

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.2309 of 2009

K.Swaminathan ... Petitioner

v.

1. M. Visalakshi
2. V.N. Azhagesan
3. Sathyalakshmi ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the memo dated 03.07.2009 in O.S.No.271 of 2008 on the file of the District Judges Court, Fast Tract Court No.III at Erode.

For Petitioner : Mr.K. Mukunth
for M/s.Sarvabhauman Associates

Mr.M.Sricharan Rangarajan
Special Government Pleader (CS)
Assisted by Dev. Narendran
Government Advocate

ORDER

Since the issue involved in the present Civil Revision Petition is with regard to refund of the full court fee, this Court directed the learned counsel appearing for the petitioner to serve the papers on the learned Special Government Pleader (C.S.) enabling him to make his submissions on the issue. In view of the same, Mr.M.Sricharan Rangarajan, learned Special Government Pleader (CS), made his submissions in the Civil Revision Petition, though the Government is not a party.

2. The plaintiff in O.S.No.271 of 2008 on the file of the District Court, Fast Tract Court No.III, Erode has filed the above Civil Revision Petition to set aside the memo dated 03.07.2009 filed in O.S.No.271 of 2008.

3. The plaintiff filed the suit in O.S.No.271 of 2008 for specific performance. The plaintiff and the defendants entered into a compromise and also executed a joint memorandum of compromise on

03.07.2009.

4. Mr.K. Mukunth, learned counsel appearing for the petitioner submitted that the suit was referred before the Lok Adalat for arriving at a compromise on 22.06.2009 and the matter was posted on 03.08.2009 before the Lok Adalat. Subsequently, in view of urgency of the matter, the parties jointly filed a memo to advance the hearing and to place the suit before the Trial Court, viz., Fast Track Court, Dharapuram. By the joint memo, the parties requested the Legal Services Committee, Dharapuram to return the matter back to the Fast Track Court, Dharapuram for recording the settlement. Accordingly, the bundle was returned to the Fast Track Court, Dharapuram, where the parties reported settlement and also filed a memo seeking for dismissal of the suit as settled out of the Court and for refund of the full court fee.

5. The Trial Court, recorded the joint memo filed by the parties.

6.1. The learned counsel appearing for the petitioner contended that since the matter has been settled out of the Court, the plaintiff is

entitled to get refund of the full court fee paid by him.

6.2 The learned counsel appearing for the petitioner, in support of his contentions, has relied upon the following judgments:-

(i) **2010 (8) SCC 24 [Afcons Infrastructure Limited and another v. Cherian Varkey Construction Company Private Limited and others]** wherein the Hon'ble Supreme Court held as follows:-

" ... 12. Judicial settlement" is a term in vogue in USA referring to a settlement of a civil case with the help of a Judge who is not assigned to adjudicate upon the dispute. "Mediation" is also a well-known term and it refers to a method of non-binding dispute resolution with the assistance of a neutral third party who tries to help the disputing parties to arrive at a negotiated settlement. It is also a synonym of the term "conciliation". (See *Black's Law Dictionary*, 7th Edn., pp. 1377 and 996.)

...

21.6. Justice G.P. Singh extracts four conditions that should be present to justify departure from the plain words of the statute, in his treatise *Principles of Statutory Interpretation* (12th Edn., 2010,

Lexis Nexis, p. 144) from the decision of the House of Lords in *Stock v. Frank Jones (Tipton) Ltd.* [(1978) 1 WLR 231 : (1978) 1 All ER 948 (HL)] : (WLR p. 237 F-G)

"... a court would only be justified in departing from the plain words of the statute when it is satisfied that: (1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly, could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such legislative objective; (4) the language of the statute is susceptible of the modification required to obviate the anomaly."

...

23. All over the country the courts have been referring cases under Section 89 to mediation by assuming and understanding "mediation" to mean a dispute resolution process by negotiated settlement with the assistance of a neutral third party. Judicial settlement is understood as referring to a compromise entered by the parties with the assistance of the court adjudicating the matter, or another Judge to whom the court had referred the dispute.

...

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.

(ii) **2014 (6) 216 [Venkatachalam and others v.**

Sengoda Gounder and others] wherein this Court held as follows:-

" 7. In this case, though the matter is not settled through Lok Adalat, parties themselves have come forward for listing the matter before this Court. Eventhough the matter was not referred before Lok Adalat, the parties settled the matter voluntarily, and it has to be encouraged, otherwise the parties will not come forward to settle the matter and they will get a reference to the Lok Adalat. Thereafter, they will seek full Court-fee. To avoid such situation, the Court referred the matter to Lok Adalat under Section 89 of CPC. This Court is having ample powers to grant full Court-fee in case of settlement between parties, even without any reference to the Lok Adalat. Therefore, this Court directs the Registry to refund the full Court-fee in this matter."

(iii) An unreported Judgment of this Court dated 26.02.2015, made in **Second Appeal No.1374 of 2013 [N.J.Senthil Kumar v. N.B.Subash]** wherein this Court held as follows:-

"... 7. Having regard to the above settlement arrived by

between the parties and in terms of the joint memo extracted herein above, I am inclined to dismiss this second appeal as settled out of court.

8. At this juncture, the learned counsel for the appellant would submit that the entire court fee paid may be refunded to him in view of the judgement of this court in Venkatachalam and others v. Sengoda Gounder and others, 2014 (6) CTC 216. In para 7 of the said judgement, this court has held as follows:-

"7. In this case, though the matter is not settled through Lok Adalat, parties themselves have come forward for listing the matter before this Court. Even though the matter was not referred before Lok Adalat, the parties settled the matter voluntarily, and it has to be encouraged, otherwise the parties will not come forward to settle the matter and they will get a reference to the Lok Adalat. Thereafter, they will seek full Court-fee. To avoid such situation, the court referred the matter to Lok Adalat under Section 89 of CPC. This court is having ample power to grant full Court-fee in case of settlement between parties, even without any reference to the Lok Adalat. Therefore, this court directs the Registry to refund the full court-fee in this matter."

9. In the instant case also, though the matter has not been referred to the Lok Adalat and settled before the Lok Adalat, since it has been settled out of court between the parties, applying the decision in Venkatachalam's case [cited supra], I am inclined to issue a direction to the Registry to refund the entire court-fee paid in this second appeal to the appellant."

(iv) **AIR 2015 P & H 130 [Pradeep Sonawat. v. Satish Prakash @ Satish Chandra]** wherein the Punjab & Haryana High Court held as follows:-

" ... 7. Conjoint reading of Section 16 of the Act with Section 89 of CPC leaves no doubt that endeavor of the legislature is for settlement of cases by alternative disputes settlement mechanism. Be it Lok Adalat or out of Court settlement or Arbitration or Conciliation or Mediation, effort always is to end the litigation once for all times to come. Settlement in terms of Section 89 CPC results in complete end to the litigation. Resort to appeal or revision statutorily is out of the legal arena. Merely because the matter for settlement was not taken up in daily Lok Adalat, which under the aegis of the Haryana State Legal Services Authority, is held every day in each Court in the State after Court hours, should not be taken to the prejudice of the petitioner-plaintiff.

...

17. Keeping in view the totality of the facts, merely because the matter has not been settled in Lok Adalat, as has been observed by the lower Court while dismissing the application of the plaintiff-petitioner, invocation to Section 16 of the Act should not have been refused. ..."

7.1 Countering the submissions made by the learned counsel appearing for the petitioner, Mr.M.Sricharan Rangarajan, learned Special Government Pleader (CS), submitted that the petitioner-plaintiff is not entitled to get refund of the entire court fee paid by him for the reason that the matter was settled under Section 89 of the Code of Civil Procedure and it was settled before the Trial Court. Further, the learned Special Government Pleader(CS) submitted that the suit was filed by the plaintiff as early as in the year 2008 and the amendment to Section 69 of the Tamil Nadu Court Fee and Suit Valuation Act (Act 6 of 2017), giving right to the plaintiff to get refund of the full court fee, even if the dispute is settled before the Trial Court came into effect only in the year 2017, therefore, the plaintiff is not entitled to get refund of the full court fee. The learned Special Government Pleader (C.S.), further submitted that the amended provisions of section 69 of the Act are prospective in nature and therefore, the same cannot be given any retrospective effect.

7.2. The learned Special Government Pleader (C.S.), in support of his contentions, has relied upon the following judgments:-

- (i) **(2014) 6 CTC 252 [A.Gnanaselvan v. B.A. Xavier]]**

wherein the Division Bench of this Court held as follows:-

3. The submission of the learned Counsel for the Appellant is that the Appellant, as the original Plaintiff, has paid the Court-fees on the Suit, which was dismissed. In Appeal, matter has been compromised. The Appeal is continuation of the Suit proceedings. No additional evidence has been led in in the Appeal and thus, the bar of "before any evidence" would not apply.

4. We are unable to persuade ourselves to agree with the submission of the learned Counsel for the Appellant. The legislative intent is quite clear that this provision is applicable to a Suit and that too, before any evidence has been recorded on the merits of the claim. It does not apply in Appeal. If the legislative intent was otherwise, the issue of refund of Court-fees in Appeal would also have been dealt with under this provision. Not only that, even assuming that the Appeal is taken as continuation of Suit proceedings, the benefit would be available if no evidence was recorded, on merits, which would be a factual/procedural impossibility. We are, thus, unable to accede to the prayer of the learned Counsel for the Appellant. This is not also a settlement under ADR Mechanism under Section 89 of the Code of Civil Procedure, 1908, which would have enabled us to grant benefit to the Appellant under Section 69-A of the Act. We can only sympathise with the Appellant.

5. At this stage, an Order of a Division Bench of this Court in Jayalakshmi v. Vasavi Transport, etc., 1995 (2) LW 110, has been brought to our notice by Mr. K. Govindarajan, learned Counsel, who happens to be present in Court. In the said Order, while recognising the absence of any provision under the said Act for refund of Court-fees in Appeals, it was opined that the same would not preclude the Appellants from making an Application to the Government *ex gratia ad misericordia do mini regis* ("by favour" and "by the mercy of our Lord the King") and for that purpose, a Certificate was directed to be granted by the Registry to the Appellants as to the valuation of the stamps affixed on the Memorandum of Appeal, which stood defaced and the Government was directed to pass an Order, as they deem fit, after perusing the Certificate, as it is wholly *ex gratia ad misericordia do mini regis*.

6. The learned Counsel for the Appellant, in view of the aforesaid observation, seeks the same relief.

7. We are inclined to accede to the request of the learned Counsel for the Appellant, specifically considering the fact that the Appeal has been withdrawn, after settlement. The Appellant would have been able to obtain refund of the Court-fees under Section 69-A of the said Act, on a recourse of ADR Mechanism under Section 89 of C.P.C. being resorted to. The said

provision was introduced as an incentive to aid in assistance to ADR Mechanism as well the process of settlement of lis. The only difference is that the present settlement of lis is inter-se parties, without intervention of a mediator. We are sure that the Application to be preferred by the Appellant would receive appropriate consideration by the Government ex gratia ad misericordia do mini regis, keeping in mind the salutary object of encouraging settlement in whatever form feasible albeit inter-se settlement between the parties. The Registry is directed to return the defaced Stamp Papers, with due Certificate, to enable the Appellant to make such an Application. We would expect disposal of such Application within a period of two months of receipt of the same from the Appellant.

(ii) **2018 (3) CTC 117 [Tidel Park Limited v. M/s.Arkay Energy (Rameswarm) Limited]** wherein the Division Bench of this Court held as follows:-

" ... 9. 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 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.

10. 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(Central Act should have culminated in a settlement. In the light of the amendment 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.

11. 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. ... “

(iii) **MANU/TN/7849/2007 [Ranganathan V. In the Court of District Judge, Trichirapalli]** wherein the Division Bench of this Court held as follows:-

“ ... 5. A plain reading of the above provision shows that a legal fiction is created by treating the award of the Lok Adalat as a decree of the Civil Court. Once a decree is passed on compromise, no Court fee is refundable (under normal circumstances) either under The Court Fees Act, 1870 (Central Act VII of 1870) (before its Amendment by Act 46 of 1999) or under The Tamil Nadu Court-Fees and Suits Valuation Act, 1955. But in order to encourage amicable settlement of disputes through alternative dispute resolution (ADR) mechanism, in the wake of the increase in the volume of adversarial litigation, Section 21 of the Legal Services Authorities Act provides a bait for the litigants

in the form of refund of Court-Fees.

6. .But while doing so, Section 21 enables the refund of Court Fees "in the manner provided under the Court Fees Act, 1870". But The Court Fees Act, 1870, was repealed under Section 87(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 in its application to the State of Tamil Nadu. Therefore, the words "in the manner provided under the Court Fees Act, 1870" appearing in Section 21 of the Legal Services Authorities Act, 1987 have no meaning in their application to the State of Tamil Nadu, on a plain reading of the provision. Hence, it is to be seen if the provisions of Tamil Nadu Court Fees and Suits Valuation Act, 1955, could be read into Section 21(1) of the Legal Services Authorities Act, 1987, to make it meaningful, in so far as the State of Tamil Nadu is concerned.

...

9. .However, Section 69 deals with Refund in cases where a suit is settled out of Court. Section 69 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 reads as follows:

"69. Refund on settlement before hearing.- Whenever any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim, half the amount of all fees paid in respect of the claim or claims in the suit shall be ordered by the Court to be refunded to the parties by whom the same have been respectively paid.

Explanation.- The expression 'merits of the claim' shall have the meaning assigned to it in section 12."

Therefore, Section 69 of the Tamil Nadu Act appears to be the only provision which could probably be invoked in a situation contemplated under Section 21(1) of the Legal Services Authorities Act, 1987. But a reading of Section 69 of the Tamil Nadu Act shows that the refund is limited only to half the amount of all the fees paid in respect of the claim in the suit. Even the eligibility for refund of half the Court fee is subject to two preconditions, namely -

- (a) that the suit is settled out of Court; and
- (b) that such settlement takes place before any evidence has been recorded on the merits of the claim.

Therefore, under normal circumstances, refund of half the Court fee cannot be ordered unless the above two preconditions are satisfied.

36. Therefore, Section 21(1) of the Legal Services Authorities Act, 1987 can be made workable only by holding that irrespective of the conditions prescribed under Sections 69 of the Tamil Nadu Court Fees Act, a person would be entitled to refund of Court Fee, if his case is settled in Lok Adalat. But by the very same logic, such an interpretation cannot also make Section 69 of the Tamil Nadu Court Fees Act otiose or a dead letter. As seen from the above discussion, the subject of Court fees chargeable in all Courts other than the Supreme Court falls within the exclusive domain of the State. Therefore, to say that de hors Section 69 of the Tamil Nadu Act, full Court fee is refundable, would make inroads into the occupied field of State legislation to such an extent that it would be intolerable. All the aforesaid decisions of the Supreme Court have held only "incidental encroachments" and

"slight transgressions" permissible, and hence such encroachment cannot go beyond a limit. Therefore, I am of the considered view that Section 21(1) of the Legal Services Authorities Act and Section 69 of the Tamil Nadu Court Fees Act should be given a harmonious construction, so that a person would be entitled only to refund of half the court fee, even if the preconditions laid down under Section 69 of the Tamil Nadu Court Fees Act are not satisfied. Such a harmonious construction alone would save both Section 21(1) of the Legal Services Authorities Act as well as Section 69 of the Tamil Nadu Court Fees Act. Otherwise, anyone of them will become a dead letter. An interpretation, which would make any one of the two legislative provisions redundant, cannot be adopted. On the contrary, an interpretation which would reconcile both of them and make both of them work, has to be preferred.

37..Even the decision of the Division Bench in Parvathi and another V. Punjab National Bank (2005 (5) CTC 577) did not actually deal with the question as to whether the refund to be made should be limited to half the Court fee paid or full Court fee. The Division Bench did not hold that Section 69 of the Tamil Nadu Court Fees Act would get totally eclipsed by Section 21(1) of the Legal Services Authorities Act. While a partial eclipse of Section 69 of the Tamil Nadu Court Fees Act may come within the parameters

of "incidental encroachment" and "slight transgression" permitted by law, a total eclipse may not really be permitted.

38.It is a well known principle of interpretation of statutes that a statute must be read in a manner which would make it workable. This is based on the maxim "ut res magis valeat quam pereat". This maxim was referred to with approval by the Supreme Court in M.P.Gopalakrishnan Nair V. State of Kerala ((2005) 11 SCC 45), wherein it was held in para 55 and 56 as follows:-

"55.A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. (See Nandkishore Ganesh Joshi V. Commr., Municipal Corpn. of Kalyan & Dombivali and Ranjitsing Brahmajeetsing Sharma V. State of Maharashtra.)

56.It is necessary to bear in mind the principle "ut res magis valeat quam pereat" in terms whereof a statute must be read in such a manner which would make it workable. (See Balram Kumawat V. Union of India, Nandkishore Ganesh Joshi, para 19 and Pratap Singh V. State of Jharkhand, SCC para 81, JT para 82.)

Therefore, I hold that the petitioner was entitled only to refund of half the Court fees and the writ petition seeking refund of the full Court fees is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed."

8. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the issue involved in the present Civil Revision Petition is with regard to the refund of the full court fee, i.e., when the dispute between the plaintiff and the defendants is settled out of the court, whether the plaintiff is entitled to get refund of the full court fee or not. In the case on hand, though the matter was referred to Lok Adalat for settlement, it was not settled before the Lok Adalat and the matter came back to the Trial Court. Before the Trial Court, the parties had entered into a compromise and also executed a joint memorandum of compromise. In such circumstances, the plaintiff prays for refund of the full court fee.

9. As per the provisions of Section 69 of the Tamil Nadu Court Fee and Suit Valuation Act, 1955, prior to amendment in the year 2017, if the matter is settled out of the Court, the plaintiff is entitled to get refund of 50% of the court fee paid by him. In the year 2017, the

provisions of Section 69 was amended (Act 6 of 2017), by which, the plaintiff is entitled to get refund of the full court fee paid by him even if the matter is settled before the Trial Court.

10. As per Section Section 69 of the Tamil Nadu Court Fee and Suit Valuation Act, if 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, the entire court fee paid by the plaintiff shall be refunded.

11. In the case on hand, admittedly, the matter was not settled by any of the modes of settlement of dispute referred to in Section 89 of the Code of Civil Procedure. That being the case, Section 69 has no application for the case on hand. Since the suit was filed in the year 2008, i.e, prior to the amendment in the year 2017, as per Section 69, the plaintiff is entitled to get refund of 50% of the court fee paid by him. The Division Bench of this Court in the Judgment reported in **(2014) 6 CTC 252 [cited supra]** held that when the matter is not settled under ADR Mechanism under Section 89 of the Code of Civil

Procedure, 1908, the plaintiff is not entitled to get refund of the full court fee.

12. The ratio laid down in the Judgments reported in **2018 (3) CTC 117 [cited supra]** and **MANU/TN/7849/2007 [cited supra]** also support the submissions made by the learned Special Government Pleader (C.S.).

13. Since the Division Bench of this Court in the Judgment reported in **(2014) 6 CTC 252 [cited supra]** categorically held that when the dispute is not settled under ADR Mechanism under Section 89 of the Code of Civil Procedure, 1908, the plaintiff is not entitled to get refund of the full court fee, the Judgment squarely applies to the present case. This Court is bound by the Judgment of the Division Bench of this Court.

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14. In the Judgment reported in **2010 (8) SCC 24 [cited supra]** though there is no dispute with regard to the ratio laid down in the said Judgment, the Hon'ble Supreme Court has not dealt with the

issue regarding the payment and refund of court fees. Hence, the said Judgment is not applicable to the present case.

15. In these circumstances, I am of the considered view that the plaintiff is not entitled to get refund of the full court fee and he is entitled to get refund of 50% of the court fee paid by him under Section 69 of the Tamil Nadu Court Fee and Suit Valuation Act for the reason that the suit was filed in the year 2008, i.e. prior to the amendment, which came into effect only in the year 2017.

15. For the reasons stated above, the Civil Revision Petition is dismissed. No costs.

14.11.2019

Index : Yes

Speaking order

Rj

To
The District Court,
Fast Tract Court No.III,
Erode.

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M.DURAIWAMY, J.

Rj



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