

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8088 OF 2015

Prakash Laxman Somanna .. Petitioner

V/s.

Mukesh Laxman Somanna and Ors. ... Respondents

Mr.Ketan Joshi i/b Mr.S.A.Dhamale for the petitioner

**CORAM: K.K. TATED, J.
DATED : MAY 2, 2018**

P.C. :

1 Heard.

2 By this Petitioner, under Article 227 of the Constitution of India, Petitioner is challenging the order passed by learned Judge of City Civil Court, Bombay dated 10.07.2015 in Misc. Application No.108 of 2015 in Suit No.3764 of 2002 (High Court Suit No.8431 of 2002) by which the Petitioner's Application for delay in submitting the Application before the Authority for refund of Court Fees to the Petitioner plaintiff as per order dated 14.01.2013 passed by the court, stands rejected.

3 In the present proceeding, Petitioner filed Suit in High Court Original side Suit No.8431 of 2002. Same suit was transferred to

Bombay City Civil Court and numbered as Suit No.3764 of 2002. Said Suit was settled out of court. Same was withdrawn by the Petitioner plaintiff and requested for refund of court fees. At that time, trial court passed order on 14.1.2013 which reads thus;

“NOB/TOB

By PRAECIPE

Plff present. Adv Ms.Damale for plff present

Deft present. Adv absent

The learned adv for plff has submitted the matter has settled between plff and deft and hence want to withdraw the suit.

An endorsement to that effect has been made on the plaint byu the plff and his advocate.

As the suit is withdrawn unconditionally it stands disposed of accordingly.

Refund the court fee stamps to the plff as per rules.”

4 Thereafter it remained on the part of Petitioner plaintiff to make appropriate Application to the authority for refund of court fees for more than two years. Hence, the Petitioner plaintiff filed praecipe dated 31.03.2015 with the Registry of Bombay City Civil Court at Bombay for condonation of delay in submitting the Application for refund of court fees. Thereafter the Petitioner filed Misc. Application No.108 of 2015 before the Bombay City Civil Court, Mumbai for same relief with following paragraph:

“7. It is therefore prayed that the delay in submitting the application before the Ld.Authority for refund of Court Fee may

be condoned and the Concern Authority may be directed to refund the amount of Court fee to the plaintiff as per the order dated 14-02-2013 passed by this Hon'ble Court."

5 That Application was rejected by Bombay City Civil Court, Mumbai by impugned order dated 10.02.2015. Hence, Petitioner preferred present Writ Petition.

6 The learned counsel for the Petitioner submits that impugned order dated 10.07.2015 is required to be set aside only on the ground that same was passed without assigning any reason. He further submits that when plaintiff withdrew his Suit on 14.01.2013, on that date itself, he made oral Application for refund of court fees. That Application was allowed by the Trial Court. Hence, there is no question of delay on plaintiff's part. As per section 43 of the Bombay Court Fees Act, 1959, they have to make Application within one year to the authority for refund of court fees. Section 43 of the Bombay Court Fees Act, 1959 reads thus:

"43 Repayment of Fee in Certain Circumstances

(1) When any suit in a Court [Maharashtra or any proceeding instituted by presenting a petition to a court under the Hindu Marriage Act, 1955,] is settled by agreement of parties before any evidence is recorded, or any appeal or cross-objection is settled by agreement of parties before it is called on for effective hearing by the Court, half the amount of the fee paid by the plaintiff, [petitioner appellant, or respondent on the plaint, [petition] appeal or cross-objection, as the case may be, shall be repaid to him by the Court:

Provided that, no such fee shall be repaid if the amount of fee paid does not exceed [twenty five rupees] or the claim for repayment is not made within one year from the date

on which the Suit, [proceeding,] appeal or cross-objection was settled by agreement.

(2) The State Government may, from time to time, by order, provide for repayment to the plaintiffs,[petitioners][complaints under section 138 of the Negotiable Instruments Act, 1881,] appellants or respondents of any part of the fee paid by them on plaints, [petitions] [complaints under section 138 of the Negotiable Instruments Act, 1881,] appeals or cross-objections, in suits, [complaints under section 138 of the Negotiable Instruments Act, 1881,] proceedings] or appeals disposed of under such circumstances and subject to such conditions as may be specified in the order.

Explanation.--For the purpose of this section, effective hearing shall exclude the dates when the appeal is merely adjourned without being heard or argued.

7 The learned counsel for the petitioner submits that Trial Court failed to consider the fact that on 14.01.2013 itself they made Application to the court. Therefore there is no question of delay. Hence, impugned order passed by Trial Court dated 10.07.2015 be set aside directing Bombay City Civil Court, Mumbai to issue appropriate direction to the authority for refund of court fees. He submits that if present Writ Petition is not allowed, irreparable loss will be caused to them. He submits that in the interest of justice, this Hon'ble Court be pleased to direct Bombay City Civil Court, Mumbai to issue appropriate direction to the authority for refund of court fees.

8 It is to be noted that in the present proceedings, Petitioner withdraw the Suit by order dated 14.01.2013. At that time, Bombay City Civil Court, Mumbai accepted Petitioner's oral request for refund

of court fees as per rules. It is to be noted that as per section 43 of the said Act, Petitioner ought to have made Application within one year for refund of court fees. He failed and neglected to make same. Actually he filed praecipe on 31.3.2015 and thereafter filed Misc. Application No.108 of 2015. That was beyond the period of one year. He failed to show sufficient cause for delay of more than one year in filing application for delay. Therefore, there is no question of condonation of delay in filing Application for refund of court fees.

9 Considering these facts, I do not find any reason to entertain the Application. Hence, Writ Petition stands rejected.

(K.K. TATED, J.)