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

+ **CS(OS) 677/2023 and I.A. Nos. 21032/2023, 21033/2023**

MOHIT ARYA

..... Plaintiff

Through: Mr. Dinesh Garg, Ms. Rachna Agrawal, Advocates with plaintiff in-person.

versus

SHANTI SATYAPRAKASH ARYA AND ORS Defendants

Through: Ms. Vandana Bhatnagar, Advocate *via* video-conferencing.

Ms. Shanti Satya Prakash Arya, Advocate for D-1 *via* video-conferencing.

Mr. Sanjay Arya, Advocate for D2 *via* video-conferencing.

Ms. Neeru S. Agarwal, Advocate for D3 *via* video-conferencing.

Ms. Sangeeta Choudhary, Advocate for D4 *via* video-conferencing.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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16.01.2024

I.A. No. 24794/2023

By way of the present joint application filed under Order XXIII Rules 3 and 3A read with section 151 of the Code of Civil Procedure 1908 ('CPC'), the plaintiff and defendants seek disposal of the suit in terms of the settlement arrived at between them as set-out in para 4(i) to 4(xii) of the application.

2. In addition, the plaintiff also seeks refund of the full court fee in view of the suit being disposed-of in terms of the settlement.



3. The application is supported by affidavits of all the parties. Furthermore, in compliance of the previous order dated 12.12.2023, the plaintiff is present in court; and the defendants have joined *via* video-conferencing. Parties have been identified by their respective counsel. Parties have also confirmed the terms of the settlement and agree to remain bound thereby.
4. In view of what has been stated in the application, this court is satisfied that the parties, who are members of the extended family, have arrived at a lawful settlement as detailed in para 4(i) to 4(xii) of the application.
5. Accordingly, the court sees no reason why the terms of the settlement should not be accepted.
6. In view of the above, the terms of the settlement are accepted and taken on record; and shall be deemed to form part of this order.
7. Parties are directed to abide by such terms.
8. Mr. Dinesh Garg, learned counsel appearing for the plaintiff seeks refund of the full court fee affixed on the plaint. To answer the query that section 16A of the Court Fees Act, 1870 as applicable to Delhi, provides for refund of *only half* of the court fee if the matter is settled privately among the parties without intervention of the court or any alternate dispute resolution mechanism, counsel submits that that provision is in the teeth of the view expressed by the Supreme Court in *High Court of Judicature at Madras vs. M.C. Subramaniam & Anr.*¹

¹ (2021) 3 SCC 560



9. Attention in this behalf is drawn to para 26 of *M.C Subramaniam* (supra), where the Supreme Court has opined, even though in the context of the Tamil Nadu Court Fees and Suit Valuation Act 1955, that on a broad and purposive construction of section 89 of the CPC, the provision for refund of the *entire* court fee *shall also extend to all methods of out-of-court dispute settlement* between parties and not be limited to settlement arrived at through mediation.
10. It is also noticed that in order dated 16.08.2023 made by a Division Bench of this court in W.P.(C) No. 10235/2022 titled ***Praveen Kumar Agarwal vs. Union of India and Anr.***, the Division Bench had recorded a statement made by learned counsel appearing for the Government of NCT of Delhi ('GNCTD'), that in terms of a communication dated 14.08.2023 received from GNCTD, the department was contemplating necessary steps for repeal of Section 16A of the Court Fees Act as applicable to Delhi.
11. It is seen, that as recorded in the Division Bench order, the decision of the GNCTD proceeded on their perception that section 16A was creating an *arbitrary distinction* between persons who seek refund of court fee under section 16 and those who seek refund under section 16A of the Court Fee Act. By the said order, the Division Bench had disposed-of the public interest litigation with the direction to the GNCTD to take appropriate consequential steps *within a period of 04 months* from that date *i.e.* 16.08.2023.
12. Regardless of whether or not any steps to that effect have been taken by the GNCTD so far, in view of the observations of the Supreme Court and of a Division Bench of this court as cited above, this court



is persuaded to accept the plaintiff's prayer; and it is accordingly directed that the *entire* amount of the court fee paid on the plaint shall be refunded to the plaintiff.

13. The Registry is directed to draw-up the requisite certificate for refund of the *entire* court fee, within 04 weeks from today.
14. The application is disposed-of in the above terms.

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15. The suit is accordingly decreed in terms of the settlement comprised in para 4(i) to 4(xii) of I.A. No. 24794/2023 aforesaid, which terms shall form part of the decree.
16. Decree sheet be drawn-up accordingly.

ANUP JAIRAM BHAMBHANI, J

JANUARY 16, 2024/uj