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

+ **CM(M) 919/2017**

ANSHU AGGARWAL

..... Petitioner

Through: Mr. S.C. Chaturvedi & Mr. Bipin K.
Jha, Advs.

Versus

S. HARMEET SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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28.08.2017

CM No.30790/2017 (for condonation of 117 days delay in re-filing the petition)

1. For the reasons stated, the delay in re-filing is condoned.
2. The application is disposed of.

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3. This petition under Article 227 of the Constitution of India impugns the dismissal of the application filed by the petitioner / plaintiff under Section 151 of the Code of Civil Procedure, 1908 (CPC) for return of court fees in Civil Suit No.79137/2016 of the Court of Additional District Judge (ADJ)-III (Central), Tis Hazari Courts, Delhi vide order dated 15th February, 2017 written in hand in the margin of the said application.
4. The petitioner / plaintiff instituted a suit before the District Judge (Central), Tis Hazari Courts, Delhi for recovery of damages of Rs.2 crores from the respondent / defendant.
5. The said suit was marked to the Court of ADJ-III, Central District, Tis Hazari Courts, Delhi.

6. On 16th January, 2017, the counsel for the petitioner / plaintiff withdrew the suit with liberty to file afresh in the appropriate jurisdiction.
7. The counsel for the petitioner / plaintiff on enquiry states that the suit was withdrawn on the day when it came up for admission before the said Court and even before summons of the suit had been ordered to be issued.
8. The petitioner / plaintiff thereafter filed the application aforesaid for return of court fee of Rs.1.97 lacs claimed to have been paid on the plaint.
9. The said application has been dismissed observing that since the suit was withdrawn and not settled, Section 16A of the Court Fees Act, 1870 was not applicable.
10. As per the dicta in *Aya Singh Vs. Munshi Ram* AIR 1968 Del 249 (DB) and consistently followed in *Shiv Charan Singhal Vs. Rakesh Kumar* (2013) 201 DLT 735 and *Rekha Dua Vs. Yoginder Chauhan* 2013 SCC OnLine Del 2429, it has been held by this Court that the Court has inherent power to order refund of court fees in appropriate cases. In the present case, the order permitting the suit to be withdrawn for filing in Court of appropriate jurisdiction, was in the nature of order of return of plaint and in which case also, the court fees should have been returned.
11. The impugned order thus cannot be sustained and is set aside and the Court of ADJ (Central), Tis Hazari Courts, Delhi is directed to either return the court fees along with the plaint in accordance with the rules to the petitioner / plaintiff or to issue a certificate to the petitioner / plaintiff to get refund of the court fees if any paid on the plaint.
12. I may record that there is no proof before this Court of court fees of Rs.1.97 lacs having been paid by the petitioner / plaintiff save for an

averment in the plaint and the Suit Court may satisfy itself in this regard.

13. Be that as it may, I have enquired from the counsel for the petitioner / plaintiff as to for what reason the suit was withdrawn and in which Court is it intended to be filed. Section 5 of the Delhi High Court Act, 1966 vests Original Civil Jurisdiction in this Court only in respect of suits, the value of which exceeds Rs.2 crores. The claim of the petitioner / plaintiff being of Rs.2 crores, the Court of Additional District Judge had pecuniary jurisdiction to entertain the same.

14. The counsel for the petitioner / plaintiff states that the learned ADJ was of the view that the suit of the petitioner / plaintiff is a commercial dispute within the meaning of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. However on enquiry as to under which Clause of Section 2(1)(c) of the Commercial Courts Act, the suit falls, the counsel only states that in his opinion, the suit is not a commercial suit.

15. It was for the counsel for the petitioner / plaintiff to satisfy ADJ in this regard and it is not understandable as to why the petitioner / plaintiff has withdrawn the suit. Though it is stated that the learned ADJ opined so but there is nothing in the order dated 16th January, 2017 to the said effect.

16. The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 28, 2017

‘gsr’..