

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 8032 of 2018
Date of decision: 30.1.2019

Hem Raj

.. Petitioner

v.

Sanjeev Kumar and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Nand Lal Sammi, Advocate for the petitioner.
Mr. Vijay Lath, Advocate for the respondents.

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AVNEESH JHINGAN, J. (Oral)

The present revision petition has been filed being aggrieved of the order dated 10.9.2018, passed by Additional District Judge, Jind (for short, 'Appellate Court') dismissing the application of the petitioner (plaintiff in the suit) for refund of court fee.

The facts in brief are that a suit for possession by way of specific performance in respect of a plot measuring 96 square yards (details mentioned in the head note of the plaint) on the basis of agreement to sell dated 3.6.2014 was filed by the petitioner. The suit was dismissed vide judgment and decree dated 31.3.2018. Aggrieved of the dismissal, the petitioner preferred an appeal.

During the pendency of the appeal, the matter was referred to Lok Adalat and was amicably settled there. On the basis of settlement arrived at before the Lok Adalat, a statement was made that the petitioner is

not interested in pursuing the appeal and a request was made for refund of the court fee, which was declined by the Appellate Court. Hence the present civil revision petition.

Learned counsel for the petitioner states that as the matter has been settled before the Lok Adalat, the court fee attached with the appeal be ordered to be refunded.

Learned counsel for the respondents has no objection.

Heard learned counsel for the parties and perused the paper book.

For the purpose of deciding the controversy, it would be appropriate to refer to the relevant provisions of the Court Fees Act, 1870 (for short, 'the 1870 Act'), the Code of Civil Procedure, 1908 (for short, 'CPC') and Legal Services Authorities Act, 1987 (for short, 'the 1987 Act'). The same are extracted below:

“Section 16 of the 1870 Act

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.

Section 89 of the 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 as 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.

Section 21(1) of the 1987 Act

21. Award of Lok Adalat.- (1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under subsection (1) of Section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).

[Emphasis supplied]

It is also relevant to reproduce the Statement of Objects and Reasons of the 1987 Act. The same are extracted below:

“Statement of Objects and Reasons.- Article 39-A of the Constitution provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

2. With the object of providing free legal aid, Government had, by a Resolution dated the 26th September, 1980 appointed the “Committee for Implementing Legal Aid

Schemes” (CILAS) under the chairmanship of Mr. Justice P. N. Bhagwati (as he then was) to monitor and implement legal aid programmes on a uniform basis in all the States and Union Territories. CILAS evolved a model scheme for legal aid programme applicable throughout the country by which several legal aid and Advice Boards have been set up in the States and Union Territories. CILAS is funded wholly by grants from the Central Government. The Government is accordingly concerned with the programme of legal aid as it is the implementation of a constitutional mandate. But on a review of the working of the CILAS, certain deficiencies have come to the fore. It is, therefore, felt that it will be desirable to constitute statutory legal service authorities at the national, State and District levels so as to provide for the effective monitoring of legal aid programmes. The Bill provides for the composition of such authorities and for the funding of these authorities by means of grants from the Central Government and the State Governments. Power has also been given to the National Committee and the State Committees to supervise the effective implementation of legal aid schemes.

3. For sometime now, Lok Adalats are being constituted at various places in the country for the disposal, in a summary way and through the process of arbitration

and settlement between the parties, of a large number of cases expeditiously and with lesser costs. The institution of Lok Adalat is at present functioning as a voluntary and conciliatory agency without any statutory backing for its decisions. It has proved to be very popular in providing for a speedier system of administration of justice. In view of its growing popularity, there has been a demand for providing a statutory backing to this institution and the awards given by Lok Adalats. It is felt that such a statutory support would not only reduce the burden of arrears of work in regular courts, but would also take justice to the doorsteps of the poor and the needy and make justice quicker and less expensive.

4. The Bill seeks to achieve the above objects. The Notes on clauses explain the provisions of the Bill in detail.”

In **Salem Advocate Bar Association. v. Union of India**, AIR

2003 SCC 189, the Supreme Court held as under:

“10. It is quite obvious that the reason why Section 89 has been inserted is to try and see that all the cases which are filed in court need not necessarily be decided by the court itself. Keeping in mind the law's delays and the limited number of Judges which are available, it has now become imperative that resort should be had to alternative dispute resolution mechanism with a view to bring to an end litigation between the parties at an early date. The alternative dispute resolution

(ADR) mechanism as contemplated by Section 89 is arbitration or conciliation or judicial settlement including settlement through Lok Adalat or mediation. Sub-section (2) of Section 89 refers to different Acts in relation to arbitration, conciliation or settlement through Lok Adalat, but with regard to mediation Section 89(2)(d) provides that the parties shall follow the procedure as may be prescribed. Section 89(2)(d) therefore, contemplates appropriate rules being framed with regard to mediation.

11. Section 89 C.P.C. directs that 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 (c) judicial settlement including settlement through Lok Adalat. Procedure for referring the dispute to Lok Adalat has been given under Rule 3 of Uttar Pradesh Civil Procedure Alternative Dispute Resolution Rules, 2009, which provides that the Court shall, after recording admissions and denials at the first hearing of the suit under Rule 1 of Order 10, and where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, formulate the terms of settlement and give them to the parties for their observations under sub-section (1) of Section 89, as the parties

shall submit to the Court their responses within thirty days of the first hearing.

12. Under Section 19(5) of Legal Services Authorities Act 1987, Lok Adalat has jurisdiction over the cases referred to it or directly came to it. Once the matter came before Lok Adlat, then it has jurisdiction to pass award in terms of settlement between the parties. Section 89 C.P.C. casts a duty upon the Court trying the suit that at first hearing while recording statements of the parties under Order 10 Rule 1 C.P.C. to examine as to whether there exist elements of a settlement, acceptable to the parties. Then the Court will formulate the terms of settlement and give them to the parties for their observations under sub-section (1) of Section 89 as the parties shall submit to the Court their responses within thirty days of the first hearing. If the parties agree for settlement of their dispute, matter would be referred to Lok Adalat, for resolving the dispute through settlement. The provisions of Section 21 of Legal Services Authorities Act, 1987 and Section 16 of Court Fee Act, 1870 are applicable in both the cases.”

From the Statement of Objects and Reasons of the 1987 Act, it is evident that in order to promote speedier system of administration of justice and for providing statutory backing to the institution and the awards given by Lok Adalat, the said Act was introduced in order to take justice to the doorsteps of the poor and the needy and make justice quicker and less expensive.

Section 89 of the CPC deals with settlement of dispute outside the Court and it includes settlement and reference made to Lok Adalat. Section 16 of the 1870 Act provides for refund of the full amount of court fee paid in respect of the case where the matter has been settled by the modes referred to in Section 89 of the CPC.

Section 21 of the 1987 Act provides that the award of Lok Adalat shall be deemed to be a decree of the civil court. It further contemplates that the court fee paid in such cases where the matter has been settled in Lok Adalat shall be refunded as provided in the 1870 Act.

Considering the facts of the case that the matter was settled before the Lok Adalat during the pendency of appeal, after the suit was dismissed, and the provisions referred to above, it is ordered that the court fee attached with the appeal be refunded to the petitioner.

The revision petition is allowed.

(AVNEESH JHINGAN)
JUDGE

30.1.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No