

Nitin Gupta vs Ireo Private Limited on 15 July, 2021

Author: Suresh Kumar Kait

Bench: Suresh Kumar Kait

\$~2
* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 215/2020
NITIN GUPTAPlaintiff
Through In person
versus
IREO PRIVATE LIMITED Defendant
Through Ms. Shruti Arora, Adv.
CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
ORDER

% 15.07.2021 The hearing has been conducted through video conferencing. I.A. 5255/2021 (u/S 151 CPC)

1. By this application, plaintiff is seeking expeditious disposal of the matter on the issue of refund of court fees after decision of present suit vide order and judgment dated 07.10.2020.

2. Notice issued.

3. Ms. Shruti Arora, Advocate, accepts notice.

4. For the reasons stated in the application, it is allowed. With the consent of both the sides, the matter is taken up today itself for hearing and disposal on the issue of refund of court fees.

5. The application stands disposed of.

3. The present application has been filed by the applicant/plaintiff under Section 151 CPC seeking clarification of the order and judgment dated 07.10.2020 passed by this Court.

4. Pertinently, vide aforesaid order and judgment dated 07.10.2020, this Court on a joint application [IA No. 9020/2020 (u/O 23 R 3 CPC) filed by both the sides, after examining the terms of settlement set out in the application, had decreed the suit in view thereof. Further, this Court had also observed as under:-

"12. Furthermore, given the fact that the matter has been concluded at an early stage, I am inclined to order refund of court-fee in favour the plaintiff. The Registry will

take requisite steps in that behalf."

5. In this view of the matter, the plaintiff is before this Court seeking clarification on the aspect of refund of court fees praying for refund of entire court fees, instead of 50%.

6. A Division Bench of this Court in *Nutan Batra Vs. M/s. Buniyaad Associates* 2018 SCC OnLine Del 12916 while allowing an appeal against the order of refusal of refund of entire court fee in a suit, had dealt with the applicability provisions of Sections 16 and 16A of the Act and Section 89 of the CPC. The Division Bench relying upon the observations of the Hon'ble Supreme Court in *Afcons Infrastructure Limited v. Cherian Varkey Construction Company Private Limited*, (2010) 8 SCC 24, observed as under:-

"8. Section 89 has been interpreted inter alia in the judgment of the Supreme Court in *Afcons Infrastructure Limited v. Cherian Varkey Construction Company Private Limited*, (2010) 8 SCC 24. The following observations in the said judgment are relevant for a proper interpretation of the provision:

"9. If Section 89 is to be read and required to be implemented in its literal sense, it will be a trial Judge's nightmare. It puts the cart before the horse and lays down an impractical, if not impossible, procedure in subsection (1). It has mixed up the definitions in sub-section (2). In spite of these defects, the object behind Section 89 is laudable and sound. Resort to alternative disputes resolution (for short "ADR") processes is necessary to give speedy and effective relief to the litigants and to reduce the pendency in and burden upon the courts. As ADR processes were not being resorted to with the desired frequency, Parliament thought it fit to introduce Section 89 and Rules 1-A to 1-C in Order X in the Code, to ensure that ADR process was resorted to before the commencement of trial in suits.

10. In view of its laudable object, the validity of Section 89, with all its imperfections, was upheld in *Salem Advocate Bar Assn. (1) v. Union of India* (2003) 1 SCC 49 [for short *Salem Bar(1)*] but referred to a committee, as it was hoped that Section 89 could be implemented by ironing the creases. In *Salem Advocate Bar Assn.(II) v. Union of India* (2005) 6 SCC 344 [for short *Salem Bar (II)*], this Court applied the principle of purposive construction in an attempt to make it workable.

XXXXXXXXXXXX

25. In view of the foregoing, it has to be concluded that proper interpretation of Section 89 of the Code requires two changes from a plain and literal reading of the section. Firstly, it is not necessary for the court, before referring the parties to an ADR process to formulate or reformulate the terms of a possible settlement. It is sufficient if the court merely describes the nature of dispute (in a sentence or two) and makes the reference. Secondly, the definitions of "judicial settlement" and "mediation" in clauses (c) and

(d) of Section 89(2) shall have to be interchanged to correct the draftsman's error. Clauses (c) and (d) of Section 89(2) of the Code will read as under when the two terms are interchanged:

(c) for "mediation", the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for "judicial settlement", the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

The above changes made by interpretative process shall remain in force till the legislature corrects the mistakes, so that Section 89 is not rendered meaningless and infructuous."

7. The Division Bench further observed as under:-

"20. In such a case, we are of the view that an interpretation of the statute inuring to the litigant's benefit should be preferred. If a plaintiff is able to demonstrate that the case falls within the requirements of Section 16, refund of the full amount of the court-fee ought to be granted. However, as held by the Division Bench of this Court in Sayed Mohd. Rafey (supra), if the elements of the provision are not satisfied, then refund in terms thereof cannot be granted. It may then be examined as to whether the conditions laid down in Section 16A have been fulfilled, so as to grant refund of 50% of the court-fees paid."

8. On the similar issue, a Coordinate Bench of this Court in Munish Kalra Vs. Kiran Madan and Others 2019 SCC OnLine Del 8021 while relying upon Supreme Court's decision in Afcons Infrastructure Limited (Supra), has observed as under:-

"8. In Afcons Infrastructure Limited v. Cherian Varkey Construction Company Private Limited, (2010) 8 SCC 24, the Supreme Court has held that a judicial settlement under Section 89(2)(d) would be where "the Court effects compromise between the parties". In the present case, proposals which were exchanged between the parties were considered in detail during the course of submissions in the Court and finally, after the efforts of the counsels along with the parties, the settlement terms were arrived at. This was a compromise effected in Court as per the prescribed procedure in Order XXIII Rule 3 CPC, and would thus constitute a judicial settlement as defined by Afcons Infrastructure (supra).

9. Under these circumstances, in view of the decision of the Supreme Court in Afcons Infrastructure (supra) as also Nutan Batra (supra), the suit having been settled, the Plaintiff is entitled to refund of the entire court fee."

9. In the present suit, the order and judgment dated 07.10.2020 records that the Court satisfied itself on the statement of truth filed by the parties, examined the terms of the settlement and after finding the same to be lawful, decreed the suit in terms of settlement. Further, the Court specifically observed that since the matter has concluded at an early stage, so plaintiff shall be entitled to refund of the court fees.

10. In the light of afore-going narration, the present application is allowed. Plaintiff is entitled to a certificate from this Court authorizing to seek refund of the entire court fees from the authorities concerned in respect of the present suit.

11. The application is accordingly disposed of.

SURESH KUMAR KAIT, J JULY 15, 2021 rk/r