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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2021

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

S.A.No.871 of 2019
and
C.M.P.No.18106 of 2019

P.Rajaseelan
S/o.Prakasam

... Appellant

Vs.

Canara Bank
Yellanhalli Branch
Rep. by its Principal Officer
and Manager,
The Nilgiris.

... Respondent

Prayer:

Second Appeal has been filed under Section 100 of Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated 14.03.2019 made in A.S.No.2/2015 on the file of District Judge and appellate authority of the Nilgiris at Uthagamandalam confirming the judgment and decree dated 18.07.2013 made in O.S.No.68/2009 on the file of the Subordinate Judge of the Nilgiris at Uthagamandalam.

For Appellant : Mr.R.Jayaprakash

For Respondent : Mr.P.Raghunathan
M/s.T.S.Gopalan & Co

J U D G M E N T

Mr.R.Jayaprakash, learned counsel on record for sole appellant and Mr.P.Raghunathan, learned counsel of M/s.T.S.Gopalan & Co., (Law Firm) on behalf of lone respondent Bank are before this Virtual Court.

2. Adverting to earlier proceedings made in previous listing on 19.07.2021, aforementioned both learned counsel submit that the counsel for appellant has filed a memo for withdrawing the captioned matter and respondent/Bank has also given a letter



dated 21.07.2021 saying that the Bank does not stand in the way of withdrawal.

3. A scanned reproduction of an earlier counsel letter, the memo filed by the appellant (together with docket) and annexed letter from the Bank are as follows:

R. JAYAPRAKASH
R. MUTHUKRISHNAN
ADVOCATES

@ PAIS LOBO ALVARES
CATHOLIC CENTER ANNEX
No. 64, Armenian Street,
Parrys Corner, Chennai – 600 001
Mobile : 9940486699
e-mail: jpadvocate@gmail.com

Date : 24.07.2021

To

The Registrar (Appellate Side)
High Court of Judicature at Madras
Chennai – 600 104

Respected Sir,

Sub : Second Appeal No. 871 of 2019 – P. Rajaseelan Vs. Canara Bank – on the file of Hon'ble High Court of Judicature at Madras - Withdrawal : reg.

The above Second Appeal is listed for hearing before His Lordship Hon'ble Mr. Justice M. Sundar as **Item No. 7 on Monday (26.07.2021)**

The Appellant has instructed us to withdraw the above said Appeal based on the Letter dated 21.07.2021 issued by the Respondent/Bank. The said copy of the said letter issued by the Respondent/Bank sent to the Appellant endorsing no objection for withdrawal of the case is enclosed herewith.

In view of the above, we are filing herewith the Memo for withdrawal of the above said Second Appeal.

Hence, we request your goodness to direct the Registry to put up the Withdrawal Memo dated 24.07.2021 along with the Letter of the Respondent/ Bank dated 21.07.2021 in the Second Appeal No. 871 of 2019 bundle, **so as to enable us to withdraw the above Second Appeal on Monday (24.07.2021)**.

Thanking you

Yours faithfully

R. Jayaprakash

R. Jayaprakash

Encl:

1. Withdrawal Memo dated 24.07.2021
2. Letter from the Respondent/Bank dated 21.07.2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Appellate Jurisdiction)

S.A No. 871 of 2019

P. Rajaseelan
S/o. Prakasam
Senior Manger (HR)
M/s. Needle Industrial Indi Private Limited
Yellannahalli, The Nilgiris
Pin Code - 643 243

...Appellant

Vs.

Canara Bank, Yellannahalli Branch
(Body Corporate under the Banking Companies
(Acquisition and Transfer of Undertakings)
Act V of 1970, having its Head Office at
J.C. Road, Bangalore and one of its Branch
Office amongst other places at Yellannahalli
Coonoor Taluk, The Nilgiris Represented by
Its Principal Officer and Manager
Thiru. Kolandavel, S/O. K. Subramaniam
Aged abo 55 Years, Canara Bank
Yellannahalli Branch, Coonoor Taluk, The Nilgiris.

...Respondent

MEMO FILED BY THE APPELLANT

It is respectfully submitted as follows: -

1. The Appellant has filed the above said Appeal before this Hon'ble Court to Set aside Judgment and decree passed in A.S No. 2 of 2015 dated 14.03.2019 passed by the District Judge and Appellate Authority of the Nilgiris at Udthagamandalam confirming the decree and judgement dated 18.07.2013 made in O.S No. 68 of 2009.
2. During the pendency of the above Appeal, a one time settlement offer was made and based on the same, the Appellant had settled the amount.
3. The Bank has also issued a letter confirming the receipt of payment and issued a letter dated 21.07.2020 indicating that they have no objection for the Appellant withdrawing the above Second Appeal. Based on the same, the Appellant has instructed us to withdraw the above Second Appeal

In view of the above, it is respectfully prayed that Hon'ble Court may be pleased to permit the Appellant to withdraw the S.A No. 871 of 2019 and thus render justice.

Dated at Chennai on this the 24th day of July, 2021

R. J. L.

COUNSEL FOR APPELLANT



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**HIGH COURT
MADRAS**

S.A No. 871 of 2019

P. Rajaseelan

...Appellant

Vs.

Canara Bank

...Respondent

WITHDRAWAL MEMO

R. JAYAPRAKASH
(R No. 466/1996)
R. MUTHUKISHNAN
(R. No. 2729/2014)

Mobile : 9940486699

Advocates

COUNSEL FOR APPELLANT



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केनरा बैंक



Canara Bank

YELLANAHALLI, NILGIRIS -	T : 0423 -220787 F : 0423 -220787 E : cb1235@canbank.com www.canarabank.com	Selected Business Industry Valuated
REF: CNR/OTS		Date:21 07 2021

To
Mr Rajaseelan
Needle Indust. [India] pvt.Ltd.
YellanaHalli 643 243

Dear Sir,

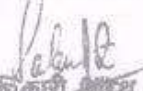
Sub: Your Loan 1235741018069 - OTS proposal submitted - reg.

This has reference to the above.

We request you to withdraw the litigation filed by you against the EP in OS 68/2009, before the Hon. High Court , Chennai for us to proceed further in the OTS [one time settlement] offer submitted by you.

We have No Objection in your withdrawing the Litigation filed by you as the amount has been remitted by you and the sanction of the same is pending with our higher office for this letter of withdrawal of litigation from your counsel / you.

Yours faithfully
केनरा बैंक For Canara Bank


Manager
एल्लनाहल्ली ब्रंच YellanaHalli Branch



4. The contents of the aforementioned memo and letter are reiterated by respective counsel in the hearing today.

5. Learned counsel for appellant requests for refund of full Court fee under Section 69-A of 'The Tamil Nadu Court-Fees and Suits Valuation Act, 1955' [hereinafter 'TN Court Fees Act' for brevity and convenience] as amended as the matter has been settled out of Court.

6. Hon'ble Supreme Court in a recently rendered judgment in the case of The High Court of Judicature at Madras Vs. M.C.Subramaniam & Ors. reported in 2021 SCC OnLine SC 109 has held that settled out of Court as occurring in Section 69-A of TN Court Fees Act includes settlement out of Court de hors recourse to any of the modes adumbrated in Section 89 of 'The Code of Civil Procedure, 1908' [hereinafter 'CPC' for the sake of convenience and brevity]. This is one such case. Therefore, in the light of Section 69-A of TN Court Fees Act read in the context of law laid down by Hon'ble Supreme Court in M.C.Subramaniam's case, the appellant is entitled to refund of full Court fee. Relevant paragraphs in M.C.Subramaniam's case are paragraphs 26 and 27 and the same read as follows:

'26. Thus, even though a strict construction of the terms of Section 89, CPC and 69-A of the 1955 Act may not encompass such private negotiations and settlements between the parties, we emphasize that the participants in such settlements will be entitled to the same benefits as those who have been referred to explore alternate dispute settlement methods under Section 89, CPC. Indeed, we find it puzzling that the Petitioner should be so vehemently opposed to granting such benefit. Though the Registry/State Government will be losing a one-time court fee in the short term, they will be saved the expense and opportunity cost of managing an endless cycle of litigation in the long term. It is therefore in their own interest to allow the Respondent No. 1's claim.

27. Thus, in our view, the High Court was correct in holding that Section 89 of the CPC and Section 69-A of the 1955 Act be interpreted liberally. In view of this broad purposive construction, we affirm the High Court's conclusion, and hold that Section 89 of CPC shall cover, and the benefit of Section 69-A of the 1955 Act shall also extend to, all methods of out-of-court dispute settlement between parties that the Court subsequently finds to have been legally arrived at. This would, thus, cover the present controversy, wherein a private settlement was arrived at, and a memo to withdraw the appeal was filed before the High Court. In



such a case as well, the appellant, i.e., Respondent No. 1 herein would be entitled to refund of court fee.'
(underlining made by this Court
for ease of reference)

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7. Learned counsel for appellant submits that he will comply with all requirements for refund of full Court fee paid subject to standard statutory deductions, if any. Registry to process the request for refund of Court fee and make refund to the appellant by way of an instrument drawn in favour of the appellant (P.Rajaseelan, S/o.Prakasam) as expeditiously as possible and in any event, within twelve weeks from the date of receipt of this order.

8. Therefore, the captioned main Second Appeal and captioned CMP are dismissed as withdrawn albeit with the above directives for refund of full Court fee. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mk

To

1. The District Judge,
Court of District Judge and Appellate Authority of the
Nilgiris
Udhagamandalam.
2. The Subordinate Judge,
Court of Subordinate Judge of the Nilgiris
Udhagamandalam.

+1cc to M/s.T.S.Gopalan & Co, Advocate, S.R.No.35740

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.35413

S.A.No.871 of 2019 and
C.M.P.No.18106 of 2019

VSN-II (CO)
HS (24/08/2021)