



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.08.2019

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (NPD) (MD)No.1255 of 2019

Firm Aruna Sona Credits

A registered partnership firm

Having its business premises at

No.7, 2nd Floor, M.Harsha Tower, No.6A,

Thiru Vi.Ka. Road, Karur Town, Karur Taluk,

Rep by its Managing Partner

VR Balasubramaniam

... Petitioner/ Plaintiff

vs.

K.Arumugam

... Respondent/ Defendant

Petition filed under Article 227 of the Constitution of India, to set aside the clause (ii) of the judgment and decree dated 25.06.2018 made in O.S.No.3 of 2016 on the file of the Principal District Judge, Karur.

For Petitioner : Mr.K.Prabhakar

ORDER

Against the order of the Court below passed in O.S.No.3 of 2016 dated 25.06.2018, rejecting refund of the court fee, this revision petition is filed by the plaintiff.

2.The case of the revision petitioner/plaintiff is that he filed the above suit against the respondent/defendant for recovery of money. After examination of three witnesses on the side of the plaintiff, the plaintiff filed a memo stating that the parties settled the matter out of court and sought for refund of court fees. Though the Court below dismissed the suit based on the memo filed by the plaintiff, it refused to entertain the relief of refund of the court fee in view of Section 69-A of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 amended Act 2017, against which, the petitioner/plaintiff has filed this revision petition. In support of the contention, he relied on the following judgments:-

(i)2018 (3) CTC 117, Tidel Park Limited vs. Arkay Energy (Rameswaram) Limited.



(ii)Eswaramoorthy vs. Ramakrishnan, (1974) 87 LW 898.

(iii)Maxworth Home Limited vs. Bina Neyabalan, 2016 SCC Online Mad 30230.

3.Perusal of record shows that the learned Judge has dismissed the claim for refund of court fee, stating that the suit was not referred to any modes of settlement contemplated in Section 89 of the Civil Procedure Code and therefore, the plaintiff is not entitled to refund of court fee under Section 69-A of the Tamil Nadu Court Fees and Suits Valuation Act. Under Section 69 of the Tamil Nadu Court Fees and Suits Valuation Act, if no evidence is recorded on the merits of the claim, then, full court fee can be refunded, but the learned Judge finding that the plaintiff has examined three witnesses in chief in the form of filing affidavit which are related to the main facts of the issue, held that the petitioner is not entitled for refund of court fee and dismissed the application against which, the present revision petition has been filed.

4.In my considered opinion, three witnesses have been examined in chief, only by filing affidavits and they were not even cross examined, before that, the matter has been settled out of court and therefore, the petitioner is entitled for refund of the court fee which is also fortified by the judgment reported in 2015 (2) TNLJ 63, N.J.Senthil Kumar vs. N.B.Subash. It is worthwhile to extract below the following paragraphs of the above judgment:-

'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.

10. In the result, the second appeal is dismissed as settled out of court. The appellant/plaintiff is at liberty to make appropriate application before the first appellate court for refund of Rs.9,62,998/- lying in the credit of the said court which was deposited by the defendant as per the direction of the first appellate court. If any such application is made by the appellant/plaintiff the first appellate court shall refund the said amount to him without there being any need to issue notice to the respondent/defendant. The Registry is directed to refund the entire court fee paid in this second appeal to the appellant herein. Consequently, connected MP is closed.'

5. In view of the judgment reported in 2015 (2) TNLJ 63, the impugned order passed in O.S.No.3 of 2016 dated 25.06.2018, is set aside only to the extent of rejection of the refund of court fee. The Court below is directed to refund the entire court fee paid by the petitioner/plaintiff within a period of two weeks from the date of receipt of a copy of this order.

With the above direction, this Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

To

The Principal District Judge,
Karur.

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-79621[F] dated 05/08/2019

C.R.P(NPD) (MD)No.1255 of 2019
05.08.2019

Bala/ksa
MS/03.10.2019/3P.3C