

HIGH COURT OF DELHI: NEW DELHI

I.A. No. 9711/09 in CS (OS) 156/09

Date of Decision: October 7th, 2009

J K FORGINGS

... PLAINTIFFS

Through: Mr. Jagjit Singh, Adv.

Versus

ESSAR CONSTRUCTION INDIA LTD & ORS ... DEFENDANT

Through: Ms.Shikha Sarin, Adv.

CORAM:

HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the digest or not? Yes

S.L. BHAYANA, J.

1. By this order, I propose to dispose of IA No. 9711/09 filed by plaintiff thereby seeking refund of court fees.
2. By virtue of this application filed under Section 16 of Court Fee Act 1870, plaintiff/applicant is thereby praying for refund of court fees which was paid by the applicant with the plaint.
3. Instant suit was a suit for recovery of money against the defendants registered as CS (OS) 156/2009, vide order dated 27/5/09 this suit was decreed on joint application moved by both the parties being IA

No.7283/09 under Order XXIII Rule 2 CPC filed by the parties on the basis of which the suit stands disposed of.

4. On the other hand the registry of this court vide reference dated 16/9/2009 has raised objection regarding the refund of court fees on the ground that court fees can be returnable only in the manner provided under Section 16 of Court Fees Act, which provides that court must refer the parties to the suit to any one of the modes of settlement of disputes referred to Section 89 of CPC but in this case parties have not settled their dispute through any of the modes prescribed under Sec 89 of CPC so the court fees cannot be refunded to them.

5. The question of law involved in this application is whether the plaintiff is entitled to get refund of court fees or not?

6. I have heard the counsel for the applicant and also gone through the reference dated 3/8/2009 put up by the Registry.

7. It would be apposite to extract some of the relevant provisions which throw some light on this issue:

XI

Analogous Provisions Section 89 of Code of Civil Procedure, 1908 (as inserted by C.P.C. (Amendment) Act, No. 46 of 1999

Settlement of disputes outside the Court.

(1) Where it appears to the Court that there exist elements of a settlement, which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the Court may reformulate the terms of a possible settlement and refer the same for—

- (a) arbitration;
- (b) conciliation;
- (c) judicial settlement including settlement through Lok Adalat; or

(d) mediation.

(2) Where a dispute has been referred--

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of Section 20 of the Legal Services Authorities Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

Order X, Rules 1A to 1C as inserted by CPC (Amendment) Act, 1999

1A. Direction of the Court to opt for any one mode of alternative dispute resolution .—

After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of Section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

1B. Appearance before the conciliation forum, or authority.—

Where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

1C. Appearance before the Court consequent to the failure of efforts of conciliation.—

Where a suit is referred under rule 1A and the Presiding Officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then, it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it.

Section 16 of Court Fees Act, 1870 as inserted by Code of Civil Procedure (Amendment) Act, 1999

“16. Refund of fee.—Where the Court refers the parties to the suit to any one of the mode of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 (5 of 1908) the plaintiff shall be entitled to a certificate from the Court authorizing him to receive back from the collector, the full amount of the fee paid in respect of such plaint.”

8. It would also be appropriate to take note of statement of objects and reasons appended to the Amendment Bill which states as follows:

“With a view to implement the 129th report of Law Commission of India and to make conciliation scheme effective, it is proposed to make it obligatory for the court to refer the dispute after the issues are framed for settlement or through Lok Adalat . It is only after the parties fail to get their disputes settled through any one of the alternate dispute resolution methods that the suit shall proceed further in the court in which it was filed”

9. Before introduction of 2002 amendment, Justice Malimath Committee in its Report in Chapter VII at page 112 and Chapter IX at pages 168,170 and 171 recommended “ if a law is enacted giving legal sanction to such machinery for resolution of disputes and resort thereto is made compulsory, much of the inflow of commercial litigation in regular civil courts gradually moving up hierarchically would be controlled and reduced.”

Malimath committee recommended making it obligatory for the courts to refer the dispute after issues are framed, for settlement.

10. It seems that this special provision along with following rules inserted in order X has been introduced in order to help litigants to settle their disputes outside the court by simpler and quicker method. The litigants on the institution of suit or proceedings may request the court to refer the dispute and if court feels that there exists element of settlement, which may be acceptable to the parties, court may refer them to any of the abovementioned forums at any stage of the proceedings.

11. The laudable object sought to be achieved by inserting and amending these sections seems to be speedy disposal. The policy behind the statute is to reduce the no. of cases by settlement. Section 89 of C.P.C and Section 16 Court Fee Act are welcome step in that direction, as the

no. of cases has increased, it is the duty of court to encourage settlement. In present scenario of huge pendency of cases in the courts a purposive and progressive interpretation is the requirement of present hour. The intention of the Legislature is primarily to be gathered from the object and the words used in the material provisions. The statute must be interpreted in their plain grammatical meaning.

12. It is very clear that the Legislative intent of Section 16 of Court Fees Act was made broad enough to take cognizance of all situations in which parties arrive at a settlement irrespective of the stage of the proceedings. It is also obvious that the purpose of making this provision was in order to provide some sort of incentive to the party who has approached the court to resolve the dispute amicably and obtain a full refund of the court fees. Having regard to this position, the present application will have to be allowed.

13. In this connection I may also refer to the few orders of this court vide which court had adjourned the matter so that parties may arrive at settlement. Instant suit was filed on 20/1/2009 and thereafter at preliminary stage of hearing on 5/3/2009 parties had informed the court about settlement talks and on the next date of hearing before court i.e on 1/4/2009, parties were ready to move the joint application pursuant to the settlement arrived at between them. Consequent to this a decree in terms of settlement was passed by this court vide order dated 27/5/2009.

14. This is not a case where parties to the suit after long drawn trial have come to the court for settlement. Had it been the case of long drawn trial non- refund of court fees could have been justified but in such like cases courts endeavor should be to encourage the parties and court fees attached with the plaint should be refunded as an incentive to them.

15. It is a matter of record that at the stage of preliminary hearing parties have arrived at settlement, it was arrived at before the submission of statement of defence.

16. Defendants have expressed no objection with regard to refund of court fees.

17. Settlement of dispute only through any of the mode prescribed under section 89 of C.P.C is not sine qua non of section 89 C.P.C rather it prescribes few methods through which settlement can be reached, sine qua non for applicability of section 89 is settlement between the parties outside the court without the intervention of the courts.

18. It is also not the requirement of the section that court must always refer the parties to Dispute Resolution Forum. If parties have arrived at out of court settlement it should be welcomed subject to principles of equity.

19. Court Fees Act is a taxing statute and has to be construed strictly and benefit of any ambiguity if any has to go in favour of the party and not to the state.

20. Ex debito justitiae impels me to direct the Registry to refund the court fees to the applicant and the requisite certificate be issued to the applicant.

21. With these observations, the application stands disposed of.

S.L. BHAYANA, J.

October 7th, 2009