning the plaint under

Order 7 Rule 10(a) of the Code is also incorrect.

Considering the entire facts and circumstances of the case, I find the impugned judgments are not sustainable in law. Therefore, Exts.P2 and P3 are hereby set aside. The trial court shall receive the plaint back to file and proceed with the case in accordance with law. The trial court shall adjudicate whether the plaintiff is required to pay any additional court fee under Section 35 of the 1959 Act.

Sd/-
A.HARIPRASAD, JUDGE.

AS

The observation in paragraph 4 of the judgment that "*the respondent though served away*" is deleted, vide order dated 19.11.2015 in I.A.No.16612/2015 in O.P.(C). No.3802/2013.

Sd/-
Registrar (Judicial)