

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

CR 2738/2021(O&M)

Date of decision: 13.04.2023

Parveen Kumar

.....**Petitioner**

Vs.

Vijay Lal

.....**Respondent**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Divyam Singh, Advocate
for the petitioner.

NidhiGupta,J.

Present revision petition has been filed by the petitioner/
plaintiff seeking setting aside of order dated 11.10.2021 (Annexure P-5)
passed by the Id. ADJ, Karnal whereby the prayer of the petitioner/ plaintiff
for refund of the Court fees on the plaint, has been declined.

2. Perusal of the office report shows that respondent stands
duly served, however, there is no representation on his behalf. Accordingly,
the matter is being decided in his absence.

3. It is submitted by learned counsel for the petitioner that the
brief facts of the case are that the petitioner had filed a Civil Suit (Annexure
P-1) dated 3.12.2015, for possession by way of Specific Performance of
Agreement to Sell dated 24.10.2013. The suit of the petitioner was decreed
by the Id. Trial Court vide Judgment and Decree dated 6.7.2018 (Annexure
P-2). Aggrieved thereof, the respondent herein had filed an Appeal

(Annexure P-3). However, during the pendency of the appeal, the parties arrived at a compromise, by way of Compromise Deed dated 11.10.2021 (Annexure P-4).

3(i) Accordingly, on the same date i.e. 11.10.2021 counsel for defendant made a statement that compromise had been arrived between the parties, therefore the appeal may be permitted to be withdrawn and the matter be decided in Lok Adalat and court fee may be refunded. It is submitted that as a result of the compromise, the appeal was dismissed as withdrawn on 11.10.2021 itself, and court fee was refunded to the defendant on the same day as per the Legal Service Authority Act.

3(ii) However, when the petitioner/plaintiff made a request to return the court fee by relying on the judgment passed in '*RSA 1265/2019 titled as Naresh Kumar v Jasmer Singh*', the Id. Court below rejected the petitioner's request for return of the court fees on the ground that the case law is not applicable as in the said case, the compromise was effected before the Executing Court, whereas in the present case compromise had taken place before the Mediation & Conciliation Centre/ Lok Adalat. It is submitted that Id. Court below also held that petitioner is the plaintiff in the suit and the suit filed by him was decreed by Additional Civil Judge, Indri, District Karnal vide Judgment dated 06.07.2018, and therefore, request of the petitioner/ respondent-plaintiff for refund of court fee was declined.

3(iv) Hence, the present revision petition for setting aside the impugned order on the ground that admittedly, compromise has taken between the parties outside the court, and the dispute has now come to an end, and therefore, court fee deposited by the petitioner, ought to be refunded.

4. No other argument is raised by Id. Counsel for the petitioner.

5. Heard.

6. While passing the impugned order the Id. Court below has distinguished the judgment passed by this Court in ***Naresh Kumar (supra)***, to hold that the abovesaid judgment would not apply to the present case as:

“The supra authority Naresh Kumar is not applicable on the facts of the present case as in the supra authority, a compromise was effected before the Executing Court and the compromise was taken place before the Mediation and Conciliation Centre/ Lok Adalat.”

In my view, the above said conclusion of the Id. Lower Appellate Court in the impugned order is patently unsustainable as in fact, relevant finding of this Court in case of ***Naresh Kumar (supra)*** is as follows:

“In view of Section 16 of the Court Fees Act, 1870 the Court fee can be refunded to the appellant as well as to the respondents where the compromise had taken place before the Mediation and Conciliation Centre/Lok Adalat. Even the Court fee can be refunded where the compromise has taken place outside the Court. Reference to the aforesaid case law would suffice to answer the aforesaid issue.

In view of aforesaid legal position, both the parties are allowed refund of their respective Court fee affixed during trial, appeal and present RSA.”

7. Accordingly, from a perusal of the abovesaid extract it is clear that the impugned order is based on a misreading and misinterpretation of the judgment passed by this Court in ***Naresh Kumar (supra)***. In fact, the said judgment is applicable to the case of the petitioner and fits the case of the petitioner as it has been held and observed therein that Court fee can be refunded to the appellant as well as to the respondents where the compromise had taken place before the Mediation and Conciliation Centre/Lok

Adalat. Court fee can be refunded even where the compromise has taken place outside the Court.

8. Further, this Court in ***Surender Kumar v Hans Raj Mandi*** **2021(2) R.C.R. Civil 851** has held that:

"Court Fees Act, 1870 Section 16 Civil Procedure Code, 1908 Section 90 Refund of Court fees - Held, court fee can be refunded to parties where compromise /settlement taken place even outside Court - Intention behind provisions of law relied upon by counsel so that process of alternate dispute resolution is encouraged - Therefore, both parties are allowed refund of respective court fees affixed before Trial Court, lower Appellate Court and High Court in present regular second appeal.

11. *In support of his submission, the counsel has relied upon Pradeep Sonawat v. Satish Prakash, AIR 2015 Pb. 130; Tarun Juneja & Ors. v. Hukam Singh, CR. No.874 of 2009 decided on 15.9.2009; Harish Kumar (deceased) through LRs v. Pawan Kumar Sehgal, RSA. No.3645 of 2018 decided on 09.09.2019; Naresh Kumar v. M/s Jasmer Singh Harphool Singh & Ors., RSA. No.1265 of 2019 decided on 10.09.2019; A. Sreeramaiah v. South Indian Bank Ltd. & Anr., 2007 (5) RCR (Civil) 374 [Karnataka High Court]; and Kamalamma & Ors. v. Honnali Taluk Agricultural Produce Coop. Marketing Society & Ors., 2009(33) RCR (Civil) 110 [Karnataka High Court].*

12. *A perusal of the decisions mentioned above makes it clear that court fee can be refunded to the parties where a compromise/settlement has taken place even outside the Court. This is also the intention behind the provisions of law relied upon by the counsel so that the process of alternate dispute resolution is encouraged."*

It is therefore, apparent that as per abovesaid judgment of this Court, the impugned order of the learned Appellate Court is unsustain-

9. Again in case of **Pritam Singh Vs. Ashok Kumar, (P&H)**

Law Finder Doc ID#1409718 this Court held as follows:

“Court Fees Act, 1870 Section 16 Court fee - Refund of - Whether appellant is entitled to refund of Court fee even in absence of compromise effected before Lok Adalat in terms of section 89 CPC - Held, yes - section 89 CPC would apply even in cases of counter claims in suits and also in appeals, counter objections and counter appeals and benefit of Section 16 of Court Fee Act is available to appellant in appeal in case of settlement irrespective of fact whether it was before Lok Adalat or otherwise - Refund of Court fee cannot be denied merely because matter has not been settled before Lok Adalat.

7. By referring to **Pradeep Sonawat v. Satish Prakash @ Satish Chandra, 2015(1) RCR (Civil) 955 (P&H)**, learned counsel for the appellant contended that section 89 CPC would apply even in cases of counter claims in suits and also in appeals, counter objections and counter appeals and benefit of Section 16 of the Court Fee Act is available to the appellant in appeal in case of settlement irrespective of fact whether it was before the Lok Adalat or otherwise. The refund of Court fee cannot be denied merely because the matter has not been settled before the Lok Adalat. Learned counsel also relied upon **A. Sreeramaiah v. Sought Indian Bank Ltd., Bangalore and another, 2007(5) RCR (Civil) 374, Kamalamma v. Honnali Taluk Agricultural Produce Co-operative Marketing Society Ltd., Honnali, 2010(1) AIR Kar. R 279 and CR No.874 of 2009 titled Tarun Juneja v. Hukam Singh decided on 15.09.2009.**”

10. Also in case of **Pardeep Sonawat v Satish Parkash @ Satish Chandra 2015 (1) R.C.R. Civil (955)** the petition was allowed and it was held that “whether the compromise is with the persuasion of the Court or amongst the parties by themselves in terms of Section 89 CPC or otherwise, invocation of provision of Section 16 of the Act should be made in all cases

so that settlements by way of alternative dispute resolution mechanism are encouraged.”

11. A perusal of the abovesaid case law evidences that the impugned order is patently fallacious and contrary to the relevant case law on the issue.

12. Accordingly, present revision petition is **allowed**.

13. Pending application(s),if any, stand disposed of.

(Nidhi Gupta)
Judge

13.04.2023
ps-I

Whether speaking/reasoned **Yes**

Whether reportable **Yes/No**