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

+ **CS(COMM) 469/2019**

PROUD SECURITIES AND CREDITS PRIVATE LIMITED

..... Plaintiff

Through: Mr. Mahip Singh, Mr. Samir
Malik, Mr. Krishan Kumar,
Advs.

versus

URRSHILA KERKAR & ANR.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

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17.04.2023

I.A. 4886/2023 (Withdrawal of Suit & refund Court Fee)

1. This matter has been taken up today as 14 April 2023 was declared a holiday.

2. The present application has been moved for the refund of the court fee which had been filed in connection with the instant suit. Undisputedly, the present was a summary suit brought against the defendant. However, it could not be proceeded with further in light of the proceedings which have come to be initiated against the defendants under Section 95 of the Insolvency and Bankruptcy Code, 2016 [IBC]. According to learned counsel, while the aforesaid developments may not strictly fall within the ambit of a settlement which is alluded to in Section 16 of Court-Fees Act, 1870 since the plaintiff would now have the solitary remedy of participating in proceedings to be instituted under the IBC and take part in a collective settlement of claims, the Court may consider extending the benefits thereof in the peculiar facts of the present case.

3. Learned counsel has further placed reliance on the judgement rendered by the Supreme Court in the **High Court of Madras vs. M.C. Subramaniam** [(2021) 3 SCC 560] where while referring to the scope and intent of Section 16, the following pertinent observations came to be made:-

“13. The provisions of Section 89 CPC must be understood in the backdrop of the longstanding proliferation of litigation in the civil courts, which has placed undue burden on the judicial system, forcing speedy justice to become a casualty. As the Law Commission has observed in its 238th Report on Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions, Section 89 has now made it incumbent on civil courts to strive towards diverting civil disputes towards alternative dispute resolution processes, and encourage their settlement outside of court (Para 2.3). These observations make the object and purpose of Section 89 crystal clear — to facilitate private settlements, and enable lightening of the overcrowded docket of the Indian judiciary. This purpose, being sacrosanct and imperative for the effecting of timely justice in Indian courts, also informs Section 69-A of the 1955 Act, which further encourages settlements by providing for refund of court fee. This overarching and beneficent object and purpose of the two provisions must, therefore, inform this Court's interpretation thereof.

18. It is pertinent to note that the view taken by the High Court in the impugned judgment [*M.C. Subramaniam v. Sakthi Finance Ltd.* Civil Misc. Petition No. 26742 of 2019, decided on 8-1-2020 (Mad)] has been affirmed by the High Courts in other States as well. Reference may be had to the decision of the Karnataka High Court in *Kamalamma v. Honnali Taluk Agricultural Produce Coop. Mktg. Society Ltd.* [*Kamalamma v. Honnali Taluk Agricultural Produce Coop. Mktg. Society Ltd.*, 2009 SCC OnLine Kar 744 : (2010) 1 AIR Kant R 279] , wherein it was held as follows : (SCC OnLine Kar para 6)

“6. Whether the parties to a suit or appeal or any other proceeding get their dispute settled amicably through arbitration, or mediation or conciliation in the Lok Adalat, by invoking provisions of Section 89 CPC or they get the same settled between themselves without the intervention of any Arbitrator/Mediator/Conciliators in Lok Adalat, etc., and without invoking the provision of Section 89 CPC, *the fact remains that they get their dispute settled without the intervention of the Court. If they get their dispute settled by invoking Section 89 CPC, in that event the State may have to incur some expenditure but, if they get their dispute settled between themselves without the intervention of the Court or anyone else, such as arbitrator/mediator,*

etc., the State would not be incurring any expenditure. This being so, I am of the considered opinion that whether the parties to a litigation get their dispute settled by invoking Section 89 CPC or they get the same settled between themselves without invoking Section 89 CPC, the party paying court fees in respect thereof should be entitled to the refund of full court fees as provided under Section 16 of the Court Fees Act, 1870.”

19. Section 16 of the Court Fees Act, 1870 is in pari materia with Section 69-A of the 1955 Act, and hence the abovestated principles are equally applicable to the present case.

26. Thus, in our view, the High Court was correct in holding that Section 89 CPC and Section 69-A of the 1955 Act be interpreted liberally. In view of this broad purposive construction, we affirm the High Court's conclusion, and hold that Section 89 CPC shall cover, and the benefit of Section 69-A of the 1955 Act shall also extend to all methods of out-of-court dispute settlement between parties that the Court subsequently finds to have been legally arrived at. This would, thus, cover the present controversy, wherein a private settlement was arrived at, and a memo to withdraw the appeal was filed before the High Court. In such a case as well, the appellant i.e. Respondent 1 herein would be entitled to refund of court fee.”

4. The Court notes that once personal insolvency has commenced in terms of Section 95, the interim moratorium would come into play immediately upon the institution of those proceedings. In terms of the commencement of proceedings under the IBC, the plaintiff would now have the solitary remedy of filing a claim and participate in the collective statutory settlement process that would ensue against the defendants. Since the same would also relate to a settlement of claims, it would appear to fall within the scope of Section 16.

5. In view of the aforesaid, the prayer as made in the present application is allowed. The Registry to take appropriate steps for refund of the court fee which stands deposited accordingly.

YASHWANT VARMA, J.

APRIL 17, 2023/neha