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

+ FAO(OS) 158/2017

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Date of decision: 18th April, 2018

M/S NORTHERN COALFIELDS LTD Appellant

Through Mr.Anip Sachthey,
Ms.Anjali Chauhan and Ms.Ria
Sachthey, Advs.

versus

M/S HEAVY ENGINEERING CORPN LTD ... Respondent

Through Ms.Maneesha Dhir,
Ms.Sharmistha Ghosh and Mr.Mahipal
Singh, Advs. for R-1.

Mr.Waize Ali Noor, Adv. for
Mr.Kirtiman Singh, CGSC.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. By way of the present appeal, the appellant assails the order dated 23rd January, 2017 passed on I.A. No.903/2017 praying for refund of court fee of Rs.65,07,000/- which was affixed on the plaint in CS(OS) No.2030/2001.

2. Inasmuch as we have recorded the entire factual narration leading to the filing of the present appeal in our order dated 19th May, 2017 for expediency we extract the said order hereunder:-

"FAO(OS) 158/2017

1. The present appeal assails the order dated 23rd January, 2017 passed in CS(OS)No.2030/2001 whereby the ld. Single Judge has dismissed the appellant/plaintiff's application (I.A.No.903/2017) praying for refund of court fee of Rs.65,07,000/-.
2. This appeal relates to the litigation which arose out of a contract executed in 1984 between two Public Sector Undertakings. It appears that some disputes having arisen, the respondent M/s Heavy Engineering Corporation Limited took the appellant Northern Coalfields Limited to arbitration, resulting in passing of the award to the tune of Rs.17 crores in favour of the respondent.
3. Relating to the same contract of 1984, in the year 2000, the appellant herein initiated CS(OS)No.1709/2000 seeking declaration that the respondent was acting fraudulently and challenging the aforesaid award.
4. The proceedings in this case went up to the Supreme Court by way of Civil Appeal No.6296/2016 titled as M/s Northern Coalfields Limited vs. Heavy Engineering Corporation Limited and Another which came to be disposed of by the order dated 13th July, 2016. In para 28 of the above mentioned judgment, the Supreme Court referred the disputes which was the subject matter of CS(OS)No.1709/2000 pending between the parties to sole Arbitrator for adjudication of all claims and counter claims which the parties may choose to file before him. It was further directed that the CS(OS)No.1709/2000 shall stand disposed of in view of the order dated 13th July, 2016 passed by the Supreme Court in Civil Appeal No.6296/2016.
5. Apart from CS(OS)No.1709/2000, the appellant herein had initiated the second suit being CS(OS)No.2030/2001 for recovery of amounts against the respondent.
6. It is to be noted that the appellant filed an I.A.No.1/2016 in Civil Appeal No.6296/2016 before the Supreme Court of India seeking reference of the claim of the appellant which was subject matter of CS(OS)No.2030/2001 to the same Arbitrator in terms of the Supreme Court order dated 13th July, 2016.

7. This application (I.A.No.1/26) was disposed of by the Supreme Court vide its order dated 9th November, 2016 wherein the court has directed as follow:

“We accordingly allow this application (I.A.No.1 of 2016) for Directions and permit the appellant-company to withdraw Suit No.2030 of 2001 pending before the High Court of Delhi with liberty to include the claim made in the suit in the counter claim which the appellant – company may make before the learned Arbitrator. The High Court may, when approached,

pass a formal order for disposal of Suit No.2030 of 2001. We make it clear that the appellant – plaintiff shall also be free to seek appropriate directions from the High Court for refund of the court fee in accordance with law. The interlocutory application is in the above terms disposed off.”

(Emphasis supplied)

8. In view of the above, on the 19th December, 2016, the parties appeared before the ld. Single Judge when, on the request of the appellant herein, CS(OS)No.2030/2001 was dismissed as withdrawn “with no order as to costs”

No prayer of any other kind was made by the appellant/plaintiff herein before the ld. Single Judge on 19th December, 2016.

9. Thereafter on 17th January, 2017, the appellant herein filed I.A.No.903/2017 for refund of full court fees. This application came to be rejected by the ld. Single Judge by the order dated 23rd January, 2017 inter alia observing that, on 19th December, 2016, a simplicitor request for withdrawal of the suit was made and nothing else and the suit was withdrawn after prosecuting the same for a long period of over 16 years. Aggrieved thereby, the present appeal is filed.

10. On query by the court, we are informed that despite the order of reference of the disputes made by the Supreme Court as back as on 13th July, 2016 and several dates before the sole Arbitrator, even the claims have not been filed till date.

11. Judicial notice can be taken of not only the court time which has been expended in this case before the ld. Single Judge, Division Bench of this Court, the Supreme Court of

India as well as sole Arbitrator. Public money is being expended in prosecution and defence of the cases. Even the Court fee, refund whereof is sought in the present appeal is to the tune of over Rs.65 lakhs which was dispute in question in CS(OS)No.2030/2001. We have no information of the litigation expenses already incurred by both sides which includes lawyers fees and expenses. Such litigation which is almost between two limbs of one “body” (government) are gross wastage of public money.

It appears that parties are not interested in effective adjudication to bring the litigation between them to an end.

12. We may note that though, it was possible to dispose off the appeal today itself however, the matters would not end here. The present case raises an important question as to the manner in which Public Sector Undertakings can litigate endlessly. The present litigation relates to a contract of 1984. The above narration refers to two suits, an arbitration, probably appeal(s) to the Division Bench, appeal and application(s) before the Supreme Court. In our view no litigant, especially Public Sector Undertakings ought to be permitted to expend valuable judicial time in pursuing litigation in the manner in which the above cases have been prosecuted/defended. It is truly painful to see the judicial time which stands expended in the over 16 years since 2000 (when CS(OS)No.1709/2000 was filed), and thereafter the litigation remained pending before the Id. Single Judge as well as before the Division Bench; Supreme Court of India.

13. We may also note that so far as refund of the court fee is concerned, the issue relates to the interest of the Government of NCT of Delhi. Therefore, in the peculiar facts and circumstances of this case, the Government of NCT of Delhi deserves to be heard before any order is passed in this appeal.

14. Pained by the above history of the litigation, we have requested Mr. Sanjay Jain, Id. ASG who happens to be present in court in some other cases to appear in this matter and to bring the above position regarding the manner in which two Public Sector Undertakings are litigating endlessly in court and before the Arbitrator without having any intention to

bring the litigation to an end to the notice of the authorities concerned. The efforts at the highest level are urgently called for to bring these two Public Sector Undertakings on the table to resolve the matters and for bringing a quibus litigation. In view of the above, we direct as follows:

(i) The Government of NCT of Delhi is directed to be impleaded as respondent no.2 in the present appeal. Amended memo of parties be filed within three days.

(ii) Issue notice to the respondents. Ms. Maneesha Dhir, Advocate accepts notice for respondent no.1 and Mr. Peeyoosh Kalra, Additional Standing Counsel for GNCTD accepts notice for respondent no.2. Copy of the paper book be furnished to the respondents.

(iii) Let the Registrar (Appellate) examine the record of Civil Suit No.1709/2000, CS(OS)No.2030/2001 and submit a report with regard to the number of sittings and the effective date on which effective orders have been passed in both the cases. A tentative estimation of the costs be placed before us.

(iv) The Registrar (Appellate) shall also make an inquiry and inform this court about the appellate proceedings in a tabulated form to enable this court to consider the same. Such report shall be placed before us on the next date of hearing.

(v) Mr. Peeyosh Kalra, Additional Standing Counsel and Mr. Kirtiman Singh, Advocate would be at liberty to inspect the records of the cases between this period.

(vi) A direction is issued to the Government of India through Secretary, Ministry of Law and Justice to examine the issues flagged above and examine the possibility of putting in place a policy regarding litigation by agencies and instrumentalities of the State and place the same before us.

Copy of this order be given to Mr. Sanjay Jain, ld. ASG, urgently.

List for consideration on 24th July, 2017."

3. Pursuant to the above order, a report dated 22nd July, 2017 has been submitted by Mr. Lorren Bamniyal, Registrar (Appellate)

of this court, who has summarised the hearings in CS(OS) 1709/2010 and CS(OS)2030/2001 as hereunder;

<u>“Case No.</u>	<u>Total No. of hearings</u>	<u>Effective hearings</u>
CS(OS) 1709/2010	46	09
CS(OS) 2030/2001	84	11 ”

4. Along with the report, the Registrar (Appellate) has given summarisation of the proceedings as Annexures A and B.

5. So far as the directions in para 4 of our dated 19th May, 2017 directing the Ministry of Law and Justice to examine the matter and putting in place a policy regarding litigation by agencies and instrumentalities of the State is concerned, a brief note dated 18th November, 2018 has been handed over by Mr. Waize Ali Noor, learned counsel who appears on behalf of the learned CGSC, Mr. Kirtiman Singh, which is taken on record.

6. It is stated therein that the Ministry of Law and Justice, Department of Legal Affairs is formulating a National Litigation Policy to avoid unwarranted litigation and to prevent consequent burden on the judicial system. Let effective steps for framing and implementing the national policy be taken at the earliest as well as the guidelines postulated in the brief note taken at the earliest record.

7. So far as the impugned order dated 17th January, 2017 is concerned, the learned Single Judge dealt with prayer for refund of the court fee in para 7 and 8 of order dated 17th January, 2017 which for expediency are extracted hereunder:

“7. As far as the claim of the plaintiff for refund (wrongly

labelled as for withdrawal) of the court fees is concerned, not only was such claim not made on 19th December, 2016, when the suit was withdrawn but even otherwise, I am unable to find any ground for refund of the court fees to have been made out.

8. This suit was filed in the year 2001 and was pursued till it was withdrawn on 19th December, 2016. The purport of Section 89 of the Code of Civil Procedure, 1908 (CPC) read with Section 16 of the Court Fees Act, 1870 is to allow refund of court fees as an impetus to the parties at the earliest, instead of availing of the process of the Court, agree to adjudication of their disputes by arbitration. It is not so here. Here the parties litigated before this Court for fifteen long years. The parties have been referred to arbitration by an order of the Supreme Court whereby the Supreme Court, after reversing the orders of this Court, instead of remanding the matter to this Court has, in exercise of its powers, referred the parties to arbitration. The provisions of Section 89 of CPC read with Section 16 of the Court Fees Act even otherwise are not attracted. It appears that similar prayer as made here for refund of court fee was also made before Supreme Court. Supreme Court however granted liberty to the plaintiff to make the request here, 'in accordance with law'. In my view law does not permit such refund. The counsel for the plaintiff has referred to judgment dated 1st July, 2009 of this Court in CS(OS) No.829/2002 titled **National Horticulture Board Vs. Cosco Blossoms Pvt. Ltd.** and judgment dated 28th January, 2015 of the High Court of Punjab & Haryana in Cr. No.81/2014 titled **Pradeep Sonawat Vs. Satish Prakash**, where court fees was refunded. However in both, out of court settlement was arrived at; rather in the latter of the two judgments it is held that the objective of refund of court fees is to encourage early settlement. Here, not only has no settlement been reached but the parties intend to litigate further. The litigious nature of the plaintiff is also evident from filing of these applications instead of seeking reliefs as claimed in the application, on 19th December, 2016. IA No.903/2017 is dismissed."

8. In support of the appeal, it is contended by Mr. Anip Sachthey, learned counsel for the appellant that even if it could be held that the matter had remained pending in this court and costs have been incurred on the same as also the fact that judicial time has been expended, however, in view of Section 16 of the Court Fee Act, 1870 and the order dated 9th November, 2016 of the Supreme Court of India, the learned Single Judge had in fact, no discretion in the matter and the appellant was entitled to refund of the full court fees affixed on the plaint.

9. For expediency we extract Section 16 of the Court Fees Act, 1870, which reads as under:

“Section 16 in 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.”

10. So far as Section 89 of the CPC is concerned, this provision is a statutory recognition of the alternate dispute redressal mechanisms. In the present case, the parties have sought reference of the disputes to arbitration for which reason proceedings in the suit came to an end. As such, in view of the mandate of the Court Fees Act, 1870 the appellant became entitled to the refund of full amount of the court fee paid under Court Fees Act, 1870 and amount of the court fees affixed on the plaint would have to be

refunded to the appellant.

11. However, as the above narration shows that matter has remained pending in this court for a long time. Judicial time has also expended for almost two decades. In this background, the appellant must compensate the system for the judicial time which has been expended on the suit during its pendency.

12. In view thereof, it is directed as follows:

- (i) The order dated 23rd January, 2017 in CS(OS) 2030/2001 is hereby set aside.
- (ii) The appellant is required to be refunded the court fees in CS(OS) 2030/2010. A direction is issued to the Registrar (Appellate) to issue the requisite certificate to enable the appellant to obtain the refund of the court fees.
- (iii) The appellant shall deposit an amount of Rs.5 lacs as costs, with the Delhi High Court Mediation and Conciliation Centre within a period of four weeks from today.

13. In view of the above terms, this appeal is allowed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

APRIL 18, 2018

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