

**M.SUNDAR,J.**

WEB COPY

Ms.A.S.Neela Narayani, learned counsel for applicant bank seeks leave of this Court to withdraw the captioned application but makes a request that the rights and contentions of the applicant bank may please be preserved for making the same/similar prayer before the Arbitral Tribunal which has been constituted.

2. This Court is informed that the proceedings before the Arbitral Tribunal is under way and the last sitting of the Arbitral Tribunal was on 28.02.2022. In this regard, read this in conjunction with and in continuation of earlier proceedings made in the previous listings, which read as follows:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 16.02.2022, which reads as follows:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 09.02.2022.

2.Ms.K.Sahithya, learned counsel representing the counsel on record for applicant is before this virtual Court but there is no representation for the respondents today also. Learned counsel submits that Arbitral Tribunal has since been constituted, requests for a short accommodation to get further instructions on the same and revert to this Court. Request acceded to.

List on 21.02.2022 (Monday).'

2. Ms.A.S.Neela Narayani, learned counsel for applicant submits that Arbitral Tribunal has since been constituted in and by a Sole Arbitrator Mr.R.Vigneshwaran,



WEB COPY



Member of the Bar. Learned counsel also submits that arbitration is scheduled to be held on 28.02.2022. This means sub-section (3) of Section 9 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' (hereinafter 'A and C Act' for the sake of convenience and clarity) kicks in. This also means that this application can now go before the Arbitral Tribunal and can be treated as an application under Section 17 of A and C Act. Learned counsel submits that such a course would tantamount to referring the parties to one of the modes of settlement qua Section 89 of 'The Code of Civil Procedure, 1908 (Act No.5 of 1908)' i.e., 'CPC'. Therefore, the applicant is entitled to refund of Court fee without even awaiting for settlement of dispute is learned counsel's say.

3. Section 69-A of 'Tamil Nadu Court Fees and Suits Valuation Act, 1955 [Act No. XIV of 1955]' says the Court can refer the parties to any modes of settlement of dispute qua Section 89 of CPC. Learned counsel requests for time to get further instructions and revert to this Court. Request acceded to.

List one week hence. List on 28.02.2022.'

3. Section 69-A of 'The Tamil Nadu Court-Fees and Suits Valuation Act, 1955 (Tamil Nadu Act XIV of 1955)' [hereinafter 'TN Court Fees Act' for convenience and clarity] reads as follows:

'Section 69-A. Refund on settlement of disputes under Section 89 of Code of Civil Procedure-(1)Where the Court refers the parties to the suit to anyone of the modes of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 (Central Act V of 1908), the plaintiff shall be entitled to a certificate from



the Court authorizing him to receive back the full amount of the fee paid in respect of such plaint if the dispute referred by the Court is settled.'

4. The above takes us to Section 89 of 'The Code of Civil Procedure, 1908' (Central Act V of 1908) [hereinafter 'CPC' for the sake of brevity], which reads as follows:

'89.Settlement of disputes outside the Court:-

(1)Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for -

- (a) arbitration;*
- (b) conciliation;*
- (c) judicial settlement including settlement through Lok Adalat; or*
- (d) mediation.*

(2)Where a dispute has been referred -

(a) or arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of the



Act;

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section(1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c)for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d)for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.'

5. The prayer and request of learned counsel for applicant now necessarily means that the captioned application will stand referred to arbitration which is one of the modes of settlement adumbrated under Section 89 of CPC. Therefore, the request of the learned counsel for applicant for refund of court fee can be acceded to.

6. The rights and contentions of the applicant bank are preserved for taking out an application with a similar/same prayer



interalia under Section 17 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' (hereinafter 'A and C Act' for the sake of convenience and clarity) before the Arbitral Tribunal. If the applicant chooses to do so, the Arbitral Tribunal shall consider the same on its own merits and in accordance with law uninfluenced by this order.

7. Learned counsel on record for the applicant bank has made an endorsement in the case file and a scanned reproduction of the same is as follows:

The applicant may be permit
to move the sec-17 application
before the sole Arbitration as
the Arbitration has been initiated
and kept pending. In the above
circumstances, the applicant may be
permitted to withdraw the application
with the liberty to proceed further

Per
7/8/22
(A.S. Neela Narayan)
Counsel for Applicant

8. The aforementioned endorsement is reiterated in the



hearing.

WEB COPY

9. In the light of the narrative thus far, captioned application is disposed of as withdrawn, preserving the rights of the applicant bank in the aforesaid manner with further directive to the Registry to refund court fee to applicant (subject to standard deductions, if any) by way of an instrument drawn in favour of applicant bank and by following prescribed procedures in this regard.

07.03.2022

mmi



WEB COPY



7

M.SUNDAR.J

mmi

A.No.1435 of 2021

07.03.2022