

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 27TH DAY OF AUGUST 2021

THE MASTER

A.Nos.2742 & 2743 OF 2021

IN

C.S.D.NO.63706 OF 2020

1. S.Abubacker Siddiq,
S/o.Shahul Hameed,

2. Mrs.Naseema Siddiq,
W/o.S.Abubacker Siddiq,
Both Are Residing At:
No.14/1, Rutland Gate 4th Street,
Nungambakkam,
Chennai – 600 034.

...Applicants/Plaintiffs in
A.No.2742 & 2743 OF 2021

Vs.

Central Bank of India,
Rep.by its Manager,
Nungambakkam Branch,
Ground Floor,
No.11, Haddows Road,
Chennai – 600 006.

...Respondents/Defendants in
A.No.2742 & 2743 OF 2021

A.NO. 2742 OF 2021:-

Application Praying that this Hon'ble Court be pleased to reject the said suit SR No.63706 of 2020.

A.NO. 2743 OF 2021:-

Application Praying that this Hon'ble Court be pleased to refund the full court fee by issuing a cheque in the name of the Counsel G.Veerapathiran.

These applications coming on this day before this court for hearing in the presence of Mr.G.Veerapathiran, advocate for the applicants in A.Nos.2742 & 2743 of 2021 and upon reading the Judge's Summon and the affidavit of S.Abubacker Siddiq filed in A.Nos.2742 & 2743 of 2021 and this court having observed that there is no provision to refund court fee when the plaint is not numbered and not converted into a suit, section 66 of Tamil Nadu Court Fees Act speaks about the refund of court fee in cases where the plaint is rejected, so that the plaintiff has come forward with this application to reject the plaint to get back his court fee paid along with the plaint, and the main object of both these applications are to get refund of court fee paid, as stated already there is no provision in

Tamil Nadu Court Fees Act to return the court fee paid when the plaint is returned, under Section 69 of Tamil Nadu Court Fees Act if the suit is settled out of court before recording evidence, the plaintiff is entitled to refund of full court fee, if the suit is referred for settlement in any one of the modes in Section 89 of CPC irrespective of the result, the plaintiff is entitled for refund of full court fee under 69 A of Tamil Nadu Court Fees Act, similarly if the plaint is rejected the plaintiff's is entitled to refund of full court fee under section 66 of Tamil Nadu Court Fees Act, since there is no provision to get refund of court fee on the unnumbered plaint, this plaintiff has come forward with the application to reject the plaint, and as per law laid down by Hon'ble Apex Court, the applicant/plaintiff is entitled for refund of entire court fee paid with plaint and **it is ordered as follows:-**

That the A.No.2742 of 2021 be and is hereby dismissed.

2. That the plaint is ordered to be returned.

3. That a Certificate Under Section 66 of the Tamil Nadu Court Fees and Suits valuation Act XIV of 1955, do issue herein, out of and under the seal of this court in favour of S.Abubacker Siddiq and

Naseema Siddiq the plaintiff's herein, authorising them to receive from the pay and Accounts Office, High Court, Chennai, a sum of Rs.3,46,414/- (Rupees Three Lakhs, Forty Six Thousand Four Hundred and Fourteen Only) being the entire court fee paid on the plaint by the plaintiffs application herein.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS
THE 27TH DAY OF AUGUST 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments.

VSP
27/10/2021

A.NO.2742&2743 OF 2021
IN
C.S.D.NO.63706 OF 2020

ORDER

DATED : 27.08.2021

THE MASTER

FOR APPROVAL:29/11/2021

APPROVED ON:29/11/2021

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2. Mrs.Naseema Siddiq,
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the modes in Section 89 of CPC irrespective of the result, the plaintiff is entitled for refund of full court fee under 69 A of Tamil Nadu Court Fees Act, similarly if the plaint is rejected the plaintiff's is entitled to refund of full court fee under section 66 of Tamil Nadu Court Fees Act, since there is no provision to get refund of court fee on the unnumbered plaint, this plaintiff has come forward with the application to reject the plaint, **the court made the following order:-**

There are two applications in which A.No.2742 of 2021 is to reject the plaint and A.No.2743 of 2021 is for refund of court fee paid by the plaintiff. The story behind these applications is as follows.

The Plaintiff is the landlord and defendant is the tenant. There was a dispute between them with regard to rent. The plaintiff filed petition for fixation of fair rent and an order was passed fixing fair rent. For the differences of amount between fixed rent and the actual rent paid, the plaintiff came forward with this plaint.

Meanwhile the defendant preferred C.R.P and a compromise was effected between the plaintiff and the defendant and the matter was settled. The plaint submitted by the plaintiff is not yet numbered and it is

in S.R.No.63706 of 2020. Now the plaintiff has come forward with these applications, one application for refund of court fees and another application to reject the plaint.

Now the points for determination are

- i) Whether the unnumbered plaint can be rejected?
- ii) Whether the plaintiff is entitled for the refund of court fee?

Now the first point to be determined is whether the unnumbered plaint can be rejected for the reason that there is no cause of action. It is relevant to look into the provision of CPC under which circumstances a plaint can be rejected. The relevant provision is order VII Rule 11 of CPC. It reads as follows:

Order 7 : Plaint Rule 11: Rejection of plaint.-- The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9;*

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

The learned counsel advanced his arguments that the plaint has to be rejected since there is no cause of action as the matter was already settled. He submitted that after presentation of plaint the parties went on compromise. The reliefs claimed in the plaint by the plaintiff were already obtained. Hence there is no cause of action and the plaint may be rejected. But this court do not agree with the contention of the learned counsel.

The cause of action for a suit is bundle of facts and it has to be looked into the averments of plaint on the date of presentation of plaint. No doubt in this case, cause of action existed on the date of presentation of the plaint. Subsequently, the reliefs sought are achieved by plaintiff. It cannot be said that there is no cause of action for the suit. Since the reliefs sought are already obtained, the plaint has become infructuous. To reject the plaint, the court can look into the averments stated in the plaint only and the court cannot consider subsequent events.

There are 6 grounds stated under Order VII Rule 11 of CPC to reject the plaint. The plaintiff may opt any one of the other grounds to reject the plaint instead of choosing the provision under Order VII Rule 11 (a) that is there is no cause of action. This court do not agree with the contention of plaintiff and the plaint cannot be rejected on that ground.

Now the another point to be determined is whether he is entitled to get refund of court fees?

At this juncture it is pertinent to point out the relevant provisions in Tamil Nadu Court fees Act, for refund of court fees.

66. Refund in cases of delay in presentation of plaint, etc.

(1) Where a plaint or memorandum of appeal is rejected on the ground of delay in its re- presentation, or where the fee paid on a plaint or memorandum of appeal is deficient and the deficiency is not made good within the time allowed by law or granted by the Court, or the delay in payment of the deficit fee is not condoned and the plaint or memorandum of appeal is consequently rejected, the Court shall direct the refund to the plaintiff or the appellant, of the fee paid on the plaint or memorandum of appeal which has been rejected.

(2) Where a memorandum of appeal is rejected on the ground that it was not presented within the time allowed by the law of limitation, one-half of the fee shall be refunded.

67. Refund in cases of remand

(1) Where a plaint or memorandum of appeal which has been rejected by the lower Court is ordered to be received, or where a suit is remanded in appeal for a fresh decision by the lower Court, the Court making the order or remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of appeal; and, if the remand is on second appeal, also on the memorandum of appeal in the first appellate Court and, if the remand is in Letters Patent Appeal, also

on the memorandum of second appeal and memorandum of appeal in the first appellate Court.

(2) Where an appeal is remanded in Second Appeal or Letters Patent Appeal for a fresh decision by the lower appellate Court, the High Court remanding the appeal may direct the refund to the appellant of the full amount of fee paid on the memorandum of Second Appeal if the remand is in Second Appeal, and of the full amount of fee paid on the memorandum of Second Appeal and the Memorandum of Letters Patent Appeal if the remand is in Letters Patent Appeal:

Provided that, no refund shall be ordered if the remand was caused by the fault of the party who would otherwise be entitled to a refund:

Provided further that, if the order of remand does not cover the whole of the subject-matter of the suit, the refund shall not extend to more than so much fee as would have been originally payable on that part of the subject-matter in respect whereof the suit has been remanded.

68. Refund where Court reverses or modifies former decision on ground of mistake

Where an application for a review of judgment is admitted on the ground of some mistake or error apparent on the face of the record, and on the rehearing the Court reverses or modifies its former decision on that ground, it shall direct the refund to the applicant of so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under Article 11 (g) and (u) of Schedule II.

Section 69 - Refund on settlement before hearing

Whenever any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim, [full amount] of all fees paid in respect of the claim or claims in the suit shall be ordered by the Court to be refunded to the parties by whom the same have been respectively paid.

Explanation.-- The expression 'merits of the claim' shall have the meaning assigned to it in section 12.

Section 69A – Refund on settlement of disputes under Section 89 of Code of Civil Procedure.

Where the court refers the parties to the suit to any of the modes of settlement of dispute referred to in Section 89 of Code of Civil Procedure, 1908 (Central Act V of 1908), the fee paid shall be refunded upon such reference. Such refund need not await for settlement of the dispute.

70 - Refund of fee paid by mistake or inadvertence

The fee paid by mistake or inadvertence shall be ordered to be refunded.

The above said provisions speak about the refund of court fee in suits. There is no provision to refund court fee when the plaint is not numbered and not converted into a suit. Section 66 of Tamil Nadu Court Fees Act speaks about the refund of court fee in cases where the plaint is rejected. So that the plaintiff has come forward with this application to reject the plaint to get back his court fee paid along with the plaint.

The main object of both these applications are to get refund of court fee paid. As stated already there is no provision in Tamil Nadu Court Fees Act to return the court fee paid when the plaint is returned. Under Section 69 of Tamil Nadu Court Fees Act if the suit is settled out of court before recording evidence, the plaintiff is entitled to refund of full court fee. If the suit is referred for settlement in any one of the modes in Section 89 of CPC irrespective of the result, the plaintiff is entitled for refund of full court fee under 69 A of Tamil Nadu Court Fees Act. Similarly if the plaint is rejected the plaintiff is entitled to refund of full court fee under Section 66 of Tamil Nadu Court Fees Act. Since there is no provision to get refund of court fee on the unnumbered plaint, this plaintiff has come forward with the application to reject the plaint.

At this time, this court brings its attention to the Judgment of
Hon'ble Apex Court in

**Dr (Col.)Subhash Chandra Talwar vs T. Choithram And Sons . on
25 October, 2019**

Petition(s) for Special Leave to Appeal (C)
No(s) .18102/2013

(Arising out of impugned final judgment and order dated
04-05-2012

in CM No.8013/2012, 04-05-2012 in FAO No.459/2007 passed
by the
High Court Of Delhi At New Delhi)

DR (COL.) SUBHASH CHANDRA TALWAR

Petitioner(s)

VERSUS

T.CHOITHRAM AND SONS&ORS.

Respondent(s)

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA

HON'BLE MR. JUSTICE SURYA KANT

The relevant portion is extracted hereunder:

The petitioner herein filed a suit for damages. The defendants filed a petition before the High Court under Order VII Rule 11 praying for dismissal of the suit on the ground of jurisdiction. That plea was accepted by the learned Single Judge.

On a review petition being filed, the learned Single Judge modified the order and rejection of the plaint was directed as against dismissal of the suit as ordered earlier. The appeal filed by the petitioner was dismissed. However, the plaint was ordered to be returned with liberty to file it before the court of competent jurisdiction.

Thereafter, the petitioner filed an application for refund of the court fees. This application has been rejected only on the ground that the appeal has been disposed of on merits. We are unable to agree with the

High Court. What has been disposed of is only the rejection order under Order VII Rule 10 of the Code of Civil Procedure. This is no order on the merits of the suit. The effect is that the plaint has been ordered to be returned to be filed in the appropriate Court. Therefore, the petitioner was entitled to refund of the court fees so that he can fix the court fee in the State where he would like to file the suit. We therefore set aside the order of the High Court and direct that the entire court fees be refunded to the petitioner. The special leave petition is disposed of accordingly.

In the above case, the Hon'ble Apex court has held that the plaintiff is entitled to the refund of entire court fee paid when the plaint is returned. As per law laid down by Hon'ble Apex Court, the applicant/plaintiff is entitled for refund of entire court fee paid with plaint. This point is answered accordingly.

In fine, the prayer sought to reject the plaint is negatived and A.No.2742 of 2021 is dismissed. The plaint is ordered to be returned and ordered to refund the entire court fee paid along with the plaint and accordingly A.No.2743 of 2021 is allowed.

Sd./-MASTER
27/08/2021

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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