

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-52-2020 (O&M)

Date of Decision: August 24, 2022

Rajiv Kumar and others

...Appellants

VERSUS

Amrit Varsha and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sandeep Bansal, Advocate
for the applicants-appellants.

Mr.Munish Gupta and Mr.Akash Mehta, Advocates
for the applicants-respondents/cross objectors.

ARCHANA PURI, J.

During the pendency of RSA-52-2020, CM-5663-C-2022 and CM-5109-C-2022 have been filed by the parties to the lis, thereby making prayer for withdrawal of the appeal and cross-objections i.e. XOBS-11-2021, in view of the arrival of the compromise between the parties on 23.06.2022, which has been placed on record at Annexure A-1/C-1.

Background facts of the case in nutshell are as follows:-

That, initially, appellants-plaintiffs Rajiv Kumar, Ashwani Kumar and Deepak Kumar had filed a suit against Amrit Varsha, Anil Kumar, Dushyant Kumar and Ashok Kumar, thereby seeking possession by way of specific performance of agreement to sell dated 07.06.1999, vis-a-vis, the land, as detailed therein. In the alternative, recovery was sought of

Rs.10,00,000/-, i.e. Rs.5,00,000/- already paid and Rs.5,00,000/- as damages for breach of contract along with interest @ 12% per annum.

The suit was decreed for alternative relief for recovery of amount of Rs.5,00,000/- along with interest @ 9% per annum, from the date of agreement i.e. 07.06.1999, till the date of judgment and even future interest was granted @ 6% per annum from the date of judgment till its actual realization.

Feeling aggrieved by the aforesaid judgment, Rajiv Kumar and other plaintiffs, had filed an appeal and even Amrit Varsha and other defendants filed cross-objections. Vide judgment dated 02.08.2019, both the said appeal as well as cross-objections, were dismissed with costs, being devoid of merits. Feeling aggrieved by the aforesaid judgment of lower Appellate Court, Rajiv Kumar, LRs of Ashwani Kumar and Deepak Kumar had filed present RSA. Even, respondents No.1, 2 and 4 namely, Amrit Varsha, Anil Kumar and Ashok Kumar, had filed cross-objections.

It was only during the pendency of the RSA that parties to the lis, had reached the out of court settlement and now a prayer, has been made for withdrawal of appeal as well as cross-objections.

Perusal of the compromise, which has been placed on record as Annexure A-1 and C-1, reveals that with the intervention of the respectables, a compromise had been reached and as per this compromise/settlement, Amrit Varsha, wife of Anil Kumar, who is respondent No.1, in the appeal, had agreed to pay a sum of Rs.13,78,750/- i.e. decretal amount of Rs.5,00,000/- along with 9% per annum from the date of agreement i.e. 07.06.1999 till date of 08.01.2015, amounting to

Rs.6,56,250/- and further, interest @ 6% per annum from 08.01.2015 to

08.06.2022, amounting to Rs.2,22,500/- in total. This amount has been paid by Amrit Varsha to the appellants-plaintiffs, which fact is not disputed. As such, it is evident that decree passed by learned Civil Judge has been duly satisfied. It is in this context that RSA and cross-objections are intended to be withdrawn.

Considering the aforesaid fact situation, CM-5663-C-2022 and CM-5109-C-2022 are allowed and **RSA-52-2020** and **XOBS-11-2021**, in view of the submissions, so made, are hereby dismissed as withdrawn.

Besides the applications for seeking withdrawal of the appeal as well as cross-objections, two other applications i.e. CM-5665-C-2022 and CM-5110-C-2022, have been filed for seeking refund of the Court fee, filed before Civil Court, First Appellate Court and also filed in RSA before this Court.

Undisputedly, private out of court settlement has been reached between the parties by way of compromise Annexure A-1/C-1 and this compromise is without intervention of the Court, outside the modes contemplated under Section 89 CPC. Section 16 of the Court Fees Act, 1870, contemplates refund of Court fee, in those cases, where the Court itself refers the parties to the suit to any of the alternative dispute settlement mechanism listed in Section 89 CPC. However, it is pertinent to mention that settlement of dispute, only through any one of the mode, prescribed in Section 89 CPC, is not sine qua non of Section 89 CPC. Rather, it prescribes few methods through which, settlement can be reached, sine qua non for applicability of Section 89, for settlement between the parties outside the court, without the intervention of the Courts. It is not the

dispute resolution forum. If the parties arrive at out of court settlement, it should always be a welcome step. In this regard, it is important to make reference to the judgment passed by the Hon'ble Apex Court in ***High Court of Juridicature at Madras Rep. by its Registrar General vs. M.C.Subramaniam and others, 2021(2) RCR (Civil) 228.***

Thereby, the Hon'ble Apex Court has observed as follows:-

12. The provisions of Section 89 of CPC must be understood in the backdrop of the longstanding proliferation of litigation in the civil courts, which has placed undue burden on the judicial system, forcing speedy justice to become a casualty. As the Law Commission has observed in its 238th Report on Amendment of Section 89 of the Code of Civil Procedure 1908 and Allied Provisions, [Section 89](#) has now made it incumbent on civil courts to strive towards diverting civil disputes towards alternative dispute resolution processes, and encourage their settlement outside of court (Para 2.3). These observations make the object and purpose of [Section 89](#) crystal clear – to facilitate private settlements, and enable lightening of the overcrowded docket of the Indian judiciary. This purpose, being sacrosanct and imperative for the effecting of timely justice in Indian courts, also informs [Section 69A](#) of the 1955 Act, which further encourages settlements by providing for refund of court fee. This overarching and beneficent object and purpose of the two provisions must, therefore, inform this Court's interpretation thereof.

The Hon'ble Apex Court has also made reference to the judgment passed in ***Directorate of Enforcement vs. Deepak Mahajan, 1994(3) SCC 440***, wherein, it was observed as herein given:-

“XXXX XX XX XXXX

24...Though the function of the Courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the court to mould or creatively interpret the legislation by liberally interpreting the statute.

25. In Maxwell on Interpretation of Statutes, Tenth Edn. at page 229, the following passage is found:

“Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.”

(emphasis supplied)

Therefore, it is wellsettled that the Courts may, in order to avoid any difficulty or injustice resulting from inadvertent ambiguity in the language of a statute, mould the interpretation of the same so as to achieve the true purpose of the enactment. This may include expanding the scope of the relevant provisions to cover situations which are not strictly encapsulated in the language used therein.

Further, reference has been made by the Hon'ble Supreme Court to the judgments passed in ***Shailesh Dhairyawan vs. Mohan Balkrishna Lulla, 2016(3) SCC 619*** and ***Anurag Mittal vs. Shaily Mishra Mittal, 2018 (9) SCC 691***.

Further, the Hon'ble Apex Court, has held as follows:-

15. In light of these established principles of statutory interpretation, we shall now proceed to advert to the specific provisions that are the subject of the present controversy. The narrow interpretation of Section 89 of CPC and [Section 69A](#) of the 1955 Act sought to be imposed by the Petitioner would lead to an outcome wherein parties who are referred to a Mediation Centre or other centres by the Court will be entitled to a full refund of their court fee; whilst parties who similarly save the Court's time and resources by privately settling their dispute themselves will be deprived of the same benefit, simply because they did not require the Court's interference to seek a settlement. Such an interpretation, in our opinion, clearly leads to an absurd and unjust outcome, where two classes of parties who are equally facilitating the object and purpose of the aforesaid provisions are treated differentially, with one class being deprived of the benefit of [Section 69A](#) of the 1955 Act. A literal or technical interpretation, in this background, would only lead to injustice and render the purpose of the provisions nugatory – and thus, needs to be departed from, in favour of a purposive interpretation of the provisions.

16. It is pertinent to note that the view taken by the High Court in the impugned judgement has been affirmed by the High Courts in other states as well. Reference may be made to the decision of the Karnataka High Court in **Kamamma & ors. v. Honnali Taluk Agricultural Produce Cooperative Marketing Society Ltd., (2010) 1 AIR Kar. R 279**, wherein it was held as follows:

“6. Whether the parties to a suit or appeal or any other proceeding get their dispute settled amicably through Arbitration, or meditation or conciliation in the Lok Adalath, by invoking provisions of [Section 89](#), C.P. C. or they get the same settled between themselves without the intervention of any Arbitrator/Mediator/Conciliators in Lokadalath etc., and without invoking the provision of [Section 89](#), C.P.C., the fact remains that they get their dispute settled without the intervention of the Court. If they get their dispute settled by invoking [Section 89](#), C.P.C., in that event the State may have to incur some expenditure but, if they get their dispute settled between themselves without the intervention of the Court or anyone else, such as arbitrator/mediator etc., the State would not be incurring any expenditure. This being so, I am of the considered opinion that whether the parties to a litigation get their dispute settled by invoking [Section 89](#), C.P.C. or they get the same settled between themselves without invoking [Section 89](#), C.P.C., the party paying CourtFees in respect thereof should be entitled to the refund of full Court Fees as provided under [Section 16](#) of the CourtFees Act, 1870.”

(emphasis supplied)

[Section 16](#) of the CourtFees Act, 1870 is in parimateria with [Section 69A](#) of the 1955 Act, and hence the above stated principles are equally applicable to the present case.

The view taken by the various High Courts was endorsed by the Hon'ble Apex Court and it was concluded that where the private settlement has been arrived between the parties, they are also entitled to refund of Court fee.

In the light of the aforesaid, the parties, even though have reached private settlement, they are entitled to refund of Court fee. Thus, it is ordered that both the parties shall be entitled to refund of Court fee deposited by them either in Court of Civil Judge (Sr. Divn.), lower

Appellate Court as well as this Court.

The Civil Misc. applications i.e. CM-5665-C-2022 and CM-5110-C-2022 stands disposed of accordingly.

August 24, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes