



C.M.P.No.17297 of 2022
in AS.No.211 of 2019

V.M.VELUMANI, J.
and
SUNDER MOHAN, J.

(Order of the Court was made by V.M.Velumani, J.)

This petition is filed to direct the registry to refund the court fee paid by the petitioner in the Appeal in AS.No.211 of 2019.

2. The first respondent filed a suit in OS.No.139 of 2004 on the file of the III Additional District Judge, Salem for the relief of Specific Performance and for alternative relief. The Trial Court on 24.09.2018 decreed the suit granting alternative relief directing the petitioners to return the advance amount paid to them. Challenging the said decree and judgement dated 24.09.2018, the petitioners have filed an appeal in AS.No.211 of 2019 before this Court.

3. Pending first appeal, both the parties have settled the matter and the petitioners sought permission of this Court to withdraw the first appeal. Accordingly, this Court by judgment dated 02.03.2022, dismissed the appeal as withdrawn. Now, the petitioners have come up with the present petition seeking to refund the Court fee paid by them in the first appeal in AS.No.211 of 2019.



4. The petitioners have withdrawn the Appeal suit as settled out of Court.

The issue relating to refund of Court Fee came up for consideration before the Hon'ble Apex Court in the judgment reported in **(2021) 3 SCC 560 (High Court of Judicature at Madras, represented by its Registrar General Vs. M.C.Subramaniam and others)**, wherein, in paragraph it is held as follows:-

"23. 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, Code of Civil Procedure are even more deserving of this benefit. This is because by choosing to resolve their claims themselves, they have saved the State of the 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



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cannot be understated. In our view, there is no justifiable reason why Section 69-A should only incentives the methods of out-of court settlement stated in Section 89, Code of Civil Procedure and afford step brotherly treatment to other methods availed of by the parties."

5. The same issue came up for consideration in AS.No.529 of 2015 before Division Bench in which one of us (VMVJ) was party.

6. Taking into consideration paragraph No.23 of the Hon'ble Apex Court referred to above, we held that the appellants are entitled to refund of the Court fee paid by them, in the Memorandum of Grounds of Appeal. The same ratio laid down in the judgements referred to above are squarely applicable to the facts of the present case.

7. In view of the above, the Civil Miscellaneous petition is ordered directing the registry to refund the Court fee paid by the petitioners in the memorandum of grounds of appeal.

J.]

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[V.M.V., J.] [S.M.,

15.11.2022



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