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HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. No.131/2015

Decided on: 30th November, 2015

PUNEET BHATIA & ANR. Petitioners
Through: Dr. V.B. Bhatia, Petitioner in person.

Versus

KARISHMA BHATIA & ORS. Respondents
Through: Mr. Shadan Farasat, Adv. For GNCTD.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioners by virtue of which the petitioners have challenged the order dated 30.05.2015 passed by Prashant Kumr, ADJ-04, North-West, Rohini Courts, Delhi in CS No.221/2014 titled *Puneet Bhatia & Anr. v. Karishma Bhatia Nee Karishma Dua & Ors.* by virtue of which the application of the petitioners under Section 16 of the Court Fees Act, 1870 was rejected on the ground that it was not the Court which had referred the parties for settlement of their dispute to the Mediation Cell under Section 89 of the Code of Civil Procedure.

2. Briefly stated the facts of the case are that Puneet Bhatia the son of petitioner No.2 Dr. V.B. Bhatia had run into a matrimonial discord with Karishma Bhatia Nee Karishma Dua, respondent herein which resulted in matrimonial litigation not only in Delhi but also in Chandigarh. The present petitioners had apparently filed a suit for recovery of Rs.20 lacs on account of defamation of petitioners by the respondents and had paid court fees of Rs.20,000/-. Issues in the said suit were also framed. Simultaneously, it seems that Karishma Bhatia Nee Karishma Dua had also initiated some matrimonial proceedings against the present petitioners in Chandigarh. During the pendency of these rival proceedings between the parties, the Chandigarh Court of ADJ had referred the matrimonial dispute to the Mediation Cell to the District Court in Sector 17, Chandigarh vide order dated 29.09.2014. Pursuant to the said order, the parties appeared before the District Mediation Cell, Chandigarh on 16.10.2014 at 10:00 a.m. and ultimately it culminated into a settlement. The broad terms of settlement between the parties were as under:-

“1. That both the parties agreed to dissolve their marriage.

2. That both the parties had agreed to dissolve their marriage by filing the joint divorce petition under Section 13-B of Hindu Marriage Act on or before 02.012.2014 before competent court of law.

3. That the first party agreed to pay a sum of Rs.15,00,000/- (Rupees Fifteen lacs only) as full and final payment and as permanent alimony to the second party in two installments.

4. That both the parties agreed that the first party shall pay a sum of Rs.7,50,000/- (Rs. Seven lac Fifty Thousand only) by Demand Draft/Cash to the second party at the time of first motion of the mutual divorce petition u/s 13-B of HMA in the court.

5. That the parties agreed that the first party shall pay a sum of Rs.7,50,000/- (Rs. Seven Lac Fifty Thousand only) by Demand Draft/Cash to the second party at the time of second motion of the mutual divorce petition u/s. 13-B of HMA in the court.

6. That both the parties agreed that they will withdraw the criminal and civil complaints filed against each other before the different authorities after filing the mutual consent divorce petition. That the second party undertakes to withdraw the complaints filed against the first party before Ministry of Labour and Employment and Director General, Labour Bureau.

7. That the second party undertakes to give the statement in quashing petition before Hon'ble PB & Hry High Court at Chandigarh in FIR No.855 of 16.11.2012, P.S. City Rohtak after filing the mutual divorce petition. The second party will make the statement before Hon'ble Punjab & Haryana High Court at Chandigarh after receiving the above said amount.

8. That the first party undertakes to give the statement in quashing petition before Hon'ble High Court Delhi in FIR No.168 of 2014, P.S. Bharat Nagar, Delhi after filing the mutual divorce petition. Dr. V.B. Bhatia s/o Sh. Malik Ram Bhatia, (father of first party) shall give the statement before Hon'ble High Court Delhi at the time of quashing of the said FIR lodged against the second party.

9. That the first party undertakes to withdraw the above said defamation suit pending against the second party after filing the mutual divorce petition. Further Dr. V.B. Bhatia (father of first party) shall withdraw the above said criminal complaint no.414/1 pending in the court of Sh. Vijay Shankar MM, Delhi against second party, after filing the mutual divorce petition.

10. That the second party shall withdraw the petition no.353/13 u/s. 125 Cr.P.C. after filing the mutual divorce petition. The second party shall not claim any kind of maintenance from the first party or their family members in future. Second party shall not claim any right, title in the movable or immoveable property of first party or his family members except the aforesaid settlement alimony i.e. Rs.15 lacs. That the second party has received the dowry articles and nothing remain. That the first party will return the two personal photo albums of second party at the time of filing the mutual divorce petition.

11. That both the parties undertake that they shall not indulge in any further litigation in this regard and shall not file any civil or criminal case in future against each other or against their family members in future.

12. That both the parties agreed that they shall withdraw all the complaints filed against each other and their family members after filing the mutual divorce petition. Both the parties further undertakes

not to file any civil or criminal complaints against each other or their family members in future.

13. That both the parties undertake to comply with the conditions of the present compromise/settlement deed in the words and spirit of the documents. In case of default in compliance from any side of the parties to the settlement/compromise, the aggrieved party would be at liberty to approach competent court for appropriate relief at the cost & expenses of the defaulting party.

14. That both the parties have settled the dispute out of their sweet will and without any undue pressure or coercion from any corner. The terms agreed in this undertaking shall be binding upon both the parties under all circumstances.

15. That both the parties shall suffer the settlement before the Ld. Referral court on 03.12.2014.”

*Sd/-
(Seema Pasricha)
Mediator/20.11.2014*

3. One of the important conditions of settlement were that the present petitioners on satisfying of certain conditions would withdraw the suit for defamation instituted by them against the respondents herein. It is not in dispute that the respondent in pursuance of the said settlement had done her part of the obligation as a consequence of which the present petitioner had also chosen to withdraw the defamation suit against the respondent in the Court of ADJ, Rohini in Delhi. The petitioners herein after withdrawal of

the suit of defamation filed an application under Section 16 of the Court Fees Act stating that as the matter had been settled in pursuance of the mediation proceedings at Chandigarh Court, therefore, the court fees of Rs.20,000/- deposited by them on the petition be refunded to them. It is this application which was rejected by the learned ADJ vide impugned order.

4. I have heard petitioner Dr. V.B. Bhatia in person. I have also gone through the impugned order.
5. It has been contended by petitioner No.2 appearing in person that there are four judgments relied upon by them. These are *Pradeep Sonawat v. Satish Prakash @ Satish Chandra, Cr. No.81 of 2014, decided on 28.01.2015; A. Sreeramaiah v. South Indian Bank Ltd. Bangalore & Anr. 2007 (2) Civil Court Cases 0695; Kamalamma & Ors. v. Honnali Taluk Agricultural Produce Co-operative Marketing Society Ltd., Honnali & Ors., 2010 (1) AIR Kar. R. 279; and Tarun Juneja & Ors. v. Hukam Singh, C.R. No.874/2009 (O&M) decided on 15.09.2009.*
6. It has been contended that in pursuance of the aforesaid judgments, the petitioners are entitled to refund of court fees. Notice was

issued to the learned Standing Counsel for the Govt. of NCT of Delhi and he very fairly conceded that so far as word 'Court' used in Section 16 of the Court Fees Act, 1870 is concerned, the question to be decided by the Court is whether the Court referred to under Section 16 means the Court which has referred the dispute to the Mediation Cell or the word 'Court' is to be construed as liberally including the Court other than the one where the dispute is settled pursuant to the reference to Mediation Cell and the refund of the Court fees is sought. Before dealing with this question, it may be pertinent here to refer to the judgments which have been referred to by the petitioner in person and the relevant observations or the ratio laid down therein.

7. In *Pradeep Sonawat v. Satish Prakash @ Satish Chandra*, Cr.No. 81 of 2014, decided on 28.01.2015 the Punjab & Haryana High Court at Chandigarh after referring to the aforesaid judgments had held as under:-

"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.”

8. It may also be pertinent here to reproduce the language of Section 16 of the Court Fees Act as well as Section 89 of the CPC, which reads as under:-

“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, the full amount of paid in respect of such plaint.

“89. 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 observations 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 Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so 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 Authority 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.”

9. Reference also deserves to be made to Section 16-A of the Court Fees Act which has been inserted by the local amendment for the State of Delhi, which reads as under:-

“16A. Refund of fees on settlement before hearing. –
Whenever 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 a 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.”

10. A perusal of the aforesaid three provisions in the light of the pronouncements referred to hereinabove, there is no dispute about the fact that the intention of the legislature has been to encourage resort to alternative dispute settlement mechanism be that by Arbitration Conciliation, Mediation settlement, etc. This is also sought to be done with the intervention of the Court where it finds that there is a fair possibility of settlement of dispute between the parties which could bring two warriors to peace. The entire purpose of implementing this provision by way of amendment on the recommendation of the Law Commission was to reduce the pendency of the Court within the manageable limits so that the Courts are effectively able to dispense with the justice. In order to give incentives to such of the parties to resort to this alternative

dispute settlement mechanism, Section 16 was incorporated in the Court Fees Act which gave a discretion to the Court to refund the court fees to the party in case such a reference to the alternative dispute mechanism has brought about a final termination of the proceedings between the parties. This discretion of refund of court fees exercised by a court is to give incentive not only to party but is also to cut short the agony suffered by a party by going through a protracted trial. It is with this intention that Section 16 was incorporated in Court Fees Act, 1870. Therefore the purpose of Section 16 of the Court Fees Act is a benevolent one to confer certain incentives to the party and it is in this context the question which would arise is that the provision which confers incentive to a party should be construed in a parochial strict manner or in a liberal manner to confer that incentive to the party so that it comes forward to arrive at an amicable settlement by way of an alternative dispute mechanism. Therefore, the necessity of deciding the question as to whether the word ‘Court’ appearing in first part of Section 16 is a reference to the Court where the dispute is pending or it can be construed as any Court other than the Court where the

dispute is pending as a consequence of which whose referral the parties have arrived at a settlement. The Court must also bear in mind that in a matrimonial dispute between the parties there is a proliferation of cases which are instituted by the respective sides at different forum and at different places probably with the intention of pinning the other side down.

11. It is in this context that while as the petitioners had initiated a suit for defamation in Delhi, the wife had initiated divorce proceedings in Chandigarh where he seems to have been living at the relevant time. Now obviously, one of the Court will only refer to the parties to the Mediation Cell and if done so, the parties would appear before the Mediation Cell and would like to purchase peace for good and no party would settle a dispute in piecemeal only with the intention of getting the court fees. It is in this background that when the parties were referred by the Chandigarh Court to the Mediation Cell that a comprehensive settlement be arrived at between the parties as a consequence of which probably a divorce by mutual consent was obtained and the petitioner had also

undertaken to withdraw the suit for defamation. Therefore, I feel that the word 'Court' which is used in Section 16 need not to be construed in a parochial and limited manner only confined to the Court in Delhi where the defamation suit was pending. It has to be construed liberally so as to include the Court where the other litigation between the parties were pending. If done so, then only the real intention of the legislature would be sub-served as it will amount to giving incentive to the party to arrive at a comprehensive settlement and that comprehensive settlement if arrived at is bound to reduce the pendency of the litigation between the parties to the extent to which their number of cases are pending before different forum.

12. This view will also find support from the fact that even there is a local amendment in Delhi where in case where parties arrived at a settlement on their own depending on the stage at which such a settlement is arrived, the parties are entitled to refund of half of the court fees. This is envisaged in Section 16-A of the Court Fees Act which is a local amendment of Govt. of NCT of Delhi.

13. Therefore, this also confirms that the purpose of the Court is to encourage the settlement between the parties.
14. For the aforesaid reasons, I feel that the order dated 30.05.2015 passed by the learned ADJ is not in line with the correct interpretation of Section 16 of the Court Fees Act and the word 'Court' in Section 16 need not be construed as the only Court which has referred the parties for settlement of dispute where the dispute is pending. It could be any Court where the parties are litigating. Accordingly, the same is liable to be set aside.
15. Ordered accordingly.
16. The petitioners are entitled to refund of the entire court fees. The matter is sent back to the trial Court with the direction that the competent person shall issue a necessary recovery certificate in favour of the petitioners for the refund of the entire court fees.

V.K. SHALI, J.

NOVEMBER 30, 2015

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