

In the High Court of Punjab & Haryana at Chandigarh.

CR-3428 of 2017 (O&M)
Date of decision: 07.12.2017

Rajinder Singh

..... Petitioner

vs.

Jaswinder Kaur and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Ankush Singla, Advocate
for the petitioner.

B.S. WALIA,J.(ORAL)

[1] Despite service, none has put in appearance on behalf of the respondents. The matter pertains to rejection of the claim seeking refund of court fee on account of compromise between the parties. In the circumstances, I am not inclined to adjourn the case.

[2] Learned counsel contends that the plaintiff-petitioner had filed a suit for specific performance of agreement dated 19.12.2013 against Defendants-respondents on 17.12.2014 and paid Court fee of Rs. 3,05,893/-. Eventually the matter was referred to the National Lok Adalat and the same was dismissed as withdrawn in view of compromise having been arrived at between the parties before the National Lok Adalat, Barnala on 11.02.2017. Learned Counsel further contends that although the compromise before the National Lok Adalat was due to intervention by the Presiding Officer but no mention to that effect or for refund of court fee was recorded in the order

dated 11.02.2017 (Annexure P1).

[3] Learned counsel contends that where the dispute between the parties has been settled or compromised outside the Court e.g. before the Lok Adalat, the plaintiff is entitled as a matter of right for refund of the entire court fee paid by him in terms of Section 16 of the Court Fees Act read with Section 21 of the Legal Services Authorities Act, 1987. Section 21 of the Legal Services Authorities Act, 1987 and Section 16 of the Court Fees Act, 1870 are reproduced as under:-

Section 21 of the Legal Services Authorities Act, 1987

“21. Award of Lok Adalat-

(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of Section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870 (7-1870).”

Section 16 of the Court Fees Act, 1870

“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.

[4] Learned counsel contends that application dated 21.03.2017 (Annexure P3) was wrongly rejected by the learned Civil Judge, Barnala vide order dated 20.04.2017 (Annexure P2) on the ground that there was no order regarding refund of court fee by the learned Lok Adalat. Learned counsel contends that the matter in issue is squarely covered by the decision of this Court in **Pardeep Sonawat vs. Satish Prakash- 2015 AIR (Punjab) 130** in the light of decision in **A. Sreeramaiah v. South Indian Bank Ltd., Bangalore and Anr., 2007(5) R.C.R.(Civil) 374 : 2007 [2] Civil Court Cases 0695** wherein a Division Bench of the Hon'ble Karnataka High Court interpreting the provisions of Section 89 of the CPC

in relation to Section 16 of the Court Fees Act observed as under :-

"6. 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, appellants are entitled for refund of Full Court Fees."

[5] The Coordinate Bench in Pardeep sonawat's case also referred to the decision in **Kamamma & Ors. v. Honnali Taluk Agricultural Produce Co-operative Marketing Society Ltd., Honnali and Ors., 2010[1] AIR Kar. R 279**. Relevant extract of the same is reproduced 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 Section 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 Section 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 Section 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."

[6] Learned Counsel contends that in the circumstances 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 Section 89, Civil Procedure Code would not disentitle the party paying Court Fees in respect thereof to get refund of full Court Fees in terms of Section 16 of the Court Fees Act, 1870. Learned counsel contends that in the circumstances, the petitioner is entitled to the relief prayed for and the petitioner would be entitled to refund of the Court fee, even if the matter had been decided on the basis of compromise inter-se the parties.

[7] Admittedly, the petitioner filed a civil suit seeking specific performance of agreement to sell. The matter came to be referred to the National Lok Adalat and on account of proceedings conducted therein, a compromise was arrived at between the parties. The suit filed by the petitioner-plaintiff came to an end on account of compromise having been arrived at between the parties before the National Lok Adalat leading to the plaintiff suffering a statement that he did not want to pursue the case in view of settlement. Obviously the same was with the intervention of the National Lok Adalat. In the circumstances on a conjoint reading of Section 21 of the Legal Services Authority Act, 1987 read with Section 16 of the Court Fees Act, 1870 as well as the decision of this Court in *Pardeep Sonawat's case (Supra)*, the plaintiff is entitled to refund of the Court fee affixed by him. Even if the plaintiff did not apply for refund, the Court ought to have *suo motto invoked* its powers to direct refund of Court fee paid at the time of filing the suit. The same would be in keeping with the intention of the legislature to encourage adoption of alternative dispute resolution mechanism. Relevant extract of the decision in *Pardeep Sonawat's case (Supra)* is reproduced hereunder :-

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.

Thus, whether settlement of the dispute is by way of compromise with the persuasion of the Court or amongst the parties by themselves in terms of Section 89 of the CPC or otherwise, invocation of Section 16 of the Act should be made so that settlement by way of alternative dispute resolution mechanism gets an impetus.

[8] In the circumstances, order dated 11.02.2017 is modified so as to hold the petitioner entitled to refund of court fee while order dated 20.04.2017 dismissing the application for refund of Court fee is set aside and petitioner held entitled to a certificate to be issued to him by the Civil Judge (Jr. Division), Barnala authorizing him to receive back from the Collector the full amount of Court fee paid by him.

[9] Revision petition allowed in aforementioned terms.

(B.S. WALIA)
JUDGE

07.12.2017
smriti

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No