

2021 SCEJ 1385

Supreme Court of India

(Mohan M. Shantanagoudar and Vineet Saran, JJ.)

**The High Court of Judicature at Madras
Rep. by its Registrar General Vs. M.C. Subramaniam ors.**

[Special Leave Petition (Civil) Nos. 3063-3064 of 2021 Diary No. 3869-2021]

17.02.2021

CPC, Section 89 – S. 89 CPC shall cover, and the benefit of Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act, 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 a 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, party would be entitled to refund of court fee.

The Judgment of the Court was delivered by

Mohan M. Shantanagoudar, J.:—

1. These special leave petitions arise out of common order and judgement of the High Court of Madras (hereinafter, 'High Court') dated 8.01.2020. By the impugned judgement, the High Court allowed Civil Miscellaneous Petitions Nos. 26742 & 26743 of 2019 filed by the Respondent No. 1 herein praying for refund of the court fees deposited by him in Appeal Suits Nos. 876/2012 and 566/2013 filed by him before the High Court.

2. The facts leading to these petitions are as follows: Respondent No. 1 purchased two

vehicles from Respondent No. 2 vide two separate hire purchase agreements (hereinafter, 'Agreement-I' and 'Agreement-II'; collectively, 'the Agreements') dated 10.06.1996, under which Respondent No. 1 was the principal debtor/hirer, and Respondents Nos. 3 and 4 were the sureties to the Agreements. As per the terms of the Agreements, Respondent No. 1 was to pay a sum of Rs. 10,08,000/- in stipulated instalments to Respondent No. 2 for each of the two vehicles.

3. It suffices to note for our purposes that Respondent No. 2 brought Original Suits Nos. 66/2003 and 76/2003 against Respondents Nos. 1, 3 and 4 before the Additional District Munsif Court, Coimbatore (hereinafter, 'Munsif Court') and the Additional District and Sessions Court, Coimbatore (hereinafter, 'District Court') respectively. In the two suits, Respondent No. 2 alleged non-payment of Rs. 6,64,000/- and Rs. 5,97,200/- towards the instalments stipulated in Agreement-I and Agreement-II respectively, and sought recovery of the balance amounts along with interest thereon. Both the Original Suits Nos. 66/2003 and 76/2003 were partly decreed by the Munsif Court and District Court, by judgments dated 13.02.2004 and 31.01.2005 respectively.

4. Aggrieved, Respondent No. 1 preferred Appeal Suits Nos. 876/2012 and 566/2013 before the High Court, against the judgments in O.S. No. 66/2003 and O.S. No. 76/2013, respectively. While the appeals were still pending consideration before the High Court, the parties entered into a private out-of-court settlement, thus resolving the controversy between them. In view of this, Respondent No. 1 filed a memo before the High Court, seeking permission to withdraw Appeal Suits Nos. 876/2012 and 566/2013. Such permission, along with a direction to refund the court fee deposited by Respondent No. 1, was granted by orders dated 16.09.2019 and 18.09.2019 in

A.S. Nos. 566/2013 and A.S. Nos. 876/2012 respectively.

5. Despite the above stated orders of the High Court, the Registry orally refused Respondent No. 1's request for refund of court fees, on the ground that such refund is not authorised by the relevant rules. Left without recourse, on 25.12.2019, Respondent No. 1 filed Civil Miscellaneous Petitions Nos. 26742/2019 and 26743/2019 under Section 151, Code of Civil Procedure, 1908 (hereinafter, 'CPC'), praying for refund of the court fees paid by him in A.S. Nos. 876/2012 and 566/2013 respectively, in terms of the orders dated 18.09.2019 and 16.09.2019 therein.

6. By the impugned common judgment and order dated 8.01.2020, the High Court has allowed the aforementioned Civil Miscellaneous Petitions, and directed the Registry to refund the full court fee to Respondent No. 1 herein.

7. In addressing the question of whether the refund of court fee was permissible under the relevant rules, the High Court considered Section 69-A of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 (hereinafter, '1955 Act'), which reads as follows:

"69-A. Refund on settlement of disputes under section 89 of Code of Civil Procedure.—Where the Court refers the parties to the suit to any of the modes of settlement of dispute referred to in section 89 of the Code of Civil Procedure, 1908 (Central Act V of 1908), the fee paid shall be refunded upon such reference. Such refund need not await for settlement of the dispute."

(emphasis supplied)

8. Considering, appeal suits to be continuation of original suits, and therefore falling within the ambit of 'suits' as provided in Section 69-A, the Court went on to take

notice of Section 89, CPC which reads as follows:

"89. Settlement of disputes outside the Court.—(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:—

(a) arbitration;

(b) conciliation;

(c) judicial settlement including settlement through Lok Adalat: or

(d) mediation.

(2) Where a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of subsection (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, 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 Authority 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 mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."

9. After giving due consideration to the above provisions, the High Court held that, given their beneficial intent, they must be interpreted liberally, in a manner that would serve their object and purpose. Construing them narrowly would lead to a situation wherein parties who settle their dispute through a Mediation Centre or other centres of alternative judicial settlement under Section 89, CPC would be entitled to claim refund of their court fee, whilst parties who settle the disputes privately by themselves will be left without any means to seek a refund. Accordingly, the High Court opined that such differential treatment between two similarly situated persons, would constitute a violation of Article 14 of the Constitution. Therefore, in the High Court's view, a constitutional interpretation of Section 89 of the CPC, and resultantly Section 69-A of the 1955 Act, would require that these provisions cover all methods of out-of-court dispute settlement between parties that the Court subsequently finds to have been legally arrived at.

10. Dissatisfied, the Petitioner herein has challenged the impugned judgment of the High Court.

11. The gravamen of the Petitioner's contentions is that Section 69-A of the 1955 Act only contemplates refund of court fees in those cases where the Court itself refers the parties to any of the alternative dispute settlement mechanisms listed in Section 89 of the CPC. That hence it does not apply to circumstances such as in the present case, where the parties, without any reference by the Court, privately agreed to settle their dispute outside the modes contemplated under Section 89 of the CPC.

This Court's Analysis

12. Having heard the petitioner and thoroughly considered the arguments advanced, we find ourselves unimpressed by the Petitioner's contentions, for reasons outlined below. a

13. The provisions of Section 89 of 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. b
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14. Before expounding further on our interpretation of the aforesaid provisions, regard must be had to the following postulation of this Court's interpretive role in *Directorate of Enforcement v. Deepak Mahajan*, 1994 3 SCC 440 – j
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"24...Though the function of the Courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the court to mould or creatively interpret the legislation by liberally interpreting the statute. l
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25. In *Maxwell on Interpretation of Statutes*, Tenth Edn. at page 229, the following passage is found:

“Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman’s unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.”

(emphasis supplied)

15. Therefore, it is well-settled that the Courts may, in order to avoid any difficulty or injustice resulting from inadvertent ambiguity in the language of a statute, mould the interpretation of the same so as to achieve the true purpose of the enactment. This may include expanding the scope of the relevant provisions to cover situations which are not strictly encapsulated in the language used therein.

16. This principle of statutory interpretation has been affirmed more recently in the decision in *Shailesh Dhairyawan v. Mohan Balkrishna Lulla*, (2016) 3 SCC 619 –

“33....Though the literal rule of interpretation, till some time ago, was treated as the “golden rule”, it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced.”

(emphasis supplied)

17. This was followed in the subsequent decision of this Court in *Anurag Mittal v. Shaily Mishra Mittal*, (2018) 9 SCC 691.

18. In light of these established principles of statutory interpretation, we shall now proceed to advert to the specific provisions that are the subject of the present controversy. The narrow interpretation of Section 89 of CPC and Section 69-A of the 1955 Act sought to be imposed by the Petitioner would lead to an outcome wherein parties who are referred to a Mediation Centre or other centres by the Court will be entitled to a full refund of their court fee; whilst parties who similarly save the Court’s time and resources by privately settling their dispute themselves will be deprived of the same benefit, simply because they did not require the Court’s interference to seek a settlement. Such an interpretation, in our opinion, dearly leads to an absurd and unjust outcome, where two classes of parties who are equally facilitating the object and purpose of the aforesaid provisions are treated differentially, with one class being deprived of the benefit of Section 69-A of the 1955 Act. A literal or technical interpretation, in this background, would only lead to injustice and render the purpose of the provisions nugatory – and thus, needs to be departed from, in favour of a purposive interpretation of the provisions.

19. It is pertinent to note that the view taken by the High Court in the impugned judgement 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 *Kamamma v. Honnali Taluk Agricultural Produce Co-operative Marketing Society Ltd.*, (2010) 1 AIR Kar. R 279, wherein it was held as follows:

“6. Whether the parties to a suit or appeal or any other proceeding get their dispute settled amicably through Arbitration, or meditation or conciliation in the Lok Adalath, by invoking provisions of Section 89, C.P. C. or they get the same settled between

themselves without the intervention of any Arbitrator/Mediator/Conciliators in Lokadalath etc., and without invoking the provision of Section 89, C.P.C., 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, C.P.C., 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, C.P.C. or they get the same settled between themselves without invoking Section 89, C.P.C., 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.

(emphasis supplied)

20. Section 16 of the Court-Fees Act, 1870 is in *parimateria* with Section 69-A of the 1955 Act, and hence the above stated principles are equally applicable to the present case.

21. The holding in *Kamamma* (supra) has been followed by the Punjab & Haryana High Court in *Pradeep Sonawat v. Satish Prakash*, 2015 (1) RCR Civil 955 and *Pritam Singh v. Ashok Kumar*, 2019 (1) Law Herald (P&H) 721, which in turn were further affirmed in *Raj Kumar v. Gainda Devi through LRs*, 2019 SCC OnLine P&H 658.

22. The Delhi High Court has also taken a similar view in *J.K. Forgings v. Essar Construction India Ltd.*, (2009) 113 DRJ 612:

“11. The laudable object sought to be achieved by inserting and amending these sections seems to be speedy disposal. The policy behind the statute is to reduce the No. of cases by settlement. Section 89 of C.P.C. and Section 16 Court Fee Act are wel-

come step in that direction, as the No. of cases has increased, it is the duty of court to encourage settlement. In present scenario of huge pendency of cases in the courts a purposive and progressive interpretation is the requirement of present hour. The intention of the Legislature is primarily to be gathered from the object and the words used in the material provisions. The statute must be interpreted in their plain grammatical meaning.

12. It is very clear that the Legislative intent of Section 16 of Court Fees Act was made broad enough to take cognizance of all situations in which parties arrive at a settlement irrespective of the stage of the proceedings. It is also obvious that the purpose of making this provision was in order to provide some sort of incentive to the party who has approached the court to resolve the dispute amicably and obtain a full refund of the court fees. Having regard to this position, the present application will have to be allowed.

14. This is not a case where parties to the suit after long drawn trial have come to the court for settlement. Had it been the case of long drawn trial non-refund of court fees could have been justified but in such like cases courts endeavor should be to encourage the parties and court fees attached with the plaint should be refunded as an incentive to them.

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17. Settlement of dispute only through any of the mode prescribed under section 89 of C.P.C is not sine qua non of section 89 C.P.C. rather it prescribes few methods through which settlement can be reached, sine qua non for applicability of section 89 is settlement between the parties outside the court without the intervention of the courts.

18. It is also not the requirement of the section that court must always refer the parties to Dispute Resolution Forum. If parties have

arrived at out of court settlement it should be welcomed subject to principles of equity.

19. *Court Fees Act is a taxing statute and has to be construed strictly and benefit of any ambiguity if any has to go in favour of the party and not to the state.*”

(emphasis supplied)

23. The view taken in both *Kamamma* (supra) and *J.K. Forgings* (supra) has been subsequently relied upon by the Delhi High Court in *Inderjeet Kaur Raina v. Harvinder Kaur Anand*, 2018 SCC OnLine Del 6557.

24. We find ourselves in agreement with the approach taken by the High Courts in the decisions stated supra. The purpose of Section 69-A is to reward parties who have chosen to withdraw their litigations in favour of more conciliatory dispute settlement mechanisms, thus saving the time and resources of the Court, by enabling them to claim refund of the court fees deposited by them. Such refund of court fee, though it may not be connected to the substance of the dispute between the parties, is certainly an ancillary economic incentive for pushing them towards exploring alternative methods of dispute settlement. As the Karnataka High Court has rightly observed in *Kamamma* (supra), parties who have agreed to settle their disputes without requiring judicial intervention under Section 89, CPC are even more deserving of this benefit. This is because by choosing to resolve their claims themselves, they have saved the State of the logistical hassle of arranging for a third-party institution to settle the dispute. Though arbitration and mediation are certainly salutary dispute resolution mechanisms, we also find that the importance of private amicable negotiation between the parties cannot be understated. In our view, there is no justifiable reason why Section 69-A should only incentivize the methods of out-of-court settlement stated in Section 89, CPC and afford step-brotherly treat-

ment to other methods availed of by the parties.

25. Admittedly, there may be situations wherein the parties have after the course of a long-drawn trial, or multiple frivolous litigations, approached the Court seeking refund of court fees in the guise of having settled their disputes. In such cases, the Court may, having regard to the previous conduct of the parties and the principles of equity, refuse to grant relief under the relevant rules pertaining to court fees. However, we do not find the present case as being of such nature.

26. Thus, even though a strict construction of the terms of Section 89, CPC and 69-A of the 1955 Act may not encompass such private negotiations and settlements between the parties, we emphasize that the participants in such settlements will be entitled to the same benefits as those who have been referred to explore alternate dispute settlement methods under Section 89, CPC. Indeed, we find it puzzling that the Petitioner should be so vehemently opposed to granting such benefit. Though the Registry/State Government will be losing a one-time court fee in the short term, they will be saved the expense and opportunity cost of managing an endless cycle of litigation in the long term. It is therefore in their own interest to allow the Respondent No. 1's claim.

27. Thus, in our view, the High Court was correct in holding that Section 89 of the 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 of 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 No. 1 herein would be entitled to refund of court fee.

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Conclusions and Directions

28. These petitions are accordingly dismissed, and the impugned judgment of the High Court dated 8.01.2020 is upheld.

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29. The petitioners are directed to refund the court fee deposited by Respondent No. 1 for Appeal Suits Nos. 876 of 2012 and 566 of 2013, within a period of six weeks.

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