

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

MONDAY, THE 28TH DAY OF MARCH 2022 / 7TH CHAITHRA, 1944

WP(C) NO. 24362 OF 2021

PETITIONER:

P. G. MATHEW
ADVOCATE
AGED 68 YEARS
S/O. P. G. GEORGE, KRISHNA TOWER, MANJERI,
MALAPPURAM DISTRICT - 676 121.

BY ADVS.
T. SETHUMADHAVAN (SR.)
PREETHI. P. V.
M. V. BALAGOPAL
P. GOPINATHAN

RESPONDENT:

THE AIRPORT DIRECTOR
AIRPORT AUTHORITY OF INDIA,
CALICUT INTERNATIONAL AIRPORT,
CALICUT AIRPORT ROAD P. O.,
KARIPUR, PIN - 673647.

BY ADV V. SANTHARAM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 28.03.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

N. NAGARESH, J.

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W.P.(C) No.24362 of 2021
.....

Dated this the 28th day of March, 2022

J U D G M E N T

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The petitioner, who is an Advocate practising in Manjeri, seeks to direct the respondent-Airport Director, Airport Authority of India to pay the petitioner his professional fees amounting to ₹3,37,514/- as certified by the Sub Court, Manjeri as per Ext.P1 within a time frame to be fixed by this Court.

2. The petitioner states that he appeared for the Airport Authority of India (AAI) in O.S. No.345/2012 of Sub Court, Manjeri. The Suit was filed by the AAI for realisation of money. The Suit was decreed by the court on 04.06.2015. The petitioner sent bill for professional charges on 10.07.2015. The petitioner was informed that Advocate Fee

can be settled after realisation of the money through Execution Proceedings. The petitioner intimated the respondent that payment of Advocate Fee cannot be on the basis of the outcome of the litigation.

3. Thereupon, the respondent informed the petitioner as per Ext.P5 that an amount of ₹15,000/- has been transferred to the petitioner's account as per the then prevailing panel advocate fee. The petitioner was also informed that the court determined advocate fee as claimed by the petitioner will be paid after the recovery/realisation of the amount from the judgment debtor. The petitioner thereupon sent Ext.P6 lawyer notice demanding ₹3,37,514/-. But, the petitioner was not paid the fee.

4. The learned counsel for the petitioner argued that Advocate Fee cannot be linked to the outcome of the litigation. The Hon'ble Apex Court has held in ***B. Sunitha v. State of Telangana [AIR 2017 SC 5727]*** that advocate fee based on percentage of result of litigation is illegal. The petitioner is entitled to the fee prescribed under Rule 6(4) of

the Rules regarding Fees payable to Advocates framed by this Court.

5. The respondent opposed the writ petition. The respondent submitted that there is no violation of any legal or constitutional right of the petitioner and hence the writ petition is not maintainable. The respondent had engaged only the petitioner for prosecuting the Suit. But, the petitioner filed joint Vakalat along with Advocate Mini Mathew without the knowledge or consent of the respondent. Hence, the respondent has no liability to pay. The respondent has paid the advocate fee as per the approved fee schedule of the respondent.

6. The Sub Court has decreed the suit only against the 1st defendant though there were two defendants. The 1st defendant remained ex-parte. Therefore, the decree is to be treated as ex-parte. For ex-parte decree, the fee prescribed under Rule 6(4) of the Rules is different. The statement of costs was filed by the petitioner in the court without the consent of or notice to the respondent. In the Statement filed

in the Sub Court, the petitioner has certified that he has received the senior and junior fee. Hence, the petitioner cannot file a writ petition for the same. The petitioner was given a proposal to accept 50% of the claimed fee. The petitioner was but not inclined to accept the proposal.

7. The learned counsel for the petitioner, in reply, submitted that a prior consent of the litigant is not necessary to file Statement of costs in the Court. This is evident from Rule 196 and Form 35 of the Civil Rules of Practice and from Rule 3 of the Rules regarding Payment of Fees to Advocates. As far as engagement of Advocate Mini Mathew, there is an implied authority conferred on a Senior lawyer to file joint Vakalat along with junior lawyer, contended the counsel for the petitioner.

8. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

9. As regards the defence of the respondent that the petitioner had filed a joint Vakalat along with Advocate Mini Mathew, on behalf of the respondent, without respondent's

consent or knowledge, the Vakalat executed by the respondent authorises the petitioner to conduct and prosecute the case. The said authorisation would include authorisation to do all that is necessary to conduct and prosecute the case, including filing joint Vakalat along with junior lawyer in the office of the senior lawyer.

10. Any senior lawyer having briefs of various clients cannot effectively prosecute or defend cases without the assistance of junior or other lawyers. When a client authorises an Advocate to conduct or prosecute a case, the authority given is to conduct/prosecute the case effectively and the Advocate is empowered to file joint Vakalat for and on behalf of the client. There is no illegality in filing a joint Vakalat and the petitioner in Ext.R1(b) has agreed that everything lawfully done or made by the petitioner in the conduct of the Suit shall be as valid and binding on him as if done by the respondent. The respondent cannot deny fees if any due to the petitioner on that ground.

11. The further defence of the respondent is that the respondent has paid approved fee as per the fee schedule of the AAI. The approved fee schedule of the respondent appears to be in respect of the counsel empanelled by the respondent. When Standing/Retainer counsel are appointed by any institution, the engagement ordinarily will be as per the prescribed fee structure and there will be an agreement in respect of the fee payable as per the fee structure. In the case of the petitioner, there is nothing on record to show that the petitioner is an empanelled lawyer of the respondent and that the petitioner has agreed to prosecute the OS as per the fee prescribed for panel counsel.

12. The argument of the respondent that the decree is an ex-parte decree is unacceptable. The OS was filed against two defendants and the 1st defendant remained ex-parte. The 2nd defendant contested the Suit. The decree was passed against the 1st defendant and no relief was granted as against the 2nd defendant. That by itself will not make the decree ex-parte. The argument of the respondent

to that effect is therefore only to be rejected.

13. The respondent would argue that the statement of costs was filed by the petitioner in the court without the consent of or notice to the respondent and that the petitioner has certified in the statement of costs that he has received the stated fee from the respondent. As stated earlier, when a Vakalat is executed by a litigant in favour of an Advocate, it is an authority to do all such things necessary for the prosecution/defence of the case.

14. If the counsel has indicated in the Statement of costs the legal fee payable without consulting the client or without any agreement in that regard, the client may not be legally bound to pay the said legal fee. But, the certification as to receipt of fee by the counsel will not disentitle the counsel to receive due fees. In this case, it is not in dispute that the respondent has paid only a part payment of ₹15,000/- to the petitioner towards Advocate Fee. The fact that it is only a part payment of Advocate fee is evident from Ext.P5 communication of the respondent.

15. As regards the question of maintainability of the writ petition, it has to be noted that the respondent is Airport Director of AAI which is an instrumentality of the State and is expected and bound to act fairly. Though there is difference of opinion on the amount of legal fee payable, there is no dispute on factual aspects. The facts are admitted by either side. In the circumstances, this Court is of the view that appropriate orders are to be given to the respondent, in the interest of justice.

16. It is evident from the pleadings and arguments of the counsel on either side that there was no express agreement on the fee payable to the petitioner to prosecute the OS. It is evident from Ext.P5 communication that the respondent did not transfer ₹15,000/- as full and final settlement of fee and even the respondent treated the same only as part payment of Advocate fee. In the absence of any agreement on payment of Advocate fee, the respondent is liable to pay Advocate fee as prescribed in the Rules regarding Fees payable to Advocates framed by this Court.

In the facts and circumstances of the case, the writ petition is disposed of directing the respondent to compute the fee payable to the petitioner in terms of the Rules regarding Fees payable to Advocates framed by this Court and pay the balance fee admissible to the petitioner within a period of one month.

aks/23.03.2022

Sd/-
N. NAGARESH, JUDGE

APPENDIX OF WP(C) 24362/2021

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF THE DECREE AND COST MEMO IN O.S.NO.345/2012 OF SUB COURT, MANJERI DATED 04.06.2015.
- Exhibit P2 TRUE COPY OF THE LETTER ALONG WITH THE BILL SENT BY THE PETITIONER DATED 10.07.2015.
- Exhibit P3 TRUE COPY OF REPLY SENT BY THE RESPONDENT TO THE PETITIONER DATED 30.09.2015.
- Exhibit P4 TRUE COPY OF THE LETTER SENT BY THE PETITIONER TO THE RESPONDENT DATED 12.10.2015.
- Exhibit P5 TRUE COPY OF THE LETTER SENT BY THE RESPONDENT TO THE PETITIONER DATED 17.07.2020.
- Exhibit P6 TRUE COPY OF THE LAWYER NOTICE SENT BY THE PETITIONER TO THE RESPONDENT DATED 12.07.2021.
- Exhibit P7 CERTIFIED COPY OF THE JUDGMENT IN O.S.NO.345/2012 ON THE FILE OF THE SUB COURT, MANJERI DATED 04.06.2015.

RESPONDENT EXHIBITS

- Exhibit R1(A) TRUE COPY OF THE VAKALATH EXECUTD BY THE THEN AIRPORT DIRECTOR ON 22/11/2012
- Exhibit R1(B) TRUE COPY OF THE CERTIFIED COPY OF THE VAKALATH FILED BEFORE THE SUB COURT, MANJERI IN O.S 345/2012
- Exhibit R1(C) TRUE COPY OF THE CERTIFIED COPY OF THE STATEMENT OF COSTS SUBMITTED BY THE PETITIONER IN O.S 345/2012 BEFORE THE SUB COURT, MANJERI

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| Exhibit R1(D) | TRUE COPY OF THE COMMUNICATION DATED 10/09/2018 ISSUED BY THE RESPONDENT |
| Exhibit R1(E) | TRUE COPY OF THE LETTER DATED 26/09/2018 ISSUED BY THE PETITIONER |
| Exhibit R1(F) | TRUE COPY OF THE REPLY DATED 22/07/2020 ISSUED BY THE PETITIONER |