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

CR-4843-2019 (O&M)
Date of Decision: February 10, 2023

Chandigarh Royal City

...Petitioner

Versus

Joginder Singh and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Anish Garg, Advocate
for the petitioner.

None for the respondents.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 15.05.2019 passed by learned Court below, whereby, an application filed by the petitioner-plaintiff, thereby, seeking refund of Court fee, has been dismissed.

The background facts, as culled out, from the paperbook are that, initially, Civil Suit No.626-2014, titled as 'Chandigarh Royal City vs. Joginder Singh and another' was filed for seeking possession by way of specific performance and also sought permanent injunction.

However, during the pendency of the suit, a compromise was effected between the parties on 19.12.2017, copy whereof, has also been placed on record as Annexure P-7. In view of the aforesaid compromise,

the parties expressed their intention, not to proceed further with the suit and hence, the suit was dismissed as withdrawn, being compromised, as ordered on 19.12.2017. The order dated 19.12.2017 passed by learned Court below, vis-a-vis, withdrawal of the suit, is reproduced in verbatim, as herein given:-

“Put up before me being Incharge as learned Presiding Officer is on medical leave till 17.1.2018.

Sh.Nirmal Singh Adv appeared on behalf of plaintiff and Sh. P.S.Chechi Adv appeared on behalf of defendants and filed respective power of attorneys.

Plaintiff suffered statement wherein stated that defendants have compromised the matter with him and compromise dated 19.12.2017 is Ex.C1. He further stated that parties shall be bound by the compromise Ex.C1 and he has no objection if stay order dated 29.7.2015 is vacated. He further stated that in view compromise, he does not want to proceed with the present case and withdraw the same.

Defendants also suffered statement wherein stated that they have compromised the matter with the plaintiff. Compromise is Ex.C1 and they shall be bound by the compromise Ex.C1.

In view of compromise between the parties, the stay order dated 29.7.2015 is hereby ordered to be vacated. Necessary intimation be sent to the Revenue authorities & present case is hereby ordered to be dismissed as withdrawn being compromised. Parties shall be bound by the compromise Ex.C1. File be consigned to the Record room.

Thereafter, an application was filed for refund of the Court fee of Rs.11,25,200/-, which was affixed by the petitioner-plaintiff, at the time of filing of the suit. However, vide impugned order dated 15.05.2019, the said application was dismissed, while making observation, as herein given:-

“Order dated 19.12.2017 referred above perused. Perusal of which the said order shows that no order as to refund of court fee has been passed by the court. As such the application under consideration is devoid of merits and the same is hereby declined. File be consigned to the record.”

It is this decline of prayer for refund of Court fee, for which the petitioner-plaintiff is before this Court, in the revision petition.

Notice of motion was issued, but none had made appearance on behalf of the respondents.

Section 16 of the Court Fee Act, 1870, deals with the refund of Court fee, where settlement had taken place and it reads as herein given:-

“16. Refund of fee.-- Where the Court refers the parties to the suit to any one of the mode of settlement of dispute referred to in section 89 of the Code of Civil Procedure, 1908 (5 of 1908), the plaintiff shall be entitled to a certificate from the Court authorizing him to receive back from the collector, the full amount of the fee paid in respect of such plaint.”

Section 89 CPC makes provision for the settlement of cases, by alternative disputes settlement mechanism. Be it Lok Adalat, or out of Court settlement or Arbitration or Conciliation or Mediation. However, the intention of the legislature is for making effort always to end the litigation, once for all times to come. Settlement in terms of Section 89 CPC, results in complete end to the litigation. Resort to appeal or revision statutorily, is out of the legal arena.

As already observed aforesaid, the compromise had been effected, during the pendency of the case and also statements had been recorded, on the basis of the compromise, which has been placed on the Court file as Annexure P-7 and thereafter, the order of withdrawal of the suit was passed.

While considering the provisions of Section 16 of the Court Fees Act as well as Section 21(1) of the Legal Services Authority Act, 1987, it becomes evident that the intention of the legislature is to extend

two sided relief to the parties, i.e. to get the matter settled and in the eventuality of settlement of the matter, to be entitled to refund of Court fee, as affixed by the plaintiff on the plaint. The purpose behind the insertion of this provision was to encourage settlement of disputes. Before the Court passes any order, with regard to the refund of Court fee, it has to be seen if the case was disposed, on the basis of statements of the parties; Whatsoever, may be the statements, the matter has been settled and that, an order to that effect that matter stands compromised or settled, thereupon, it would be incumbent upon the Court to order refund of Court fee.

No doubt, as evident, at the time of withdrawal of the suit, on the basis of the compromise, no observation had been made, vis-a-vis, return of Court fee, but however, close perusal of the aforesaid Section reveals that the word used is '**shall**', which calls upon the Court concerned to pass an order, with regard to the return of Court fee, at the time of disposal of the case, in pursuance of arrival of the compromise. Even if, it had not been done so, at the time of withdrawal of the suit, on the basis of the compromise, even then, in pursuance of an application, separately filed, it was incumbent upon the Court to pass a specific order. However, the impugned order reveals that the Court simpliciter dismissed the application for refund of Court fee, while observing that no order as to the refund of Court fee has been passed by the Court. This is palpably wrong.

At first instance, at the time of final disposal of the case, it was required on the part of the Court concerned, to pass an order and even if, it has not been so passed, on the specific application, so filed, at the instance of the plaintiff, the Court fee was required to be returned.

As such, in the given circumstances, the present revision petition is accepted and the impugned order is set aside and the petitioner-plaintiff is held entitled to refund of Court fee, as affixed, at the time of institution of the suit.

February 10, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes