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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA(OS)(COMM) 5/2016

HSIL LTD

..... Appellant

Represented by: Mr.Manav Gupta, Advocate
with Ms.Deboshree Mukherjee,
Advocate

versus

SAFARI SANITARY WARES

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **09.09.2016**

CM No.33190/2016 & CM No.33189/2016

Allowed subject to just exceptions.

CM No.33188/2016

1. The application is misconceived for the reason the appellant has already paid court fees which is more than what was otherwise required to be paid.

2. The application seeking extension of time is disposed of as infructuous.

RFA(OS) (Comm.) 05/2016

1. The grievance of the appellant qua the order passed by the learned

Single Judge is limited to declining prayer for refund of court fees paid by the appellant in the suit.

2. Reason given by the learned Single Judge is that where large corporate are the plaintiffs they enjoy the benefit of payment of lower court fees vis-a-vis other suits and this is good reason for denying refund of court fees.

3. The suit was disposed of in terms of a compromise effected between the parties during mediation proceedings.

4. It is trite that personal predilection and opinion of a Judge cannot be the foundation of a judicial order.

5. It is a matter of legislative policy as to what court fees needs to be paid in which kind of suits.

6. To encourage settlements, in terms of Section 89 of the Code of Civil Procedure, 1908, Section 16 of the Court Fees Act was amended which read 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 the fee paid in respect of such plaint.”

7. The use of the word ‘shall’ evinces that the court has no discretion in the matter. It is trite that where a legislation is beneficial and the word ‘shall’ is used it has to be read as ‘shall’ and not ‘may’ i.e. the benefit is to be mandatorily accorded and is not at the discretion of the Court.

8. The appeal is accordingly disposed of setting aside the impugned

order to the extent that while decreeing the suit in terms of the settlement request for refund of court fees has been denied.

9. We direct the Registry of this Court to issue the necessary certificate to the appellant to enable the appellant to obtain refund of the court fees paid from the Collector of Stamps. The Collector of Stamps is directed that on the strength of the present order and on the strength of the certificate issued the court fees shall be refunded.

10. No costs.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

SEPTEMBER 09, 2016

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