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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 12.12.2023

+ CM(M) 1688/2023

SH. MAHAVEER TIWARI

..... Petitioner

Through: Mr. Varchaswa Singh, Advocate
(through VC)

versus

MR. RAMVIR SHARMA

..... Respondent

Through: None

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of Constitution of India impugns the order dated 19.07.2023 passed by the ('Trial Court') in civil suit bearing CS No. 236/2023, titled as '**Mahaveer Tiwari v. Ramvir Sharma**', whereby the Petitioner's application seeking refund of the Court fees of Rs. 13,600/- bearing receipt No. DLCT1241D2306L751, has been dismissed.
2. The Petitioner is the plaintiff. The civil suit was instituted by the Petitioner on 12.04.2023.
3. The said suit was thereafter, unilaterally withdrawn by the Petitioner on 24.05.2023 under Order XXIII Rule 1 CPC with liberty to file afresh. The Petitioner herein subsequently, filed an application before the Trial Court seeking refund of the court fees filed with the said withdrawn plaint.
4. The Trial Court by its impugned order dated 19.07.2023 dismissed the



said application stating that there is no provision in law which would enable the Trial Court to issue directions for refund of the court fees which already stands filed and utilised with the withdrawn suit.

5. Learned counsel for the Petitioner states that the non-refund of the court fee shall cause miscarriage of justice to the plaintiff as the initial plaint was defective and was withdrawn with the intention of re-filing.

6. Learned counsel for the Petitioner on the last date of hearing i.e., on 31.10.2023 sought an adjournment to place before this court the provision of law or a judgment in support of his contention that the plaintiff is entitled to refund of a court fee on withdrawal of a suit under Order XXIII Rule 1 CPC.

6.1. In this regard, he has relied upon the order dated 12.02.2008 passed by this Court in IA No. 5920/2006 filed in CS (OS) No. 1365/2005, titled as '**Devender Pratap Singh & anr vs. M/s Land Mark Infracon Pvt Ltd & Ors.**', the relevant portion of the order reads as under:

"1. This application is made by the plaintiff in a disposed of suit under Section 151 CPC for refund of the Court fee paid by the plaintiff. Plaintiff had filed this suit seeking cancellation of sale deed registered as a document no. 6789, Book No.1, Volume No.2033 pages 33 to 49 dated 9.5.2005. When the suit was taken up, it was found that the suit was not maintainable and the plaintiff was told that the suit was not maintainable. Plaintiff sought time on 12th February, 2006 to cite certain judgments to show that suit was maintainable and thereafter on 13th February, 2006, plaintiff's counsel made a statement in the Court that the suit suffers from a technical defect and he wishes to withdraw the suit with liberty to file a fresh suit after removing the objection and stating complete and required facts. The suit was dismissed as withdrawn and liberty was granted.

*2. Plaintiff had not filed any fresh suit after removing objection and filed this application for refund of Court fee. **There is no provision in law for refund of Court fee where plaintiff seeks to withdraw the suit. It is settled law that a person who files the suit, must be careful and vigil. The suit must be filed only if there is a cause of action and a right has accrued in favour of the plaintiff. If the suit is filed without cause of action and without there being any right in the plaintiff, the suit is liable to be dismissed. The***



plaintiff in such a case is not entitled for refund of Court fee. The very purpose of the Court Fee Act is to see that frivolous suits are not filed in the Court and those who file claim must first ascertain their rights carefully and then only levy Court fee. If some one files claim casually without ascertaining his rights, he is bound to suffer the loss of Court fee.

(Emphasis Supplied)

7. The order of the coordinate Bench of this Court, which the Petitioner relies upon substantiates the finding returned by the Trial Court that the civil court has no jurisdiction to refund the court fees after a civil suit has been withdrawn by the plaintiff under Order XXIII Rule 1 CPC.
8. This Court, therefore, finds no infirmity in the impugned order passed by the Trial Court.
9. Accordingly, the petition is accordingly dismissed.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 12, 2023/msh/aa

Click here to check corrigendum, if any