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

+ **RFA(OS) 78/2019, C.M. Appl. Nos. 38986-38987/2019**

VIJAY KUMAR & ORS

..... Appellants

Through: **Mr. Prag Chawla, Advocate**

versus

MERA BABA INFRASTRUCTURE PVT LTD Respondent

Through: **Mr. Rajeev Aggarwal, Advocate**

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Date of Decision: 17th March, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. Present appeal has been filed challenging the decree dated 22nd May, 2019 passed by the Learned Single Judge of this Court, whereby the Learned Single Judge was pleased to decree the suit for recovery filed by the Respondent for a sum of Rs. 2,15,74,500/- along with interest at the rate of 7% per annum from the date of institution of the suit till its realisation.
2. Learned counsel for the parties state that the matter has been amicably resolved by way of an out of Court settlement. However, learned counsel for the appellants prays for refund of 50% of the Court fee.

3. The Supreme Court of India in '*The High Court of Judicature at Madras represented by Its Registrar General Vs. M.C. Subramaniam & Ors.*', SLP(C) No. 3063-3064/2021 decided on 17th February, 2021 has held as under:

"18. The Delhi High Court has also taken a similar view in J.K. Forgings v. Essar Construction India Ltd. & Ors., (2009) 113 DRJ 612:

"11. The laudable object sought to be achieved by inserting and amending these sections seems to be speedy disposal. The policy behind the statute is to reduce the No. of cases by settlement. Section 89 of C.P.C. and Section 16 Court Fee Act are welcome step in that direction, as the No. of cases has increased, it is the duty of court to encourage settlement. In present scenario of huge pendency of cases in the courts a purposive and progressive interpretation is the requirement of present hour. The intention of the Legislature is primarily to be gathered from the object and the words used in the material provisions. The statute must be interpreted in their plain grammatical meaning.

12. It is very clear that the Legislative intent of Section 16 of Court Fees Act was made broad enough to take cognizance of all situations in which parties arrive at a settlement irrespective of the stage of the proceedings. It is also obvious that the purpose of making this provision was in order to provide some sort of incentive to the party who has approached the court to resolve the dispute amicably and obtain a full refund of the court fees. Having regard to this position, the present application will have to be allowed.

14. This is not a case where parties to the suit after long drawn trial have come to the court for settlement.

Had it been the case of long drawn trial nonrefund of court fees could have been justified but in such like cases courts endeavor should be to encourage the parties and court fees

attached with the plaint should be refunded as an incentive to them.

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17. Settlement of dispute only through any of the mode prescribed under section 89 of C.P.C is not sine qua non of section 89 C.P.C. rather it prescribes few methods through which settlement can be reached, sine qua non for applicability of section 89 is settlement between the parties outside the court without the intervention of the courts.

18. It is also not the requirement of the section that court must always refer the parties to Dispute Resolution Forum. If parties have arrived at out of court settlement it should be welcomed subject to principles of equity.

19. Court Fees Act is a taxing statute and has to be construed strictly and benefit of any ambiguity if any has to go in favour of the party and not to the state.” (emphasis supplied)

The view taken in both Kamalamma (supra) and J.K. Forgings (supra) has been subsequently relied upon by the Delhi High Court in Inderjeet Kaur Raina v. Harvinder Kaur Anand, 2018 SCC OnLine Del 6557.

19. We find ourselves in agreement with the approach taken by the High Courts in the decisions stated supra. The purpose of Section 69-A is to reward parties who have chosen to withdraw their litigations in favour of more conciliatory dispute settlement mechanisms, thus saving the time and resources of the Court, by enabling them to claim refund of the court fees deposited by them. Such refund of court fee, though it may not be connected to the substance of the dispute between the parties, is certainly an ancillary economic incentive for pushing them towards exploring alternative methods of dispute settlement. As the Karnataka High Court has rightly observed in Kamalamma (supra), parties who have agreed to settle their disputes without requiring judicial intervention under Section 89, CPC are even more deserving of this benefit. This is because by choosing to resolve their claims

themselves, they have saved the State of logistical hassle of arranging for a third-party institution to settle the dispute. Though arbitration and mediation are certainly salutary dispute resolution mechanisms, we also find that the importance of private amicable negotiation between the parties cannot be understated. In our view, there is no justifiable reason why Section 69-A should only incentivize the methods of out-of-court settlement stated in Section 89, CPC and afford step-brotherly treatment to other methods availed of by the parties.

Admittedly, there may be situations wherein the parties have after the course of a long-drawn trial, or multiple frivolous litigations, approached the Court seeking refund of court fees in the guise of having settled their disputes. In such cases, the Court may, having regard to the previous conduct of the parties and the principles of equity, refuse to grant relief under the relevant rules pertaining to court fees. However, we do not find the present case as being of such nature.

20. 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.

21. Thus, in our view, the High Court was correct in Holding that Section 89 of the CP 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.”

4. Keeping in view the aforesaid mandate of law, the Registry is directed to issue to an authorized representative of the appellants a certificate authorizing him/her to receive back from the Collector half the amount of the Court fee paid by them in the present appeal.

5. Accordingly, the present appeal stands disposed of in view of the settlement arrived at between the parties.

MANMOHAN, J

ASHA MENON, J

**MARCH 17, 2021
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