

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.242 of 2017

S.Elamaran

... Appellant

vs.

1.Sumathi

2.Usharani

....Respondents

Appeal filed under Section 96, r/w Order 41 Rule 1 of the Civil Procedure Code, against the judgment and decree dismissing the suit in O.S.No.29 of 2015 passed by the learned Principal District Judge, Tirvarur, dated 10.2.2017.

For Appellant : M/s.P.Veena Suresh

J U D G M E N T

The learned counsel appearing on behalf of the appellant filed a memo, stating that the parties to the appeal suit have settled the disputes amicably outside the Court.

2. It is further stated that the appeal suit was not taken up for hearing on merits even once before this Hon'ble Court. Under these circumstances, the appellant prays that the entire Court fee paid at the time of filing of the appeal suit is to be returned.

3. This Court is of the considered opinion that once the appeal suit filed and the same has not been disposed of by this Court and more specifically, not even taken up for hearing, then the appellant is entitled for the refund of entire Court fee under Section 69-A of the Tamil Nadu Court Fee and Suit Valuation Act 1955.

4. The principles regarding the refund of Court fee has already been settled by this Court in C.M.P.Nos.26742 & 26743 of 2019 dated 08.01.2020 and the relevant paragraphs are extracted hereunder:

"28. It is needless to state that the appeal suit filed before the High Court is the continuation of the Original Suit. The

Court fee has been paid in the original suit and on disposal of such original suits, the parties are not entitled for any refund of Court fee under Section 69 of the Court Fees Act. Once the appeal suit is filed, then a separate Court Fee is collected for entertaining the appeal suit. Therefore, the appeal suit is also a suit within the meaning of Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act, 1955. Therefore, once the appeal suit is settled out of Court before disposal, either through the Arbitrator, Conciliator, Mediator or through Lok Adalat pursuant to the orders of the Court or settled between the parties through their own Conciliators, Mediators or through the respective learned counsels appearing on behalf of the parties, then also the parties are entitled for refund of full Court fee with reference to Section 69-A of the Court Fee Act. In the event of dishonoring the entitlement of refund, then the same would cause discrimination amongst the same class of people, who had settled the Civil disputes out of Court and such a discrimination is not only unconstitutional, but in violation of the very spirit and scope of the amended Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act and with reference to Section 89 of the Code of Civil Procedure.

29. Under these circumstances, even in cases, where the parties had withdrawn the appeal suit by filing a memo or affidavit, stating that the disputes between the parties are settled out of Court, they are entitled for refund of full Court fee under Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act. It is not necessary while permitting the parties to withdraw the appeal suit, there must be a separate order from the Court for refund of Court fee as the parties are entitled under the statute for such refund.

30. The scope of settlement by the parties to the appeal suit out of Court, neither be restricted nor be narrowed down. Wider scope is to be provided for settlement

of such Civil disputes out of Court to encourage the parties to settle the issues. The very purpose and object of the amendment to the Code of Civil Procedure as well as the Tamil Nadu Court Fees and Suit Valuation Act is also to encourage the litigants to settle the disputes out of Court and the benefit of refund of Court fee is also granted under Section 69-A of the Court Fees Act. Thus the Courts cannot restrict the scope or discriminate the litigants, who have settled the issues out of Court in a particular manner under Section 89 of the Code of Civil Procedure.

31. Therefore, this Court is of the considered opinion that all such settlements, wherein a petition/ memo is filed by the respective parties to the appeal suit seeking permission for the withdrawal of the appeal suit, then the Courts are bound to refund the full amount of Court fee to the litigants concerned based on Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, by issuing necessary certificate.?"

5. In view of the above judgment, Registry is directed to refund the full Court fee to the appellant by following the procedures within a period of four weeks from the date of filing of the application by the appellant for return of Court fee.

6. With this direction, the appeal suit in A.S.No.242 of 2017 stands disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Kak
To

The Principal District Judge,
Tirvarur.

Copy to

The Section Officer,
VR Section, High Court,
Chennai-104.

+1cc to Mrs.P.Veena Suresh, Advocate Sr.3686

A.S.No.242 of 2017

rgn[co]
srg 01/04/2021



WEB COPY