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

% *Date of Order: 12.07.2019*

+ **C.R.P. No.193/2018**

DAYA MEENA Petitioner
Through: Mr. Aditya Aggarwal and Ms. Shweta
Tiwari, Advocates.

versus

SATISH & ORS Respondents
Through: Mr. Vikash Kumar, Advocate for R1
& R2.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

% **12.07.2019**

1. There is no appearance on behalf of respondents No.3 and 4 despite service. Mr. Kumar states that he has been appearing on behalf of respondents No.1 and 2 before the Trial Court.
2. The petitioner is aggrieved of the order dated 03.07.2018 passed by the Court of learned Additional District Judge-01, North-East District, Karkardooma Courts, Delhi (ADJ) in CS No.139/2018 by which his application for return/adjustment of the court fees under Section 151 CPC was dismissed.
3. The brief facts of the case are that the petitioner filed a Civil Suit No.08/2014 for cancellation, declaration, eviction and

possession under Section 31 and 34 of the Specific Relief Act, 1964 before the Civil Judge, Shahdara District, Karkardooma Courts, Delhi. The petitioner paid court fees of Rs.13/- on the plaint. The learned Civil Judge by an order dated 18.04.2018, directed that the plaint be returned in an appropriate Court having pecuniary jurisdiction.

4. Instead of presenting the returned plaint before the Competent Court of jurisdiction, the petitioner filed a fresh suit before the Court of ADJ being CS No. 139/2018. On the fresh plaint he has paid court fees of Rs.28,100/-. The petitioner filed an application for withdrawal of the suit as she was to file the returned plaint and not a fresh suit. The application was allowed and the suit was dismissed as withdrawn on 03.07.2018. However, his application under Section 151 CPC for return/adjustment of the court fees was dismissed by the same order. The petitioner thereafter filed the returned plaint in terms of the order dated 18.04.2018 before the learned District Judge, Shahdara.
5. The learned counsel for the petitioner has relied upon a judgment of **Kerala High Court in Valia Veettil Komappan Vs. Karthiyayani and Ors. 1968 SCC Online Ker 73**. The question involved in **Valia Veettil Komappan (supra)** was whether court fees paid on the plaint presented in the wrong court could be given credit when the suit is presented again in a

proper court. The Kerala High Court had noted that while there is no provision in the Court Fees Act for refund of the court fee paid on a plaint presented in a wrong court, as the same is permissible only in cases of compromise or remand of a suit for fresh disposal, however, in the ends of justice, the only order that the court can pass is to give credit to the fee paid in the first suit which was wrongly filed as a litigant should not be made to pay twice in the same matter.

6. In the present case, instead of filing the returned plaint before the appropriate court, a fresh plaint being CS No.139/2018 was filed by the petitioner through her counsel. He paid a court fee of Rs.28,100/-. Having realised his mistake, the plaint of CS No.139/2018 was withdrawn on 03.07.2018 and the petitioner filed the returned plaint before the appropriate court i.e. the Court of learned District Judge, Shahdara. There appears to be a mistake or negligence on the part of the learned counsel for the petitioner. It is well settled principle of law that the litigant should not be made to suffer for the lapse or negligence of his counsel. Furthermore, the litigant should not be made to make the payment of the court fees twice.
7. In the circumstances to meet the ends of justice, it is directed that the court fees of Rs.28,100/- paid in CS No.139/2018 be treated as court fees paid in the plaint filed before the learned District Judge, Shahdara in CS No.621/2018. In order to avoid

further confusion, it is also directed that the plaint of suit No.139/2018 be annexed with the plaint filed before the learned District Judge Shahdara.

8. The petition is disposed of accordingly.

VINOD GOEL, J.

JULY 12, 2019

“SDP”

