

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 19TH DAY OF MAY 2025 / 29TH VAISAKHA, 1947

RFA NO. 531 OF 2009

AGAINST THE DECREE & JUDGMENT DATED 30.09.2004 IN OS NO.91 OF 2003 OF ADDITIONAL SUB COURT, KOCHI

APPELLANTS/PLAINTIFFS:

- 1 THANKAMANY, AGED 56 YEARS
W/O LATE VELUCHAMY, KALATHIPARAMBIL HOUSE, T & R CROSS
ROAD, THOPPUMPADY VILLAGE, KOCHI TALUK.
- 2 NATARAJAN, AGED 30 YEARS
S/O LATE VELUCHAMY, KALATHIPARAMBIL HOUSE, T & R CROSS
ROAD, THOPPUMPADY VILLAGE, KOCHI TALUK.

BY ADVS.
R.SUDHISH
M.MANJU

RESPONDENTS/DEFENDANTS:

- 1 ASST.EXECUTIVE ENGINEER,KSEB
AGED 30 YEARS, ELECTRICAL MAJOR SECTION,
THOPPUMPADY, ERNAKULAM.
- 2 THE EXECUTIVE ENGINEER
ELECTRICAL MAJOR SECTION, MATTANCHERRY, ERNAKULAM.
- 3 THE KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VAIDHYUDHI BHAVAN,
TRIVANDRUM.

BY ADVS.
SHRI.P.A.AHAMED, SC, KERALA STATE ELECTRICITY BOARD
LIMITED
SRI.PULIKOOL ABUBACKER, SC, KSEB

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 11.04.2025 ALONG WITH RFA.NO.243/2016, THE COURT ON 19.05.2025 DELIVERED THE FOLLOWING:



2025:KER:34471

RFA.Nos.531/2009 & 243/2016

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 19TH DAY OF MAY 2025 / 29TH VAISAKHA, 1947

RFA NO. 243 OF 2016

AGAINST THE JUDGMENT AND DECREE DATED 30.09.2004 IN OS NO.92 OF 2003 OF ADDL. SUB COURT, KOCHI

APPELLANT/PLAINTIFFS:

- 1 THANKAMANY,
 W/O.LATE VELUCHAMY, AGED 56 YEARS,
 KALATHIPARAMBIL HOUSE, T & R CROSS ROAD,
 THOPPUMPADY VILLAGE, KOCHI TALUK.
- 2 NATARAJAN, S/O.LAGE VELUCHAMY, AGED 30 YEARS,
 KALATHIPARAMBIL HOUSE, T & R CROSS ROAD,
 THOPPUMPADY VILLAGE, KOCHI TALUK.

BY ADVS.
SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENTS/DEFENDANTS:

- 1 THE ASSISTANT EXECUTIVE ENGINEER,
 K.S.E.BOARD, ELECTRICAL MAJOR SECTION,
 THOPPUMPADY, ERNAKULAM.
- 2 THE EXECUTIVE ENGINEER,
 K.S.E.BOARD, ELECTRICAL DIVISION, MATTANCHERRY,
 ERNAKULAM DISTRICT.
- 3 THE KERALA STATE ELECTRICITY BOARD,
 REPRESENTED BY ITS SECRETARY, VAIDYUDHI BHAVAN,
 TRIVANDRUM.

BY ADV SHRI.B.PREMOD, SC, KERALA STATE ELECTRICITY
BOARD

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON
11.04.2025 ALONG WITH RFA.NO.531/2009, THE COURT ON 19.05.2025
DELIVERED THE FOLLOWING:

**“C.R”*****A. BADHARUDEEN, J.***

*R.F.A.No.531 of 2009**and**R.F.A.No.243 of 2016*

*Dated this the 19th day of May, 2025****COMMON JUDGMENT***

Both these matters have been referred to mediation and the mediation agreements signed in between Thankamany and Natarajan/the appellants and the Assistant Executive Engineer KSEB, Thoppumpady representing the respondents/defendants, have been filed separately in both these appeals.

2. As per clause No.5 of the compromise, it has been averred that *‘both the parties have agreed to request this Honourable Court to modify the decree of the Sub Court, Kochi to set side the realisation of court fee from the plaintiff’*. It is submitted by the learned counsel for the appellants/plaintiffs that since the appellants were permitted to institute the suits before the trial court as indigent persons, they were allowed to file both these appeals also as indigent as ordered in CMCP.Nos.1 and 92 of 2008. It is argued by the learned counsel for



the appellants that clause No.5 has been incorporated in the compromise to avoid or to waive realisation of court fee as ordered in the trial court verdicts, by the trial court, since the suits were proceeded by the appellants as indigent persons before the trial court. In this connection, the learned counsel for the appellants placed decision rendered by a Division Bench of this Court reported in [2015(1) KHC 361 : 2015 (1) KLT 344 : 2015 (1) KLJ 447 : ILR 2015 (1) Ker.1023], ***Kochupailo v. Reena & Ors.***, to contend that court fee could not be recovered from persons, who were permitted to institute suits as indigent persons, if suits were settled out of court. In fact, this legal position is not in dispute. Accordingly, the appellant in the above case was exempted from paying court fee in the appeal in view of the compromise. However, the request as per the present compromise is to avoid payment of realisation of court fee ordered by the trial court after disposal of the suits on merits after adjudication. In this connection, the learned counsel placed a decision of this Court reported in [2020 (3) KHC 294], ***Santha & Ors. v. Kerala State Electricity Board, TVM and Ors.***, where this Court considered claim of damages on account of



death due to electrocution and while allowing the First Appeal in the last paragraph it was held as under:

‘Since this appeal has been preferred by the appellants in *forma pauperis* on account of proven impecuniousness and since the 1st appellant has suffered immeasurably on account of the death of her husband – late Viswambaran and in bringing up her two minor children on her own, I deem it appropriae that the burden of having to pay the Court Fee be waived; and consequently, it is ordered that no recovery for the said amount will be initiated against the appellants, taking note of the afore circumstances.’

3. On perusal of the judgment in ***Santha & Ors. v. Kerala State Electricity Board, TVM and Ors.***’ case (*supra*), when the appeal was disposed of, payment of court fee at the appellate stage was waived. In the said decision also, no waiver of court fee was allowed in so far as the court fee to be payable before the trial court. In this matter, both suits and the appeals were proceeded allowing the plaintiffs/appellants as indigent persons. After disposal of the suits on merits by a common judgment, the trial court ordered for realisation of court fee.

4. The legal question arises for determination is; whether it is legally permissible for an appellate court to waive payment of court fee before the trial court on account of settlement of the appeal/appeals?

5. It is true that under Sections 69 and 69A of the Kerala Court



Fees and Suit Valuation Act ('KCF and SV Act' for short hereafter), refund of court fee is permissible when the suits and appeals are compromised or settled under Section 89 of the Code of Civil Procedure or when suits are decided on the admission of parties. When suits and appeals filed by indigent person/s are compromised, realisation of court fee shall be avoided since the same is otherwise refundable taking into account of the compromise. But there is no provision either in the KCF and SV Act or else where, permitting refund of court fee paid before the trial court by the plaintiff or the defendant as the case may be, and also to waive realisation of court fee payable before the trial court while suing as indigent persons after disposal of the case on merits after adjudication by the intervention of the appellate court. In view of the above, the request made as clause No.5 in the compromise cannot be accepted.

6. Therefore, by accepting all other clauses in the mediation agreement except clause No.5 in both the cases, the decree and judgment both in the appellate court and the trial court shall stand set aside and both the appeals stand allowed in terms of the compromise.



7. The signed compromise shall form part of the appellate decree.

8. In view of compromise, it is specifically ordered that the court fee payable in both these appeals need not be realised, though these appeals have been filed as indigent.

Registry is directed to forward copy of this common judgment to the trial court for realisation of court fee payable before the trial court forthwith.

Sd/-

(A.BADHARUDEEN, JUDGE)

rtr/