

CR-6829-2019
Decided on : 04.04.2022

M/s Sachdeva Land & Finance Pvt. Ltd. Petitioner

Versus

M/s Hemkunt Infratech Pvt. Ltd. & others Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Deepam Raghava, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Instant petition has been filed under Article 227 of the Constitution of India for modifying the order dated 11.07.2019 passed by Addl. District Judge-cum-Presiding Judge, Special Commercial Court, Gurugram in Civil Suit No.142 dated 15.05.2018 vide which the Court below partly allowed the application filed by the petitioner for withdrawal of the suit on account of jurisdictional error. However, it declined to order refund of the *ad valorem* Court fees, which had been deposited by it at the time of filing of suit in question at Gurugram.

Learned counsel for the petitioner *inter alia* contends that soon after the institution of the civil suit, an application under Order 7 Rule 10 and 10-A r/w Section 151 CPC for withdrawal of the suit for presentation before Court of competent jurisdiction and refund of the Court fees was moved before the Addl. District Judge-cum-Presiding Judge, Gurugram as it came to be revealed that the jurisdiction of the case did not fall under the Courts at Gurugram but at Delhi Courts.

Heard learned counsel and perused the relevant material on record.

The Hon'ble Supreme Court in *Dr. (Col) Subhash Chandra Talwar vs. T.Choithram and sons and others (SLP No.18102/2013)* decided on 25.10.2019 has categorically held that in absence of any order on merits of the case when the plaint has been ordered to be returned to be filed in appropriate Court, the plaintiff would still be entitled to the refund of Court fees, so that he could fix the Court fees in the State where he would be filing a fresh suit.

In the case in hand, admittedly, the trial had yet not commenced and there was no adjudication on merits but the civil suit had been just withdrawn with the liberty to approach the Court of competent jurisdiction at Delhi.

In the circumstances, the petitioner is entitled to refund of the Court fees so that he can fix the same in the State where he would be filing a fresh suit.

Accordingly, the present petition is allowed and the Court concerned is directed to refund the entire Court fees to the petitioner.

(MANJARI NEHRU KAUL)
JUDGE

04.04.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No