

Niti

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO.153 OF 2022
IN
FIRST APPEAL NO.93 OF 2019

ROBERT ANTHONY PINTO

...APPLICANT

Versus

VYONA CARMELINA
ALBUQUERQUE NEE PINTO

....RESPONDENT

Mr A.D. Bhobe with Ms Annelise Fernandes, Advocate for the Applicant.

Mr Pravin Faldessai, Additional Government Advocate for the State.

CORAM: M. S. SONAK, J.

DATE: 15th DECEMBER 2023

P.C. :

1. Heard Mr Bhobe for the applicant. At the request of the Court, Mr Faldessai, learned Additional Government Advocate appeared in this matter to assist the Court.
2. This is an application under Section 16 of the Indian Court-fees Act, 1870 (as amended for the State of Goa) seeking a certificate/order which would entitle the applicant to refund the court fees.

3. The applicant and the respondent were involved in a Matrimonial Petition no.97/2015/C. This petition was disposed of by judgment, order and decree dated 21.02.2019 made by Senior Civil Judge, 'C' Court at Mapusa.

4. As against the above judgment, order and decree the applicant instituted First Appeal No.93/2019 in this Court. This appeal was referred to mediation by order dated 18.09.2019.

5. The dispute between the applicant and the respondent was resolved in mediation and the parties filed Consent Terms before the Mediator, Smt. Sayonara Telles Laad. These Consent Terms were accepted, and First Appeal No.93/2019 was disposed of by this Court by order dated 25.11.2019.

6. Therefore, the applicant, relying on Section 16 of the Indian Court-fees Act (as amended for the State of Goa), has sought a certificate/order which would entitle him to a refund of court fees.

7. Section 16 of the above Act reads as follows:

“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 authorising him to receive back [from the Collector or by way of e-payment, in the manner as prescribed by rules], the full amount of the fee paid in respect of such plaint.]

[16A]. Refund in case of delay in presentation of plaint, etc: (1) Where a plaint or memorandum of appeal is rejected on the ground of delay in its presentation, or where the fee paid on a plaint or memorandum of appeal is deficient and the deficiency is not made good within the time allowed by law or granted by the Court, or the delay in payment of the deficit fee is not condoned and the plaint or memorandum of appeal is consequently rejected, the Court shall direct the refund to the plaintiff or the appellant, of the fee paid on the plaint or memorandum of appeal which has been rejected.

(2) Where a memorandum of appeal is rejected on the ground that it was not resented within the time allowed by the law of limitation, one-half of the fee shall be refunded.

[16B]. Refund on settlement before hearing: Where by agreement of parties:-

- (i) any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim; or
- (ii) any suit is compromised ending in compromise decree before any evidence has been recorded on the merits of the claim; or
- (iii) any appeal is disposed of before the commencement of hearing of such appeal:

half the amount of all fees paid in respect of the claim or claims in the suit or appeal shall be ordered by the Court to be refunded to the parties by whom the same have been respectively paid.

Explanation(1): The expression “merits of the claim” refers to all matters which arise for determination in the suit not being matters relating to the frame of the suit, misjoinder of parties and cause of action the jurisdiction of the court to entertain or try the suit or the fee payable, but includes matters arising on pleas of res-judicata, limitation and the like.

Explanation (2): The expression “hearing of the appeal” includes the “vista” of a case filed in the appellate court.

[16C]. Refund of fee paid by mistake or inadvertence;- Any fee paid by mistake or inadvertence shall be ordered to be refunded.

[16.D]. Procedure for obtaining refund when a person becomes entitled to a refund of court fees, the court shall grant a certificate authorizing him to receive back [from the Collector or by way of e-payment, in the manner as prescribed by rules] the amount specified therein, calculated according to the provisions of this Act.]”

8. The above provisions appear to apply to the present matter, except that the provisions of Section 16 refer to “*parties to the suit*” and not parties to an appeal. However, Mr Bhole and Mr Faldesai pointed out that this issue is no longer *res integra* given the decision of the Hon’ble Supreme Court in the case of the ***High Court of Judicature at Madras rep. by its Registrar General V/s. M.C. Subramaniam***¹.

9. In the above decision, one of the issues which arose for consideration is whether a provision similar to Section 16 of the Court-fees Act, as applicable to the State of Goa, covers parties to an appeal based on the premise that an appeal is nothing but a continuation of a suit. Finally, the Hon’ble Supreme Court has held that even parties to an appeal would be covered. If the appeal is settled by any one of the

¹ AIR 2021 SC 2662

modes of settlement of dispute referred to in Section 89 of CPC, then the appellant would be entitled to a certificate from the Court.

10. The observations in paragraphs 19 to 21 of the above decision are relevant, and the same are quoted below for the convenience of reference:-

*“19. We find ourselves in agreement with the approach taken by the High Courts in the decisions stated supra. The purpose of Section 69A is to reward parties who have chosen to withdraw their litigations in favour of more conciliatory dispute settlement mechanisms, thus saving the time and resources of the Court, by enabling them to claim refund of the court fees deposited by them. Such refund of court fee, though it may not be connected to the substance of the dispute between the parties, is certainly an ancillary economic incentive for pushing them towards exploring alternative methods of dispute settlement. As the Karnataka High Court has rightly observed in **Kamamma and Ors. V/s. Honnali Taluk Agricultural Produce Cooperative Marketing Society Ltd.**² (supra), parties who have agreed to settle their disputes without requiring judicial intervention under Section 89, CPC are even more deserving of this benefit. This is because by choosing to resolve their claims themselves, they have saved the State of the logistical hassle of arranging for a third-party institution to settle the dispute. Though arbitration and mediation are certainly salutary dispute resolution mechanisms, we also find that the importance of private amicable negotiation between the parties cannot be understated. In our view, there is no justifiable reason why Section 69A should only incentivize the methods of out-of-court settlement stated in Section 89,*

² (2010) 1 AIR Kar R 279

CPC and afford step-brotherly treatment to other methods availed of by the parties.

Admittedly, there may be situations wherein the parties have after the course of a longdrawn trial, or multiple frivolous litigations, approached the Court seeking refund of court fees in the guise of having settled their disputes. In such cases, the Court may, having regard to the previous conduct of the parties and the principles of equity, refuse to grant relief under the relevant rules pertaining to court fees. However, we do not find the present case as being of such nature.

20. Thus, even though a strict construction of the terms of Section 89, CPC and 69A of the 1955 Act may not encompass such private negotiations and settlements between the parties, we emphasize that the participants in such settlements will be entitled to the same benefits as those who have been referred to explore alternate dispute settlement methods under Section 89, CPC. Indeed, we find it puzzling that the Petitioner should be so vehemently opposed to granting such benefit. Though the Registry/State Government will be losing a one-time court fee in the short term, they will be saved the expense and opportunity cost of managing an endless cycle of litigation in the long term. It is therefore in their own interest to allow the Respondent No. 1's claim.

21. Thus, in our view, the High Court was correct in holding that Section 89 of the CPC and Section 69A of the 1955 Act be interpreted liberally. In view of this broad purposive construction, we affirm the High Court's conclusion and hold that Section 89 of CPC shall cover, and the benefit of Section 69A of the 1955 Act shall also extend to, all methods of out-of-court dispute settlement between parties that the Court subsequently finds to have been legally arrived at. **This would, thus, cover the present controversy, wherein a private settlement was arrived at, and a memo to withdraw the appeal was filed before the High Court. In**

such a case as well, the appellant, i.e., Respondent No. 1 herein would be entitled to refund of court fee.”

11. Accordingly, applying the above legal principles to the facts of the present case, this application is allowed. The Registry is directed to issue a certificate to the appellant in terms of Section 16 of the Court-fees Act as applicable in the State of Goa upon which the appellant would be entitled to receive from the Collector the Court fees paid by him in the present appeal. The Registry must issue the necessary certificate within four weeks from today.

12. The Court thanks Mr Faldessai for the assistance rendered by him in this matter. Civil Application is disposed of.

M. S. SONAK, J.

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR
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