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

Decided on: 14th December, 2018

+ **FAO (OS) (COMM) 42/2018 & CM No. 9553/2018**

NUTAN BATRA

..... Appellant

Through: Ms. Leena Tuteja, Ms. Diksha
Bhati & Mr. Ishaan Chawla,
Advs.

versus

M/S BUNIYAAD ASSOCIATES

..... Respondent

Through: Mr. Ramesh Singh, Standing
Counsel GNCTD with
Mr.Chirayu Jain & Mr. Nikita
Goyal, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J.

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1. This appeal is directed against an order dated 09.02.2018 passed by the learned Single Judge in I.A. No. 1650/2018 in C.S.(Comm.) 1464/2016. By the impugned order, the learned Single Judge dismissed the appellant's application for refund of the entire court fees paid in the suit in terms of Section 16 of the Court-Fees Act, 1870 (hereafter referred to as "the Act").

2. The appellant filed the suit in question against the respondents claiming infringement of certain intellectual property rights. The

paragraph of the plaint dealing with valuation alone is relevant for the purpose of this appeal. It is as follows: -

“That the suit is valued for the purposes of court fee and jurisdiction in the following manner:

- i) For a decree for permanent injunction restraining infringement of trade mark, this relief is valued for purposes of court fee and jurisdiction at Rs. 200 and court fee of Rs. 20/- is affixed hereto;*
- ii) For a decree for permanent injunction restraining acts of passing off, this relief is valued for purposes of court fee and jurisdiction at Rs. 200/- and court fee of Rs. 20/- is affixed hereto;*
- iii) For a decree of delivery up of infringing brochures, print outs and other articles, this relief is valued for the purposes of court fee and jurisdiction at Rs. 200/- and court fee of Rs. 20/- is affixed thereto.*
- iv) For an order for rendition of account of profits illegally earned by the Defendants and/or damages claimed in the alternative, this relief is valued for the purposes of court fees and jurisdiction at Rs. 1,10,00,000/- and court fees of Rs. 1,10,000/- is paid thereon.*

Thus the suit is valued for purposes of court fees and jurisdiction at Rs. 1,10,00,000/- and court fees of Rs. 1,10,000/- is paid thereon. The subject matter of the Suit is a commercial dispute as defined in section 2(1) (c) of the Commercial Courts, Commercial Division and Commercial Appellant Division of High Courts Ordinance, 2015.”

3. By an order dated 08.09.2017, the suit was referred for mediation before the Delhi High Court Mediation and Conciliation

Centre which resulted in settlement of all the disputes and differences and recording of a Settlement Agreement dated 17.11.2017. By an Order dated 13.12.2017, the suit was consequently disposed of in terms of the Settlement Agreement, and it was directed that the plaintiff (appellant herein) would be entitled to refund of 50% of the court fee paid, in terms of Section 16A of the Act (as applicable in Delhi). I.A. No. 1650/2018 was thereafter filed by the appellant, for modification of the order dated 13.12.2017 to the effect that the appellant was entitled to the refund of the entire court fees. She invoked Section 16 of the Act read with Section 89 of the Code of Civil Procedure, 1908 (hereafter referred to as “the CPC”).

4. This application was dismissed by the impugned order of the learned Single Judge wherein it has been held as follows: -

“This application is misconceived and dismissed because the provisions of Section 16 and 16-A of the Courts-fees Act, 1870 (as applicable to Delhi) have to be read together. Section 16-A of the Court-fees Act has been specifically added for Delhi and which provides that only 50% of the Court fee is refundable and that too if the case is compromised before commencement of evidence in the suit. The compromise which is subject matter of Section 16-A of the Court-fees Act (as applicable to Delhi) will include compromise before the Mediation & Conciliation Centre and it cannot be that if a matter is compromised before the Mediation Centre, then, the entire court fee will be refunded as per Section 16. To take such an interpretation will be to wipe off Section 16-A from the statute book and which specifically is applicable for Delhi.”

5. Although the respondent has not been represented in the appeal, we had issued notice to the Standing Counsel for the Govt. of NCT of Delhi to assist the Court with respect to interpretation of Section 16 and 16A of the Act. We have heard Ms. Leena Tuteja, learned counsel for the appellant and Mr. Ramesh Singh, learned Standing Counsel for the Govt. of NCT of Delhi.

6. The relevant statutory provisions which require interpretation for the purpose of this appeal are Sections 16 and 16A of the Act and Section 89 of the CPC (which is referred to in Section 16). These provisions are set out below:

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 authorizing him to receive back from the collector, the full amount of the fee paid in respect of such plaint.

Section 16A of the Court-fees Act, 1870

16A. Refund of fees on settlement before hearing.- Whenever by agreement of parties-

- i) Any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim; or
- ii) Any suit is compromised ending in a compromise decree before any evidence has been recorded on the merits of the claim; or
- iii) Any appeal is disposed of before the commencement of hearing of such appeal; half the amount of all fees paid in respect of the claim or claims in the suit or appeal shall be ordered by the

Court to be refunded to the parties by whom the same have been respectively paid.

Section 89 of CPC

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 observations 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 has been referred-

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 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 (39 of 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 (39 of 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.”

7. Section 16 of the Act and Section 89 of CPC were incorporated into the respective statutes by the Code of Civil Procedure (Amendment) Act, 1999, which was brought into effect on 01.07.2002. The Statement of Objects and Reasons of that amendment does not deal with the insertion of Section 16 in the Court Fees Act, but does mention the following context for insertion of Section 89 into the CPC:

“3. Some of the more important changes proposed to be made are as follows.

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(d) with a view to implement the 129th Report of the Law Commission of India and to make conciliation scheme effective, it is proposed to make it obligatory for the Court to refer the dispute after the issues are framed for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalat. It is only after the parties fail to get their disputes settled through any one of the alternate dispute resolution methods that the suit shall proceed further in the court in which it was filed.”

8. Section 89 has been interpreted *inter alia* in the judgment of the Supreme Court in *Afcons Infrastructure Limited v Cherian Varkey Construction Company Private Limited & Ors.* (2010) 8 SCC 24. The following observations in the said judgment are relevant for a proper interpretation of the provision:

“9. If Section 89 is to be read and required to be implemented in its literal sense, it will be a trial Judge’s nightmare. It puts the cart before the horse and lays

down an impractical, if not impossible, procedure in sub-section (1). It has mixed up the definitions in sub-section (2). In spite of these defects, the object behind Section 89 is laudable and sound. Resort to alternative disputes resolution (for short “ADR”) processes is necessary to give speedy and effective relief to the litigants and to reduce the pendency in and burden upon the courts. As ADR processes were not being resorted to with the desired frequency, Parliament thought it fit to introduce Section 89 and Rules 1-A to 1-C in Order X in the Code, to ensure that ADR process was resorted to before the commencement of trial in suits.

10. In view of its laudable object, the validity of Section 89, with all its imperfections, was upheld in Salem Advocate Bar Assn. (1) v. Union of India (2003) 1 SCC 49 [for short Salem Bar(1)] but referred to a committee, as it was hoped that Section 89 could be implemented by ironing the creases. In Salem Advocate Bar Assn.(II) v. Union of India (2005) 6 SCC 344 [for short Salem Bar (II)], this Court applied the principle of purposive construction in an attempt to make it workable.

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25. In view of the foregoing, it has to be concluded that proper interpretation of Section 89 of the Code requires two changes from a plain and literal reading of the section. Firstly, it is not necessary for the court, before referring the parties to an ADR process to formulate or reformulate the terms of a possible settlement. It is sufficient if the court merely describes the nature of dispute (in a sentence or two) and makes the reference. Secondly, the definitions of “judicial settlement” and “mediation” in clauses (c) and (d) of Section 89(2) shall have to be interchanged to correct the draftsman’s error. Clauses (c) and (d) of Section 89(2) of the Code will read as under when the two terms are interchanged:

(c) for “mediation”, 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 Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for “judicial settlement”, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

The above changes made by interpretative process shall remain in force till the legislature corrects the mistakes, so that Section 89 is not rendered meaningless and infructuous.”

9. Section 16 of the Act was also inserted by the same amendment, apparently with the object of providing some incentive to resort to methods of Alternative Dispute Resolution (hereinafter referred to as “ADR”). The notes on clauses accompanying the bill [which was ultimately enacted as the 1999 Amendment to the CPC] treated it as “consequential” to the insertion of Section 89 in the CPC.

"Clause 35.- (Amendment to the Court fees Act, 1870).

The proposed amendment is consequential to the new Section 89 in the Code of Civil Procedure, 1908, proposed to be inserted vide clause 7 of the Bill so as to enable the party to claim refund of court-fee in case the matter in dispute is settled outside the court".

10. Interestingly, the Court-fees Act, 1870 as originally enacted did not contain any provision for refund of court fees in case of suits which did not result in final adjudication by the court. Although, such

refunds were provided for in the earlier statute, viz. the Court Fees Act of 1867. With the increase in the burden on the courts in the intervening period, this position has undergone a change once again, and Parliament has intervened to encourage ADR including *inter alia* arbitration and mediation.

11. On a literal reading of Section 16, a plaintiff would be entitled to the refund of the court fees on a mere reference to ADR, under Section 89 of the Code, regardless of whether the reference ended in a successful settlement or not. This has come in for criticism from the Law Commission of India. In its 238th Report, submitted in December, 2011, the Commission made the following observations with respect to Section 16:

“6.4.2 Here again, there is a clear drafting error which gives rise to conflict with section 21 of the Legal Services Authorities Act, 1987. The LSA Act provides that the court-fees paid in a case placed before the Lok Adalat shall be refunded in the manner provided under the Court-fees Act, 1870 only if a compromise or settlement has been arrived at between the parties. However, Section 16 of the Court-fees Act, as the language stands, goes further and says that the court-fee is refundable merely on a reference by court to any ADR process. This would mean that virtually the court-fee paid in most of the suits will have to be refunded. What will happen if the reference to conciliation, mediation or Lok Adalat does not end in a settlement and the parties come to the court for adjudication? If the court-fees paid had already been refunded to the plaintiff when the reference was made, adjudication of the suit becomes free, there being no provision for collecting fresh court-fees. ... It was not intended by the Government (while introducing the Bill) or by the Legislature that the court-fees shall be refunded to the plaintiff once the reference

is made to ADR process, irrespective of its outcome or the conduct of the plaintiff or petitioner. We may in this context, refer to clause 35 of the 'Notes on Clauses' accompanying the CPC (Amendment) Bill, 1997. It reads as follows:

"Clause 35.- (Amendment to the (ours fees Act, 1870).

The proposed amendment is consequential to the new section 89 of the Code of Civil Procedure. 1908 proposed to be inserted vide clause 7 of the Bill so as to enable the party to claim refund of court-fee in case the matter in dispute is settled outside the section".

It clearly reflects the intention of the introducer of the Bill. However, the actual wording in the section is quite different. It does not appear that any conscious departure was intended at the time of enactment of the provision. It is clearly a case of draftsman employing the language which does not accord with the intention behind the clause in the Bill. It is therefore necessary to amend the provision in the Court-fees Act, 1870 so as to bring it in conformity with section 21 of the LSA Act, keeping in view the intendment and rationale of the provision."

12. This Court agrees with the observations of the Commission regarding the incongruous and unreasonable consequences that would follow upon a literal interpretation of Section 16 of the Act. The purpose of refunding the court fees is to encourage parties to resort to means of dispute resolution, other than adjudication by the courts, even after the civil courts have been approached for relief. The provision acknowledges that payment of court fees is meant to support the adjudication of disputes by the court in which proceedings have been instituted. It entitles litigants to a refund thereof in the event of

the court's process is not in fact used to arrive at a final resolution of the dispute, but is not intended to apply in the event that the matter does not attain finality in the settlement process. On a proper construction, therefore, this Court is of the considered view that Section 16 can be made applicable only when parties are able to reach a settlement after a reference to ADR under Section 89 of the Code. In this connection, the judgment of the Supreme Court in *Afcons* (supra) emphasizes the purposive construction of a statute, particularly a procedural provision. While reiterating that the normal rule of construction is to follow the plain meaning of the statute, the Court held as follows:

“21. There is however an exception to this general rule. Where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words or grammatical construction thereof would lead to confusion, absurdity, repugnancy with other provisions, the courts may, instead of adopting the plain and grammatical construction, use the interpretative tools to set right the situation, by adding or omitting or substituting the words in the Statute. When faced with an apparently defective provision in a statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the legislature has deliberately introduced an absurd or irrational statutory provision. Departure from the literal rule of plain and straight reading can however be only in exceptional cases, where the anomalies make the literal compliance of a provision impossible, or absurd or so impractical as to defeat the very object of the provision. We may also mention purposive interpretation to avoid absurdity and irrationality is more readily and easily employed in relation to procedural provisions than with reference to substantive provisions.”

13. As far as the NCT of Delhi is concerned, the Legislative Assembly of NCT of Delhi has also intervened and inserted Section 16A into the Act, by enactment of the Court Fees (Delhi Amendment) Act, 2010 which was assented to by the President of India on 17.01.2011. It appears from the Statement of Objects and Reasons of this Amendment that it was intended to deal with situations which are not covered by Section 16 of the Act:-

“The Court Fees Act, 1870 (7 of 1870) is a Central Act as in force in the Nation Capital Territory of Delhi. Section 16 of this Act provides for the refund of the court fee where the parties to the suit settle their cases by adopting any of the modes of settlement of dispute referred to in section 89 of the Code of Civil Procedure, 1908 (5 of 1908). There is no provision in the said Act to refund the court fee in cases where the parties settle their cases on their own or with the intervention of the Court. Therefore, it is felt that the Government of National Capital Territory of Delhi may amend Section 16 of the Court Fees Act, 1870 for permitting refund of court fees in such cases.”

14. Thus, the intention of the Delhi Amendment was to provide for some relief in cases which are not covered by Section 16, perhaps because Section 89 of the CPC had not been invoked. Section 16A is conditional upon the suit being at a pre-evidence stage; then too, it provides for refund of only 50% of the court fees paid.

15. Mr. Ramesh Singh, learned Standing Counsel for the Govt. of NCT of Delhi, drew the attention of this court to two judgments of this Court, both prior to insertion of Section 16A by the Delhi Amendment. The first is a judgment of the learned Single Judge dated

October 07, 2009 in I.A. No. 9711/2009 in C.S. (OS) 156/2009 *J K Forgings vs Essar Construction India Ltd & Ors.*, wherein, the Court held that Section 16 of the Act is applicable in all circumstances in which parties arrive at a settlement, irrespective of the stage of proceedings. In that judgment, refund of court fees under Section 16 was permitted even in a case where settlement had been reached out of Court, and not by recourse to Section 89 of the Code.

16. *J.K. Forging* (supra), the judgment of a learned Single Judge was explicitly overruled by the Division Bench in the second judgment cited by Mr. Singh, viz. *Sayed Mohammed Rafey vs. Mumtaz Ahmad and Ors.* (Order dated July 20, 2010) in FAO (OS) 343/2010 and CM 9014/2010). The Division Bench has *inter alia* observed as follows:-

“For a party to be entitled to refund Court Fee it must fall within the circumstances envisaged by a statutory provision. However favourably the Court may want to ameliorate the plight of a litigant who has paid Court Fee, if a statutory provision specifically prohibits or does not permit such relief the Court is not empowered in granting the relief.”

17. In the context of this discussion, we are required to determine the respective scope and applicability of Sections 16 and 16A of the Act.

18. The cases of reference to arbitration or “judicial settlement” (as interpreted in paragraph 25 of *Afcons*, supra) do not pose any great difficulty, as they do not fall within Section 16A of the Act at all, and

are covered only under Section 89 of the CPC read with Section 16 of the Act. Similarly, a compromise entered out of Court, whether resulting in a compromise decree, or in the suit being dismissed as settled out of Court, is covered only by Section 16A and not by Section 16.

19. A difficulty arises however, in the case of mediation/conciliation, initiated upon a reference by Court (as understood in the light of *Afcons*, supra). These cases can potentially fall both within Section 16 and 16A of the Act. On a plain reading, Section 16 would apply as the parties are referred to mediation by an order of Court. However, Section 16A would also apply, as long as the mediation is at a pre-evidence stage of the suit, and the settlement agreement has been incorporated in a compromise decree. This Court has framed Rules under Part X and Section 89 (2)(d) of the CPC, entitled the Mediation and Conciliation Rules, 2004. Rules 24 and 25 of the said Rules require an agreement between the parties to be reduced into writing and signed by them, which would be forwarded to the Court in which the suit or proceeding is pending. On receipt of the settlement agreement, the Court upon its satisfaction is required to pass a decree in terms thereof, that the parties have settled their disputes.

20. In such a case, we are of the view that an interpretation of the statute inuring to the litigant's benefit should be preferred. If a plaintiff is able to demonstrate that the case falls within the requirements of Section 16, refund of the full amount of the court-fee

ought to be granted. However, as held by the Division Bench of this Court in *Sayed Mohd. Rafey* (supra), if the elements of the provision are not satisfied, then refund in terms thereof cannot be granted. It may then be examined as to whether the conditions laid down in Section 16A have been fulfilled, so as to grant refund of 50% of the court-fees paid.

21. A case as such the present one, therefore, incorporates elements referable to both Section 16 and Section 16A. It is clear that parties were referred to mediation under the aegis of the Delhi High Court Mediation and Conciliation Center by an order dated 08.09.2017. The mediation was successful and the parties arrived at a settlement, which was incorporated in a decree by an order dated 13.12.2017. As the conditions of Section 16 of the Act are thus satisfied, the plaintiff (appellant herein) is entitled to a refund of the entire court-fee paid.

22. For the foregoing reasons, the impugned order dated 19.02.2018 is set aside and the appellant/plaintiff's application [I.A. No. 1650/2018 in CS (Comm.) 1464/2016] is allowed. The appeal is allowed in the above terms, without order on costs.

PRATEEK JALAN, J

S. RAVINDRA BHAT, J

DECEMBER 14, 2018

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