



A.S(MD)No.28 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.07.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

A.S.(MD)No.28 of 2014

M.Sebastian Micle

...Appellant

/Vs./

1.V.Murugan (died)

2.Chandrika Devi

...Respondents

*[R2 is brought on record as legal heir of the deceased
sole respondent vide order dated 01.04.2019]*

PRAYER:- Appeal Suit- filed under Section 96 r/w Order 41 Rule 1 of 15 of the Civil Procedure Code, to set aside the judgment and decree dated 08.10.2013 made in O.S.No.2 of 2007 on the file of the District Court, Kanyakumari at Nagercoil.

For Appellant	: Mr.P.Thiagarajan
For R2	: Mr.Vashik Ali
	for Mr.D.Nallathambi
For R1	: Died



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COMMON JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

This appeal has been filed challenging the judgment dated 08.10.2013 passed in O.S.No.2 of 2007 by the learned District Judge, Kanyakumari.

2.When the matter is called today, Mr.Thiagarajan, learned counsel on record for the appellant and Mr.Vashik Ali, learned representing counsel on behalf of the learned counsel on record for the respondent would, in one voice, state that the suit has been settled by the parties out of Court.

3.Memo has been filed by Mr.Thiagarajan reiterating the aforesaid narration, accompanied by an affidavit of the appellant to the effect that the appellant and the respondent have compromised the matter and the suit has been settled out of Court.



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4.In the light of the aforesaid, the appellant seeks refund of Court fee in terms of Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 (in short 'Act'). Section 69-A of the Act is generous and provides for refund of Court fee even upon reference to the suit for settlement. However, it stipulates the modes of settlement as those as referred to under Section 89 of the Civil Procedure Code, 1908 (in short 'CPC'). In the interest of completion, both Section 69-A of the Act and Section 89 of CPC are extracted below:

“Section 69-A of Tamil Nadu Court Fees and Suit Valuation Act, 1955 :

.... 69A. 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.

Section 89 of Civil Procedure Code, 1908:

.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



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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) Were a dispute has been referred--

(a) for 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 that 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 Hon'ble Supreme Court in the case of the *High Court of Judicature at Madras rep by its Registrar General vs. M.C.Subramaniam and others* [2021 0 Supreme (SC) 92] had had occasion to consider whether such refund would be possible only in those circumstances as



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adumbrated under Section 89 or even otherwise. At para 19, they agree with the ratio of the decisions of the Karnataka High Court in *Kamamma and others vs. Honnali Taluk Agricultural Produce Cooperative Marketing Society Ltd.*, [(2010) 1 AIR Kar.R.279], Punjab & Haryana High Court in *Pradeep Sonawat vs. Satish Prakash* [2015 (1) RCR Civil 955] and *Pritam Singh vs. Ashok Kumar*, [2019 (1) Law Herald (P&H) 721] and the Delhi High Court in *J.K.Forigns vs. Essar Construction India Ltd., & others* [(2009) 113 DRJ 612]. Paragraphs 19 to 21 may be usefully extracted as under:

“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 Kamamma (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 the logistical hassle of arranging for a third party institution to settle the dispute. Though arbitration and mediation are certainly



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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 CPC 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



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69-A of the 1955 Act shall also extend to, all methods of out-ofcourt 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.”

6.The Apex Court considered the object of Section 69-A of the Act, being to reward the parties who have chosen to withdraw the dispute under salutary dispute resolution mechanisms. Section 69-A must be considered and interpreted in line with its avowed objects and in an expansive manner. Thus, though the provision encompass only those modes of settlement referred to under Section 89 of the CPC, it would not be appropriate to exclude settlements by private negotiation and the benefit under Section 69 must be extended to such settlements as well.

7.A note of caution has been sound in respect of those cases where the settlement is not bonafide but as a result of exhaustion caused by multiple frivolous litigation or other factors. Thus, the conduct of the parties who have entered into a settlement must indicate that such settlement is bonafide and in such cases, the benefit under Section 69-A



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be extended in the interests of saving expense and opportunity cost.

8.In the present case, we see no hurdle in granting the request of the appellant for refund of Court fee. Let a request for refund be made in this regard to the Registrar General of this Court. Refund to be granted within a week from the date of receipt of the request.

9.The appeal suit is closed as settled out of Court with the directions as above. No costs.

[A.S.M.J.] & [R.V.J.]
27.07.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes
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To

1.The District Court, Kanyakumari at Nagercoil.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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Order made in
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