

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 81 of 2014

Date of Decision : January 28th, 2015

Pradeep Sonawat

.... Petitioner

Versus

Satish Prakash @ Satish Chandra

.... Respondent

CORAM : HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present Mr. Amit Sharma, Advocate,
for the petitioner.

None for the respondent.

Dr. BHARAT BHUSHAN PARSOON, J.

Dismissal of application of the plaintiff, petitioner herein, for return of the court fee affixed on the plaint, wherein litigation had ended in a mutually settled compromise, forms genesis of this revision petition.

2. Based on an agreement to sell, the plaintiff, petitioner herein, had brought a suit on 18.1.2012 against the defendant for specific performance of the same. During the proceedings of the suit, on 10.9.2012, the matter was compromised and the suit was decided in terms of the said mutually agreed settlement. Compromise was acted upon and parties were satisfied.

3. An application was moved by the petitioner for refund of Court fee on 22.1.2013, which was dismissed vide order dated 25.4.2013 [Annexure P5]. The plaintiff preferred an appeal against the said order, but

had withdrawn the same vide order dated 21.10.2013 [Annexure P/7] being not maintainable.

4. This revision petition has been preferred by the plaintiff, petitioner herein, against the said order claiming that his prayer for refund of the court fee was wrongly rejected by the Court below to his great prejudice vide impugned order dated 25.4.2013.

5. It is contended that as the matter had been settled by way of a compromise, refund of court fee was to be the necessary consequence in terms of Section 16 of the Court Fee Act, 1870 [for short, "the Act"]. Section 16 of the Act is reproduced below for ready reference:-

"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."

6. Since reference to Section 89 of Code of Civil Procedure, 1908 [for short, "CPC"] has been made in this provision, it would be appropriate to reproduce Section 89 of CPC, which reads as under:-

"85. Persons specially appointed by Government to prosecute or defend on behalf of foreign Rulers.-- (1) The Central Government may, at the request of the Ruler of a foreign State or at the request of any person competent in the opinion of the Central Government to act on behalf of such Ruler, by order, appoint any persons to prosecute or defend any suit on behalf of such Ruler, and any persons so appointed shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Ruler.

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of such Ruler.

(3) A person appointed under this section may authorize or appoint any other persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto."

7. Conjoint reading of Section 16 of the Act with Section 89 of CPC leaves no doubt that endeavor of the legislature is for settlement of cases by alternative disputes settlement mechanism. Be it Lok Adalat or out of Court settlement or Arbitration or Conciliation or Mediation, effort always is to end the litigation once for all times to come. Settlement in terms of Section 89 CPC results in complete end to the litigation. Resort to appeal or revision statutorily is out of the legal arena. Merely because the matter for settlement was not taken up in daily Lok Adalat, which under the aegis of the Haryana State Legal Services Authority, is held every day in each Court in the State after Court hours, should not be taken to the prejudice of the petitioner-plaintiff.

8. Concept of daily Lok Adalat is not alien to the alternative dispute redressal machinery. Daily Lok Adalats in the State of Haryana are held in all the districts. Every Court of the Sessions Division, after court hours, gets converted into a daily Lok Adalat and judicial officers hold sittings for this, depending upon the workload of cases coming for settlement every day in each Court. This way, there are as many daily Lok Adalats as are the number of Courts in that Sessions Division.

9. The question simpliciter posing for answer at this stage in this petition is, as to whether the court fee should be refunded to the petitioner-plaintiff, pursuant to the settlement arrived at between the parties, which was duly recorded by the Court and was accepted or not? Judgment dated 11.12.2012 [Annexure P/3] clearly reveals that the statement of the parties as also compromise was recorded by the Court and forms part of the record. After having been acted upon by the parties, the Court had passed the decree dated 11.12.2012 [Annexure P/3] in terms of the said compromise.

10. In tune with the provisions of Section 89 of CPC, endeavour is made by every Civil Court to decide the matter by one of the modes provided in Section 89 CPC for settlement between the parties. When such

settlement is arrived at in terms of Section 89 CPC, provision of Section 16 of the Act, which is beneficial and benevolent provision in its domain and content needs to be invoked and the Court concerned is also required to inform the plaintiff that he is entitled to get back the court fee affixed by him on the plaint. Even if the plaintiff does not apply for the same, the Court acting suo moto invoking the provisions of Section 16 of the Act, should issue a certificate authorizing the plaintiff to receive back the court fee, paid in respect of such plaint, from the Collector.

11. Though, this matter is not in issue here, even then it may be mentioned that this provision would apply even in cases of counter claims in suits as also in appeals, counter objections and counter appeals.

12. To provide added locomotion to the provisions of Section 89 of CPC in consonance therewith, the Parliament had brought an amendment to the Court Fee Act, 1870 by inserting Section 16 therein. There is no denying to the fact that the object behind insertion of Section 16 to the Act was to encourage the litigants to adopt the alternative dispute resolution methodology for expeditious disposal of the disputes and with a view to end the litigation for ever.

13. In **A.Sreeramaiah Vs. South Indian Bank Ltd., Bangalore and Anr.**, 2007 [2] Civil Court Cases 0695, a Division Bench of the Hon`ble Karnataka High Court deciding such matter and interpreting Section 89 of CPC in relation to Section 16 of the Act, had observed as under:-

“6. Considering the object behind the Amendment Act, 1999 inserting section 89 of CPC and also the insertion of Section 16, it is clear that the object of providing of refund of Full Court Fees, is to encourage the settlement of the disputes in terms of section 89 of CPC. In this case, the parties agreed for settlement in terms suggested by the Court and accordingly, they have settled their dispute outside the Court. The judicial settlement is also one of the alternative method of settlement of the disputes. As such, in our considered view, in any settlement arrived in terms of section 89 of CPC including the judicial settlements at the intervention and on terms suggested by the Court, the appellant is entitled for refund of Full Court Fees, as otherwise, it would be meaningless if the provisions

of section 16 are not applied for settlement of dispute by the parties under section 89. Section 89 does provide for settlement of dispute at any stage of the proceeding, whether it is by way of method referred to therein or by judicial settlement as contemplated under section 89 sub-section (1). As such, we are of the opinion that if the parties come forward to settle their dispute before the Court itself, they should not be denied of refund of Full Court Fees on the ground that they have not settled the dispute before any of the four methods provided under section 89 of CPC. The object behind section 89 is to encourage the parties to arrive at settlement and if that object is sought to be achieved by means of referring the matter to any of the four methods mentioned in section 89, then even the settlement arrived at the earliest stage before the Court would also be one of the method provided under section 89 sub-section (1). Hence, we feel it as just and appropriate to order for full refund of Court Fees in the case of parties settling their dispute before the Court as well as before any of the Forum mentioned under Section 89 of the CPC. No party should be discriminated in the matter of refund of Court Fees mainly on the ground that they have settled the dispute at the earliest stage before the Court without recourse to any of the methods mentioned under section 89 of the CPC. Hence, appellant is entitled for refund of Full Court Fees.”

14. In **Kamamma & Ors. Vs. Honnali Taluk Agricultural Produce Co-operative Marketing Society Ltd., Honnali and Ors**, 2010 [1] AIR Kar.R 279, again referring to provisions of Section 89 of CPC and Section 16 of the Act, it was observed as under:-

“6. Whether the parties to a suit or appeal or any other proceeding get their dispute settled amicably through Arbitration or meditation or conciliation or in the Lok Adalat, by invoking provisions of Section 89, C.P.C., or they get the same settled between themselves without the intervention of any Arbitrator/Mediator/Conciliators or in Lok Adalat etc., and without invoking the provisions of S. 89, Civil Procedure Code, the fact remains that they get their dispute settled without the intervention of the court. If they get their dispute settled by invoking S. 89, C.P.C., in that event the State may have to incur some expenditure but, if they get their dispute settled between themselves without the intervention of the Court or any one else, such as arbitrator/mediator etc., the State would not be incurring any expenditure. This being so, I am of the considered opinion that whether the parties to a litigation get their dispute settled by invoking Section 89, C.P.C. or they get the same settled between themselves without invoking S. 89, Civil Procedure Code, the party paying Court Fees in respect thereof should be entitled to the refund of full Court Fees as provided under Section 16 of the Court Fees Act, 1870. Therefore, the contention of the learned Government Pleader that the principles laid down by the Division Bench of this Court

in the said case cannot be made applicable to the facts of the present case does not deserve acceptance.”

15. In Civil Revision No. 874 of 2009 [O&M], **Tarun Juneja and others Vs. Hukam Singh**, decided on 15.9.2009, a Co-ordinate Bench of this Court also referring to Section 16 of the Act and Section 21[1] of the Legal Services Authorities Act, 1987 had observed as under:-

“On conjoint reading of the Act, it may be observed that the intention of the legislature was to extend a twin relief to the parties i.e. to get the matter settled and in case it is settled, to refund the Court fee as affixed by the plaintiff on the plaint. The motive behind insertion of this provision was to encourage the settlement of disputes with the media of Lok Adalat. The words as “if the compromise or settlement is arrived at by a Lok Adalat” should not be construed so strictly as to keep those compromises within the purview which may have been effected with the intervention and under the seal of the Lok Adalat or Lok Adalat was to pass a specific order that the compromise was arrived at by it. When the matter is received by the Lok Adalat, it undergoes a continuous process of efforts before it reaches the climax and receives the seal of the Court and it also depends upon the nature of the case and the manner in which the compromise is effected. But before the Court passes the order with regard to refund the Court fee, it should see if the case was disposed of on the basis of statement of the parties whatsoever such statements may be that the matter has been settled and an order to the effect that matter stands compromised or settled, the Court would be well within its jurisdiction to refund the Court fee.”

16. Going a step further, it is felt that whether the compromise is with the persuasion of the Court or amongst the parties by themselves in terms of Section 89 CPC or otherwise, invocation of provision of Section 16 of the Act should be made in all cases so that settlements by way of alternative dispute resolution mechanism are encouraged.

17. Keeping in view the totality of the facts, merely because the matter has not been settled in Lok Adalat, as has been observed by the lower Court while dismissing the application of the plaintiff-petitioner, invocation to Section 16 of the Act should not have been refused.

18. Sequelly, reversing the impugned order, accepting the revision

petition, it is ordered that the petitioner-plaintiff is entitled to a certificate from the Court below authorizing him to receive back the full amount of the court fee paid in respect of the plaint, from the Collector.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

January 28th, 2015
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1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?