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

+ **CS(COMM) 929/2024**

MR ANIRUDH SINGH & ANR.

.....Plaintiffs

Through: Ms. Umang Tyagi, Ms. Nikita Anand,
Mr. Zuber Ali and Mr. Hardik Saxena, Advocates.

versus

GOOGLE INDIA PRIVATE LIMITED & ORS.Defendants

Through: Mr. Peeyoosh Kalra, Mr. Tanveer
Malhotra, Mr. Debashish Banerjee, Mr. Vineet
Rohilla, Mr. Pankaj Soni, Mr. Rohit Rangi,
Mr. Ankush Verma and Ms. Vaishali Joshi,
Advocates for Defendant No.2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

17.03.2025

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I.A. 539/2025

1. This application is preferred on behalf of the Plaintiffs for refund of Court Fee in the sum of Rs.2,01,000/- paid vide receipt No. DLCT0952J2433L762.

2. Learned counsel for the Plaintiffs submits that Plaintiffs had filed the present suit under Sections 104 and 108 of the Patents Act, 1970 read with Sections 6 and 2(1)(c)(xvii) of the Commercial Courts Act, 2015 for rendition of accounts and damages, which was disposed of as withdrawn on 23.10.2024 with liberty to file a fresh suit, which Plaintiffs have subsequently filed. It is submitted that since the suit was withdrawn with liberty to file fresh suit and there was no adjudication by the Court, Plaintiffs



are entitled to refund of the Court Fee. In support of the plea, reliance is placed on following judgments/orders:

- (i) ***Amit Jain v. Mahavir International Pvt. Ltd. & Others, 2023 SCC OnLine Del 2657;***
- (ii) ***Britannia Industries Limited v. Oriental Insurance Company Limited, CS(Comm) 618/2021 decided on 28.04.2022;***
- (iii) ***Amit Bansal Trading as Amit Footwears v. Glow Shoes Private Limited, CS(Comm) 296/2023 decided on 06.11.2023;***
- (iv) ***Paul Sales Pvt. Ltd. v. Hari Darshan Sev Ashram Pvt. Ltd & Ors., CS(Comm) 499/2022 decided on 31.10.2022;***
- (v) ***M. Dasarath v. K. Omprakash and Another, 1993 SCC OnLine AP 364; and***
- (vi) ***Polyprint Private Limited and Ors. v. Canara Bank and Anr., 1996 SCC OnLine AP 496.***

3. It is also urged that in most of these cases, Court Fee was refunded even though the cases did not involve settlements between the parties, either before the Mediation and Conciliation Centre of Delhi High Court or outside the Court. Learned counsel specifically adverts to paragraphs 10 to 12 of the judgment in ***Amit Jain (supra)*** which read as under:-

“10. It is trite that while interpreting a fiscal legislation like Court Fees Act, the court should adopt liberal attitude so as to lessen and not add to the burden of the litigant. Especially where the court dealing with the lis is of the view that it is not competent to decide the same, there is no logic in depriving the litigant refund of the court fees.

11. In the case of Nagpur District Central Cooperative Bank (supra) relied upon by learned counsel for appellant, in a similar situation, a Division Bench of the Bombay High Court, while referring to various judicial precedents including the decision of its Full Bench, took a view that where the court fees on the institution of a suit has been paid in a court which cannot possibly afford the relief sought, it does not seem consistent with sound principle that the plaintiff should be condemned to lose the fees thus paid, or that he should not be allowed to ask without paying a second fee for an adjudication from a court which can really give one.



12. Such refusal to refund court fees even in a lis which remained unadjudicated and expecting the litigant to pay up again would discourage the law-abiding litigant from approaching the justice dispensation system. Such a form of docket exclusion would be highly counterproductive for any civilized society.”

4. Mr. Peeyoosh Kalra, learned counsel appearing on behalf of Defendant No.2 opposes the application on the ground that the suit was disposed of as withdrawn simplicitor and was not based on settlement between the parties. The judgements referred to by the Plaintiffs were the cases where either parties had settled or complaints were returned to be filed in the Courts having jurisdiction, which is not the case here and therefore, the judgements will not aid the Plaintiffs. It is further submitted that the Division Bench in ***Amit Jain (supra)*** did not take into account the earlier judgment of the Division Bench in ***Sayed Mohammed Rafey v. Mumtaz Ahmad and Ors., 2010:DHC:3598-DB***, wherein it was held that for a party to be entitled to refund of Court fee it must fall within the statutory framework of Section 16 of the Court Fees Act, 1870 ('1870 Act') which provides that where the Court refers the parties to the suit to any one of the mode of settlement of dispute referred to in Section 89 CPC, Plaintiff shall be entitled to refund of fee paid. Reliance is placed by Mr. Kalra on the judgment of Division Bench in ***Nutan Batra v. M/s. Buniyaad Associates, 2018 SCC OnLine Del 12916***, wherein it was observed that on a proper construction, Section 16 can be made applicable only when parties are able to reach a settlement after reference to Alternate Dispute Resolution method under Section 89 CPC. This judgement also, according to Mr. Kalra, was not considered in ***Amit Jain (supra)***. Mr. Kalra hands over an order dated 28.01.2025 passed by the Supreme Court in ***Jage Ram v. Ved Kaur & Ors., SLP(C) No.723/2023***, wherein it was held that refund of Court Fees is



permissible only if the matter is referred to arbitration, conciliation, judicial settlement including Lok Adalat or Mediation for settlement and case is decided in terms of such a settlement and not otherwise.

5. Heard learned counsels for the parties and examined their submissions.

6. This application is preferred by the Plaintiffs for refund of Court Fee. It is not disputed that the suit was withdrawn simplicitor *albeit* with liberty to file a fresh one. The short issue arising for consideration before this Court is whether Plaintiffs are entitled for the refund and having examined the rival contentions and the judgements relied upon by both sides, in my view, Court Fee cannot be refunded to the Plaintiffs. Section 16 of the 1870 Act reads as follows:

“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.”

7. Interpreting Section 16, the Division Bench of this Court in **Sayed Mohammed Rafey (supra)** held as follows:

“A perusal of Section 89 of the Code of Civil Procedure, 1908, will make it indubitably clear that it is the Court which must refer the parties for settlement under that Section. This has avowedly not happened in the case before us. In fact, indubitably it had not happened even in J.K. Forgings either. For a party to be entitled to refund Court Fee it must fall within the circumstances envisaged by a statutory provision. However favourably the Court may want to ameliorate the plight of a litigant who has paid Court Fee, if a statutory provision specifically prohibits or does not permit such relief the Court is not empowered in granting the relief. In this regard, we immediately recall the celebrated decision in Nazir Ahmad - vs- King Emperor, AIR 1936 PC 253. Relying on the same the Apex Court in Mohinder Singh Gill and Another vs. The Chief Election Commissioner, AIR 1978 SC 851, observed as follows:-

“It is the basic principles of law long settled that if the manner of



doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule traceable to the decision in Taylor Vs. Taylor which was followed by Lord Roche in Nazir Ahmad Vs. King Emperor.”

In these circumstances, we are of the opinion that the impugned Order is correct and beyond challenge. We must also clarify that J.K. Forgings does not set down the correct law.”

8. Another Division Bench in **Nutan Batra (supra)** albeit in a slightly different context referred to the judgment in **Sayed Mohammed Rafey (supra)** and reiterated that on a proper construction, Section 16 can be made applicable only when the parties are able to reach a settlement after reference under Section 89 CPC. As rightly flagged by Mr. Kalra, the Supreme Court in **Jage Ram (supra)** has recently passed an order holding that only when parties are referred for settlement mechanisms such as conciliation, mediation, etc. and the case is decided in terms of such settlement, refund of Court Fees is permissible and not otherwise. In this context, I may also refer to passages from a judgement of this Court in **Sh. Mahaveer Tiwari v. Ramvir Sharma, 2023 SCC OnLine Del 7997**, which are as follows:

“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. In light of the aforesaid judgments, in the absence of the suit being withdrawn predicated on a settlement, Court Fees cannot be refunded to the Plaintiffs. There is merit in the contention of the counsel for the Plaintiffs that in many cases, the Courts have permitted refunds even though there were no settlements *albeit* it is fairly conceded that these were cases where either no reasonings were given for refund or where plaints were returned under Order VII Rule 10 CPC for filing before the appropriate Court. None of these judgements can, therefore, aid the Plaintiffs. Insofar as the judgement of the Division Bench in ***Amit Jain (supra)***, on which heavy reliance is placed by the Plaintiffs is concerned, the same is clearly distinguishable for two reasons. Firstly, this was a case where plaint was returned under Order VII Rule 10 CPC and was not a case of withdrawal



simplicitor and secondly and more importantly, the judgment did not take into consideration the earlier two judgements of the Supreme Court in *Sayed Mohammed Rafey (supra)* and *Nutan Batra (supra)*. In fact, I may usefully allude to the observation in *Sayed Mohammed Rafey (supra)*, wherein the Division Bench observed that for a party to be entitled for refund of Court Fee, it must fall within the statutory provision and however favourably the Court may want to ameliorate the plight of a litigant, who has paid the Court Fee, if a statutory provision specifically prohibits or does not permit such relief, Court is not empowered to grant the same.

10. For all the aforesaid reasons, this application is dismissed being bereft of merit.

JYOTI SINGH, J

MARCH 17, 2025

B.S. Rohella