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

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Date of decision:03.12.2021

+ CS(COMM) 446/2021& I.As.11969/2021 & 11970/2021

DEVENDRA KUMAR JAIN & ANR.Plaintiffs

Through Mr. Tejveer Singh Bhatia &
Ms.Tanya Arora, Advts.

Versus

SANJEEV GOEL Defendant

Through Mr.Lalit Chadha, AR of defendant
no.2 in person.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

I.A. 15997/2021

1. Present application has been filed by the plaintiffs under Order I Rule 10 read with Section 151 CPC seeking impleadment of Mr.Ranjit Bansali, proprietor of Oswal Electricals as defendant to the present suit.
2. Learned counsel for the plaintiffs submits thatat the time of filing the present suit, the plaintiffs were under the *bona fide* impression that the defendant No. 1 was operating fromthe premises located at BA-15, Phase 2, Truck Market, Mangolpuri Industrial Area, Delhi- 110083. However, during

the execution of the Local Commission on 24.09.2021, the plaintiffs came to know that the said premise was controlled and operated by the proposed defendant no.2 and not by defendant no.1. Learned counsel for the plaintiff further submits that now no relief qua defendant No.1 is sought and thereby, his name be deleted from the Array of Parties mentioned in the Amended Memo of Parties dated 01.12.2021.

3. In view of the reasons stated in the present application and the submission of counsel for the plaintiff, the application is allowed. Defendant No.1 is deleted from the Array of Parties and Mr.Ranjit Bansali, proprietor of Oswal Electricals is impleaded as defendant in the present suit.

4. The application is accordingly disposed of.

I.A.15996/2021

5. The present application has been jointly filed by plaintiff and defendant- Ranjit Bansali praying for issuance of decree in terms of Para 4 of the present application and for refund of entire Court fees.

6. The present suit has been filed by the plaintiffs seeking permanent injunction restraining the defendants from infringement of trademarks, copyright, passing off, damages, acts of unfair competition, dilution, misrepresentation, delivery up, rendition of accounts, etc.

7. This court is informed that the plaintiffs and defendant- Ranjit Bansali have amicably resolved their disputes out of court, in terms as stated in Paragraph 4 of the present application.

8. Learned counsel for the plaintiff submits that in terms of settlement, the present suit be decreed against defendant- Ranjit Bansali.

9. Upon hearing learned counsel for the parties and upon perusal of the application and in specific contents of Para-4 thereof, this Court finds that the settlement reached between the parties is valid and lawful.

10. Accordingly, the present joint application filed by the plaintiffs and defendant- Ranjit Bansali is allowed. Needless to say, parties shall be bound by the terms of settlement reached between them.

11. The application stands disposed of accordingly.

CS(COMM) 446/2019

12. In view of order passed in IA No. 15597/2021, name of defendant- Sanjeev Goel is deleted from the Array of Parties (as mentioned in the Amended Memo of Parties dated 01.12.2021) and the present suit shall proceed qua defendant-Ranjit Bansali.

13. Further, in view of order passed in I.A. 15996/2021 (u/O XXIII Rule 3 CPC), the present suit is decreed qua defendant-Ranjit Bansali in terms

mentioned in Paragraph No.4 of this application, which shall form part of decree sheet. Decree sheet be accordingly drawn.

14. Learned counsel also submits that since the subject matter of the suit stands amicably resolved, therefore, in terms of Section 16 of the Court Fees Act, the entire court fees be refunded to the plaintiffs.

15. A Division Bench of this Court in **NutanBatra Vs. M/s. Buniyaad Associates 2018 SCC OnLine Del 12916** while allowing an appeal against the order of refusal of refund of entire court fee in a suit, had dealt with the applicability provisions of Sections 16 and 16A of the Act and Section 89 of the CPC. The Division Bench relying upon the observations of the Hon'ble Supreme Court in **Afcons Infrastructure Limited v. Cherian Varkey Construction Company Private Limited, (2010) 8 SCC 24**, observed as under:-

“8. Section 89 has been interpreted inter alia in the judgment of the Supreme Court in Afcons Infrastructure Limited v. Cherian Varkey Construction Company Private Limited, (2010) 8 SCC 24. The following observations in the said judgment are relevant for a proper interpretation of the provision:

“9. If Section 89 is to be read and required to be implemented in its literal sense, it will be a trial Judge's nightmare. It puts the cart before the horse and lays down an impractical, if not impossible, procedure in subsection (1). It has mixed up the definitions in sub-section (2). In spite of these defects, the object behind Section 89 is laudable and sound. Resort to alternative disputes resolution (for short

“ADR”) processes is necessary to give speedy and effective relief to the litigants and to reduce the pendency in and burden upon the courts. As ADR processes were not being resorted to with the desired frequency, Parliament thought it fit to introduce Section 89 and Rules 1-A to 1-C in Order X in the Code, to ensure that ADR process was resorted to before the commencement of trial in suits.

10. In view of its laudable object, the validity of Section 89, with all its imperfections, was upheld in Salem Advocate Bar Assn. (I) v. Union of India (2003) 1 SCC 49 [for short Salem Bar(I)] but referred to a committee, as it was hoped that Section 89 could be implemented by ironing the creases. In Salem Advocate Bar Assn.(II) v. Union of India (2005) 6 SCC 344 [for short Salem Bar (II)], this Court applied the principle of purposive construction in an attempt to make it workable.

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25. In view of the foregoing, it has to be concluded that proper interpretation of Section 89 of the Code requires two changes from a plain and literal reading of the section. Firstly, it is not necessary for the court, before referring the parties to an ADR process to formulate or reformulate the terms of a possible settlement. It is sufficient if the court merely describes the nature of dispute (in a sentence or two) and makes the reference. Secondly, the definitions of “judicial settlement” and “mediation” in clauses (c) and (d) of Section 89(2) shall have to be interchanged to correct the draftsman's error.

Clauses (c) and (d) of Section 89(2) of the Code will read as under when the two terms are interchanged:

(c) for “mediation”, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a LokAdalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a LokAdalat under the provisions of that Act;

(d) for “judicial settlement”, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

The above changes made by interpretative process shall remain in force till the legislature corrects the mistakes, so that Section 89 is not rendered meaningless and infructuous.”

16. The Division Bench further observed as under:-

“18. The cases of reference to arbitration or "judicial settlement" (as interpreted in paragraph 25 of Afcons, supra) do not pose any great difficulty, as they do not fall within Section 16A of the Act at all, and are covered only under Section 89 of the CPC read with Section 16 of the Act. Similarly, a compromise entered out of Court, whether resulting in a compromise decree, or in the suit being dismissed as settled out of Court, is covered only by Section 16A and not by Section 16.

19. A difficulty arises however, in the case of mediation/conciliation, initiated upon a reference by Court (as understood in the light of Afcons, supra). These cases can potentially fall both within Section 16 and 16A of the Act. On a

plain reading, Section 16 would apply as the parties are referred to mediation by an order of Court. However, Section 16A would also apply, as long as the mediation is at a pre-evidence stage of the suit, and the settlement agreement has been incorporated in a compromise decree. This Court has framed Rules under Part X and Section 89 (2)(d) of the CPC, entitled the Mediation and Conciliation Rules, 2004. Rules 24 and 25 of the said Rules require an agreement between the parties to be reduced into writing and signed by them, which would be forwarded to the Court in which the suit or proceeding is pending. On receipt of the settlement agreement, the Court upon its satisfaction is required to pass a decree in terms thereof, that the parties have settled their disputes.

20. In such a case, we are of the view that an interpretation of the statute inuring to the litigant's benefit should be preferred. If a plaintiff is able to demonstrate that the case falls within the requirements of Section 16, refund of the full amount of the court-fee ought to be granted. However, as held by the Division Bench of this Court in *Sayed Mohd. Rafey (supra)*, if the elements of the provision are not satisfied, then refund in terms thereof cannot be granted. It may then be examined as to whether the conditions laid down in Section 16A have been fulfilled, so as to grant refund of 50% of the court-fees paid.”

17. On the similar issue, a Coordinate Bench of this Court in ***MunishKalra Vs. Kiran Madan and Others 2019 SCC OnLine Del 8021*** while relying upon Supreme Court’s decision in ***Afcons Infrastructure Limited (Supra)*** and ***NutanBatra (supra)***, has observed as under:-

“7. A perusal of *NutanBatra (supra)*, especially the discussion in paragraphs 8 & 9, clearly shows that when the matter is settled in court and decreed, the same would constitute judicial settlement. Difference between Sections 16 and 16A is that in Section 16, reference to mediation under Section 89 has been contemplated and full court fee is liable to be refunded, however, in Section 16A, if the matter is settled out of Court or

compromised ending with compromise decree before evidence is recorded, 50% of the court fee would be liable to be refunded.

8. In Afcons Infrastructure Limited v. Cherian Varkey Construction Company Private Limited, (2010) 8 SCC 24, the Supreme Court has held that a judicial settlement under Section 89(2)(d) would be where “the Court effects compromise between the parties”. In the present case, proposals which were exchanged between the parties were considered in detail during the course of submissions in the Court and finally, after the efforts of the counsels along with the parties, the settlement terms were arrived at. This was a compromise effected in Court as per the prescribed procedure in Order XXIII Rule 3 CPC, and would thus constitute a judicial settlement as defined by Afcons Infrastructure (supra).

9. Under these circumstances, in view of the decision of the Supreme Court in Afcons Infrastructure (supra) as also NutanBatra (supra), the suit having been settled, the Plaintiff is entitled to refund of the entire court fee.”

18. Applying the ration of law laid down in the afore-noted decisions, this Court finds that the parties to the present suit have arrived at an amicable settlement out of the court and the said settlement is on record, which is valid and lawful. Therefore, plaintiffs are entitled to refund of 50% Court fees. Registry is directed to issue necessary certificate/ authorization in favour of the plaintiffs to seek refund of Court fees before the appropriate authorities.

19. With aforesaid directions, the present suit stands decreed accordingly.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 03, 2021
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