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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**CR-1321-2022 (O&M)
Date of decision : 08.04.2022**

Banwari Lal

...Petitioner

versus

Mool Chand and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.K.Yadav, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

Present revision under Article 227 of the Constitution of India is to challenge the order dated 13.12.2021 passed by the learned Additional Civil Judge, Sr. Division, Kosli dismissing the application for refund of the court fees.

Brief facts relevant to the present case are that an application under Order 47 Code of Civil Procedure, 1908 (for short, 'CPC') for review of the judgment and decree dated 23.08.2021 was filed. It is stated in the application that at the time of the compromise and recording of the statement of the applicant, the applicant had specifically requested that the court fees to the tune of Rs.63,000/- be refunded. However, inadvertently, the finding qua refund of court fees was not mentioned in the judgment and decree dated 23.08.2021. The trial Court vide impugned order dated 13.12.2021 dismissed the said application holding that since the suit was not withdrawn but was decreed in terms of the compromise, hence no refund of court fees could be ordered.

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Learned counsel for the petitioner has relied upon judgments passed by this Court in **Surender Kumar Vs. Hans Raj Mandi [2021(2) RCR (Civil) 851]**; **Pritam Singh Vs. Ashok Kumar [2019(1) Law Herald 721]**; and **Pradeep Sonawat Vs. Satish Prakash @ Satish Chandra [2015(1) RCR (Civil) 955]** to contend that even in a case in which a compromise has been effected and the suit is decreed in terms of the compromise, an application for refund of court fees could be allowed as the provisions of Section 89 CPC would apply and the benefit of Section 16 of the Court Fee Act, 1870 would be available to the plaintiff.

I have heard learned counsel for the petitioner.

In **Pritam Singh's** (*supra*) it has been held as under :

“7. By referring to Pradeep Sonawat Vs. Satish Prakash @ Satish Chandra, 2015(1) RCR (Civil) 955 (P&H), learned counsel for the appellant contended that Section 89 CPC would apply even in cases of counter claims in suits and also in appeals, counter objections and counter appeals and benefit of Section 16 of the Court Fee Act is available to the appellant in appeal in case of settlement irrespective of fact whether it was before the Lok Adalat or otherwise. The refund of Court fee cannot be denied merely because the matter has not been settled before the Lok Adalat. Learned counsel also relied upon A. Sreeramaiah Vs. South Indian Bank Ltd., Bangalore and another, 2007(5) RCR (Civil) 374, Kamalamma Vs. Honnali Taluk Agricultural Produce Co-operative Marketing Society Ltd., Honnali, 2010(1) AIR Kar.

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R 279 and CR No.874 of 2009 titled Tarun Juneja Vs. Hukam Singh decided on 15.09.2009.”

In the case of **Surender Kumar** (*supra*) it was held that :

“10. The counsel for the applicant-appellant contended that since the dispute between the parties has been settled, in the light of the principles enshrined in Section 16 of the Court Fees Act, 1870 and Section 90 CPC, the parties are entitled to be refunded the court fees paid by them in the Courts below as well as this Hon'ble Court irrespective of the fact that the settlement was reached without the intervention of the Court and outside Court.

11. In support of his submission, the counsel has relied upon Pradeep Sonawat vs. Satish Prakash, AIR 2015 Pb. 130; Tarun Juneja & Ors. Vs. Hukam Singh, CR. No.874 of 2009 decided on 15.9.2009; Harish Kumar (deceased) through LRs vs. Pawan Kumar Sehgal, RSA. No.3645 of 2018 decided on 09.09.2019; Naresh Kumar vs. M/s Jasmer Singh Harphool Singh & Ors., RSA. No.1265 of 2019 decided on 10.09.2019; A. Sreeramaiah vs. South Indian Bank Ltd. & Anr., 2007(5) RCR (Civil) 374 [Karnataka High Court]; and Kamalamma & Ors. Vs. Honnali Taluk Agricultural Produce Coop. Marketing Society & Ors., 2009(33) RCR (Civil) 110 [Karnataka High Court].

12. A perusal of the decisions mentioned above makes it clear that court fee can be refunded to the parties where a

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compromise/settlement has taken place even outside the Court. This is also the intention behind the provisions of law relied upon by the counsel so that the process of alternate dispute resolution is encouraged.”

In the case of **Pradeep Sonawat** (*supra*) it was held that :

“7. Conjoint reading of Section 16 of the Act with Section 89 of CPC leaves no doubt that endeavor of the legislature is for settlement of cases by alternative disputes settlement mechanism. Be it Lok Adalat or out of Court settlement or Arbitration or Conciliation or Mediation, effort always is to end the litigation once for all times to come. Settlement in terms of Section 89 CPC results in complete end to the litigation. Resort to appeal or revision statutorily is out of the legal arena. Merely because the matter for settlement was not taken up in daily Lok Adalat, which under the aegis of the Haryana State Legal Services Authority, is held every day in each Court in the State after Court hours, should not be taken to the prejudice of the petitioner-plaintiff.

8. Concept of daily Lok Adalat is not alien to the alternative dispute redressal machinery. Daily Lok Adalats in the State of Haryana are held in all the districts. Every Court of the Sessions Division, after court hours, gets converted into a daily Lok Adalat and judicial officers hold sittings for this, depending upon the workload of cases coming for settlement every day in each Court. This way,

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there are as many daily Lok Adalats as are the number of Courts in that Sessions Division.

9. *The question simpliciter posing for answer at this stage in this petition is, as to whether the court fee should be refunded to the petitioner- plaintiff, pursuant to the settlement arrived at between the parties, which was duly recorded by the Court and was accepted or not? Judgment dated 11.12.2012 [Annexure P/3] clearly reveals that the statement of the parties as also compromise was recorded by the Court and forms part of the record. After having been acted upon by the parties, the Court had passed the decree dated 11.12.2012 [Annexure P/3] in terms of the said compromise.*

10. *In tune with the provisions of Section 89 of CPC, endeavour is made by every Civil Court to decide the matter by one of the modes provided in Section 89 CPC for settlement between the parties. When such settlement is arrived at in terms of Section 89 CPC, provision of Section 16 of the Act, which is beneficial and benevolent provision in its domain and content needs to be invoked and the Court concerned is also required to inform the plaintiff that he is entitled to get back the court fee affixed by him on the plaint. Even if the plaintiff does not apply for the same, the Court acting suo moto invoking the provisions of Section 16 of the Act, should issue a certificate authorizing the plaintiff to*

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receive back the court fee, paid in respect of such plaint, from the Collector.

11. Though, this matter is not in issue here, even then it may be mentioned that this provision would apply even in cases of counter claims in suits as also in appeals, counter objections and counter appeals.

12. To provide added locomotion to the provisions of Section 89 of CPC in consonance therewith, the Parliament had brought an amendment to the Court Fee Act, 1870 by inserting Section 16 therein. There is no denying to the fact that the object behind insertion of Section 16 to the Act was to encourage the litigants to adopt the alternative dispute resolution methodology for expeditious disposal of the disputes and with a view to end the litigation forever.

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16. Going a step further, it is felt that whether the compromise is with the persuasion of the Court or amongst the parties by themselves in terms of Section 89 CPC or otherwise, invocation of provision of Section 16 of the Act should be made in all cases so that settlements by way of alternative dispute resolution mechanism are encouraged.”

In the present case, undisputedly, the matter has been settled between the parties and the suit was decreed in terms of the compromise. The observation of the trial Court that since the suit was not withdrawn, hence the prayer for refund of court fee would not be sustainable being wholly misplaced.

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Section 89 CPC has been interpreted and has been extended to compromises entered into between the parties outside the Court also. In the present case the settlement has taken place and the suit has been decreed in terms of the said settlement.

In view thereof, the impugned order dated 13.12.2021 passed by learned Additional Civil Judge, Sr. Division, Kosli is set aside. The petitioner is held entitled to the refund of court fees.

Disposed off.

April 08, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO

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