

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:26.02.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

Application No.1102 of 2018
in
C.S.No.389 of 2011

Tidel Park Limited
No.4, Rajiv Gandhi Salai
Taramani
Chennai - 600 113

.. Applicant/Plaintiff

Vs.

1. M/s.Arkey Energy (Rameswarm) Limited
GF, 1A, Prince Village
15, Rajamannar Salai
T.Nagar, Chennai - 600 017

2.M/s.Ind Barath Power Infra Limited
Plot No.30A,Road No.1
Film Nagar, Jubilee Hills
Hyderabad - 500 033

.. Respondents/Defendants

Application filed under Order XIV Rule 8 of Madras High Court Original Side Rules read with Section 151 of the Code of Civil Procedure, to direct the Registry to refund the Court Fee of Rs.4,88,853/- paid in the above suit.

For Applicant : Mr.Narendran
of M/s.King and Partridge

For Respondents : Mr.Anirudh Krishnan

ORDER

Sole plaintiff in the main suit is the lone applicant herein. Defendants 1 and 2 in the main suit are the respondents 1 and 2 respectively in this application. Parties in this application are referred to by their respective ranks in the main suit for the sake of convenience and clarity.

2. Prayer paragraph in the main suit does not contain a paragraph number, but it has eight sub-paragraphs i.e., 'a' to 'h'. I deem it appropriate to extract the prayer paragraph in the main suit. The same reads as follows:

a) *Declaring that the first defendant has defaulted to supply the contracted demand of power and that they are therefore liable to pay the difference in rate between Arkay Energy billing and TNEB Tariff ("Discount") amounting to Rs.4, 85, 32, 773/-[as in paragraph 26 (a) (b)] for quantity of power not supplied under the Power Supply Agreement dated.10.11.2005 and consequently,-*

b. *Directing the first defendant to pay interest pendente lite on the sum of Rs.4,85, 32,773/- in terms of paragraph 26 [(a) + (b)] above;*

c. *directing the first defendant to pay interest pendente lite on the sum of Rs.4,85,32,773/- in prayer (b) from the date of filing the suit until realization thereof.*

d. declaring that the plaintiff is entitled to interest at 16% p.a on the investment of Rs.90 lakh from 05.12.2005 and for a consequent direction for payment of Rs.77,79,945/- being the money payable for interest at 16% p.a on Rs.90 lakh from 05.12.2005 and 29.04.2011, the date of filing of the suit;

e. directing the first defendant to pay interest at 16% p.a pendente lite on the investment of Rs.90 lakh from 30.04.2011, the date of filing the suit, until payment by the first defendant of the value of the shares as assessed by the statutory auditor of the first defendant in terms of the preliminary decree or the paid up value of the shares i.e., 90 lakh, whichever is higher.

f. Pass a preliminary decree declaring that the second defendant is liable to purchase the whole of the shares in the first defendant held by the plaintiff in the terms of the shareholders agreement dated 10.11.2005, directing an inquiry by the statutory auditor of the first defendant as to the value of the shares of the first defendant held by the plaintiff and fixing a date for purchase by the second defendant of the shares in the first defendant held by the plaintiff;

g. Pass a final judgment and decree directing the second defendant to pay the value of the shares as assessed by the statutory auditor of the first defendant in terms of the preliminary decree or to pay the paid up value of the shares i.e., Rs.90 lakh, in terms of clause 3 of the shareholders agreement, whichever is higher.

h. directing the first and second defendants to jointly and severally pay the costs of the suit and pass such further or other orders as may be deemed fit in the interest of justice."

3. Vide separate proceedings in the main suit today (26.02.2018) and an order in Application No.1101 of 2018 (amendment application), plaint prayers contained in sub-paragraphs 'a' to 'c' have been given up in the light of a reference to arbitration made in a Section 8 application being Application No.4804 of 2011 by an order dated 17.01.2013 made by a learned single Judge of this Court. I am informed that the order of the learned single Judge was carried in appeal by way of an intra-court appeal in O.S.A.No.313 of 2013 and by an order dated 08.02.2017, the aforesaid appeal was dismissed confirming the order of the learned single Judge. In other words, there is a reference to arbitration as far as Plaint prayers 'a' , 'b' and 'c' are concerned. In such circumstances, refund of Court fee paid on the plaint with regard to sub-paragraphs 'a' 'b' and 'c' alone are sought for by the plaintiff. In sum and substance, this is the prayer in this application. In this regard, I deem it appropriate to extract the memo of valuation paragraph in the plaint, which is in tabular column form. The same reads as follows:

SI.NO.	Description of Claim	Amount (Rs.)	C.F. Paid (Rs.)
1	Prayer (a & b) being claim for Discount	Rs. 4,85,32,773/-	Rs.4,88,853/-
2	Prayer (d) being claim for guaranteed interest	Rs.77,79,945/-	Rs.81,325/-
3	Prayer (f) being declaration by a preliminary decree	Rs.1000/-	Rs.75/-
4	Prayer (g) being claim for minimum value of shares	Rs.90,00,000/-	Rs.93,525/-
	Total	Rs.6,53,13,718/-	Rs.6,63,778/-

4. To be precise, there is a prayer for refund of Rs. 4,85,32,773/-, being the Court fee paid qua sub-paragraphs 'a' and 'b' of prayer paragraphs, which have now been deleted from the plaint as the same are in seizin by an Arbitral Tribunal. To be noted, sub-paragraph 'c' of plaint prayer paragraph pertains to future interest and therefore does not find place in the extracted tabulation supra.

5. Mr.Anirudh Krishnan, learned counsel appearing for the defendants, while not opposing the request for refund, submitted that it is necessary to bring to the notice of this Commercial Division the obtaining position of law qua recent amendments to the Tamil Nadu Court Fees and Suits Valuation Act, 1955 (hereinafter referred to as ' Court Fees Act' for brevity).

6. Learned counsel drew my attention to amended Section 69-A of the Court Fees Act, which reads as follows:

"69-A. Refund on settlement of disputes under Section 69 of Code of Civil Procedure._ Where the Court refers the parties to the suit to any of the modes of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 (Central Act V of 1908), the fee paid shall be refunded upon such reference. Such refund need not await for settlement of the dispute."

7. Mr. Anirudh Krishnan also points out that this amendment to the Court Fees Act found its way into the Statute only on 01.03.2017. It is clear from the narrative supra that the reference to the arbitration was made by a learned single Judge on 17.01.2013 and confirmed by a Division Bench on 08.02.2017, both of which are prior to the amendment on 01.03.2017. In this view of the matter learned counsel for defendants brought to the notice of the Court that there may be some doubt as to whether the plaintiff is entitled to refund of Court fee as prayed for in this application.

8. For examination of this aspect of the matter in the light of the language of 69-A of Court Fees Act, it is necessary to extract Section 89 of the Code of Civil Procedure, 1908 ('CPC' for brevity). Section 89 CPC reads as follows:-

"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 observation 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 had been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 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 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 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. A bare perusal of Section 89 CPC reveals that 'Arbitration' is one of the modes of settlement that has been contemplated in Section 89 CPC. In other words, if a suit is referred to Arbitration, the plaintiff will be entitled to refund of Court fee under Section 89 CPC.

10. The only difficulty that the facts scenario in the instant lis presents is that reference to arbitration was made prior to amendment to the Court Fees Act, particularly introduction of Section 69-A in Court Fees Act. In search for a answer to this situation, which this application presents in the instant case, I perused Section 69-A of Court Fees Act as it stood prior to 01.03.2017. Section 69-A of Court Fees Act as it stood prior to 01.03.2017 is as follows:

“69-A. Refund on settlement of disputes under Section 89 of Code of Civil Procedure._(1) Where the Court refers the parties to the suit to anyone of the modes of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 (Central Act V of 1908), the plaintiff shall be entitled to a certificate from the Court authorizing him to receive back the full amount of the fee paid in respect of such plaint if the dispute referred by the Court is settled.”

11. From the narration and reproduction of relevant provisions supra, it unfurls and emerges very clearly that a plaintiff would certainly be entitled to refund of Court fee when a matter is referred to Arbitration even prior to 01.03.2017, but the caveat or rider is, it should have culminated in a settlement. In the light of the amended Section 69-A of Court Fees Act now, a reference to Arbitration would suffice and it need not actually culminate in a settlement. This is the obtaining position from 01.03.2017.

12. In the light of chronicled dates, which I have recorded, I now examine if the plaintiff would be entitled to refund of Court fee as sought for in this application. In answer to this, the date on which the instant application was filed becomes relevant. I see from the suit file placed before me that the instant application was filed on 11.01.2018, which is post 01.03.2017. In other words, on the date on which the instant application was filed, Section 69-A of the Court Fees Act, as amended, was operating. It follows that, on the date of filing of this application, the plaintiff was entitled to refund of Court fee on a mere reference to Arbitration without waiting for the same to culminate in a settlement. As alluded to supra, the plaintiff was entitled to refund even prior to the amendment and I have already recorded that the Caveat / rider is that the plaintiff had to wait for a settlement.

It does not have to do so now. In fact, in my reading whether it culminates in a settlement or not is immaterial.

13. Owing to all that I have set out supra, I have no hesitation in coming to the conclusion that the plaintiff will be entitled to refund of Court fee as sought for. In other words, prayer in this application deserves to be acceded to and I do so.

This application is allowed. Registry is directed to process refund of Court fee in accordance with law as expeditiously as possible and in any event complete the process within 30 days from the date of communication of this order to the Registry.

Sd/-M.S.J
26.02.2018

//Certified to be a true copy//

Dated this day of 2018

jj 28/03/2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.