

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No.6373 of 2015 (O&M)

Date of Decision: August 27, 2019

Om Parkash Chahal

...Petitioner

Versus

Ved Kumari & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Rakesh Kumar Sharma, Advocate,
for the petitioner.

Mr. Amit Jain, Advocate,
for respondent No.2.

AMIT RAWAL, J.

This Court, as per the note of Court Secretary, heard the matter and petition was ordered to be allowed, but while dictating the judgment, it came to my notice that certain facts were to be clarified and, therefore, the revision petition was ordered to be listed for rehearing. It is in this background, the petition has been listed for hearing today.

Challenge is to the impugned order dated 01.08.2015 (Annexure P-4), whereby application dated 27.07.2015 for refund of the court fees has been dismissed.

Mr. Rakesh Kumar Sharma, learned counsel representing the petitioner submitted that in pursuance to the agreement to sell entered into between the parties, petitioner was constrained to file a Civil Suit bearing No.53 of 18.12.2013 for specific performance and affixed court fees of ₹ 76,800/-. However, with the intervention of respectables, the matter was

compromised and vide order dated 22.04.2015 (Annexure P-2), the suit was dismissed as withdrawn, but inadvertently, at the time of withdrawal of the suit, prayer for refund of the court fees could not be made. Accordingly, application dated 27.07.2015 (Annexure P-3) was submitted, but it has erroneously been dismissed. The impugned order is not sustainable being not in consonance with the provisions of Section 16 of the Court Fees Act, 1870 (for short, the Act) and in this regard, has sought reliance of following judgments:-

- “1) **A.Sreeramaiah Versus South Indian Bank Ltd., Bangalore & Anr., 2007(5) RCR (Civil) 374;**
- 2) **Pradeep Sonawat Versus Satish Prakash @ Satish Chandra, 2015(1) R.C.R. (Civil) 955;**
- 3) **Mool Singh Versus Abdul Jabbar, 2011 (55) R.C.R. (Civil) 537;**
- 4) **Kamamma & Ors. Versus Honnali Taluk Agricultural Produce Co-operative Marketing Society Ltd., Honnali & Ors., 2009(33) R.C.R. (Civil) 110; and**
- 5) **Pritam Singh Versus Ashok Kumar (RSA No.1425 of 2018),** decided on 16.01.2019.

I have heard the learned counsel for the parties and appraised the paper book.

For the sake of brevity, Section 16 of the Act is reproduced herein below:-

“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 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.”

From the perusal of the aforementioned Section, it is clear that the aforementioned provisions would apply only 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. Though there has been judgment of various other courts regarding the refund of the court fee in tune with provisions of Section 89 Code of Civil Procedure, but the fact of the matter is that the order permitting withdrawal of the suit does not show involvement of the court for referring the matter for the purpose of arriving at a compromise. Order dated 22.04.2015 reads as under:-

“Present: Sh.D.P.Sharma, Advocate for plaintiff.

Sh.Ajit Saini, Advocate for defendant no.1.

Sh.R.A.Gupta, Advocate for defendant no.2.

File received by transfer vide endst.No.12172-73 dated 17.4.2015, passed by Ld.District and Sessions Judge, Gurgaon. It be checked and registered.

File taken up on the application. Plaintiff appeared and got his statement recorded to the effect that the matter has been compromised between the parties. Defendant no.1 has paid Rs.3,00,000/- and defendant no.2 has paid Rs.2,00,000/- to the plaintiff. He does not want to pursue with the case and with the same. Plaintiff has also placed on record his identity card of Delhi Bar Council. Keeping in view the statement of the plaintiff, the present suit is hereby dismissed as withdrawn. After due compliance, file be considered to record room.”

In such circumstances, the impugned order rejecting the application for refund of the court fee filed afterwards, cannot be said to be erroneous as the relief cannot be granted as it does not fall within the

provisions of Section 152 of the Code of Civil Procedure. Resultantly, the revision petition is dismissed.

August 27, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No