



2023:DHC:9105



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 98/2023, I.A. 3531/2023, I.A. 14582/2023, I.A. 16345/2023 and I.A. 25081/2023

V GUARD INDUSTRIES LTD Plaintiff
Through: Mr. Sachin Gupta, Mr. Ajay Kumar, Mr. Manan Mondal, Mr. Rohit Pradhan, Ms. Prashansa Singh and Mr. Ashna Narang, Advs.

Versus
MS MAHAVIR HOME APPLIANCES
AND ANR. & ANR. Defendants
Through: Mr. Rajat Bhalla and Mr. Sivaraman Vaidyanathan, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (ORAL)

14.12.2023

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CS(COMM) 98/2023

1. The dispute between the parties stand amicably resolved and the terms of settlement have been placed on record in an application i.e. IA 25081/2023 jointly filed by the parties under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC). The terms of settlement read thus:

"i. The Defendants hereby recognize the Plaintiff as the proprietor of the registered design under no. 330602-001 in class 25-04 for ceiling fans, having the exclusive right to the use of the aforementioned design;

ii. The Defendants undertake to refrain themselves, their directors, proprietors, partners, their assignees in business, distributors, dealers, stockists, retailers, servants and agents from manufacturing, marketing, selling, or distributing any ceiling fans bearing a design that is identical or deceptively similar to the Plaintiff's registered design;



iii. The Defendants affirm that there are no existing stocks of ceiling fans under the impugned design available with them;

iv. The Defendants state that they have discontinued all production and destroyed all the stationery, packaging, promotional and publicity material, and labels and moulds under the impugned design;

v. The Defendants confirm that they have not filed any proceedings against the Plaintiff before any Court/Tribunal or authorities except that Defendant No. 1 has filed a Cancellation Petition dated 03.01.2023 before the Controller of Patent and Design & Trade Marks, Kolkata on 04.01.2023 against the Plaintiff's registered design under no. 330602-001 in class 25-04 for ceiling fans. The Defendant No. 1 undertakes to withdraw the Cancellation petition within a period of 1 week post recording of the present settlement;

vi. The Defendant No. 1 further undertakes to withdraw its design application under no. 371134-001 in class 25-04 for ceiling fan;

vii. The Defendants would never challenge the rights of the Plaintiff in its design / copyright for those said products of the Plaintiff being the subject matter of the present suit, either directly or indirectly;

viii. The Plaintiff is foregoing the costs and damages as sought in the plaint at the request of the Defendants;

ix. The abovementioned undertakings have been tendered by Sh. Naresh S. Jain, i.e. Partner of Defendant No.1 and authorized signatory of Defendant No.2 and the same shall be binding on the Defendants, their partners, directors, or proprietor as the case may be, their assignees in business, licensees, franchisee, distributors, agents, servants and dealers for all times to come. The Defendants acknowledge that in case of breach of settlement, the Defendants shall be liable to contempt proceedings."

2. Parties are represented by learned Counsel, who undertake on behalf of the respective clients to remain bound by the terms of the settlement.



2023 : DHC : 9105



3. I have perused the terms of settlement and find them to be lawful and in order.
4. As the dispute stands settled, the controversy does not survive for consideration on merits.
5. The suit accordingly stands decreed in terms of the aforesaid settlement at which the parties have arrived. The parties shall remain bound by the terms of settlement.
6. Let a decree-sheet be drawn up by the Registry accordingly.
7. Miscellaneous applications do not survive for consideration and stand disposed of.
8. An interesting issue has come up for consideration in the present matter, which may require clarification by a Division Bench, as it is of recurring significance. Precisely stated, the issue relates to the extent to which the plaintiff would be entitled to refund of court fees, where the dispute is settled privately between the plaintiff and the defendants without intervention of any Alternate Dispute Resolution (ADR) mechanism.
9. Section 16¹ of the Court Fees Act entitles the plaintiff to refund of the entire court fee deposited, where the dispute is settled under

¹ 16. **Refund of fee.** – Where the Court refers the parties to the suit to anyone 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 authorising him to receive back from the collector, the full amount of



Section 89² of the Code of Civil Procedure, 1908 (CPC). Section 89 of the CPC to which Section 16 of the Court Fees Act makes reference, envisages settlement through arbitration, mediation, judicial settlement including Lok Adalat and mediation – in other words, settlement by Alternate Dispute Resolution (ADR) mechanisms.

10. In the case of Delhi, *vide* Notification No. F.14(22)/LA-2008/WAW/17, dated 11 February 2011 published in the Delhi gazette, Section 16A³, which provides for refund only of half the court fee deposited in case the dispute was settled privately among the parties without court/ADR intervention.

11. Thus, *so far as Delhi is concerned*, there are two separate statutory dispensations. Section 16 provides for refund of complete court fees, where the dispute is settled via ADR/judicial settlement. Section 16A provides for refund of half the court fees where the dispute is settled by private agreement between the parties without the intervention of ADR.

paid in respect of such plaint.

² 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.

³ 16A. **Refund of fees on settlement before hearing:-**

Whenever by agreement of parties –

- (i) any suit is dismissed as settled out of court before evidence has been recorded on the merits of the claim; or
 - (ii) any suit is compromised ending in a compromise decree before evidence has been recorded on the merits of the claim; or
 - (iii) any appeal is disposed of before the commencement of hearing of such appeal;
- half the amount of all fees paid in respect of the claim or claims in the suit or appeal shall be ordered by the court to be refunded to the parties by whom the same have been respectively paid.



12. The decision in *Nutan Batra*:

12.1 This position also stands acknowledged by the judgment of the Division Bench of this Court in *Nutan Batra v. M/s. Buniyaad Associates*⁴. That judgment, in fact, makes reference to an earlier decision of the Supreme Court in *Afcons infrastructure and Ors. v. Cherian Verkey Construction*⁵, which notes the fact that Section 89 of the CPC pertains to the settlement of the dispute through ADR. Having noted these facts, the Division Bench holds in *Nutan Batra*, thus:

“14. Thus, the intention of the Delhi Amendment was to provide for some relief in cases *which are not covered by Section 16, perhaps because Section 89 of the CPC had not been invoked*. Section 16A is conditional upon the suit being at a pre-evidence stage; then too, it provides for refund of only 50% of the court fees paid.

17. In the context of this discussion, we are required to determine the respective scope and applicability of Sections 16 and 16A of the Act.

18. *The cases of reference to arbitration or "judicial settlement" (as interpreted in paragraph 25 of Afcons, supra) do not pose any great difficulty, as they do not fall within Section 16A of the Act at all, and are covered only under Section 89 of the CPC read with Section 16 of the Act. Similarly, a compromise entered out of Court, whether resulting in a compromise decree, or in the suit being dismissed as settled out of Court, is covered only by Section 16A and not by Section 16.*”

(Emphasis supplied)

12.2 Significantly, *Nutan Batra* holds that where a dispute is settled through mediation, the case may fall either under Section 16 or Section 16A, depending on the facts. However, *where a case is not*

⁴ (2018) 255 DLT 696 (DB)



*settled through any ADR mechanism, but is privately settled between the parties, paras 14 and 18 of the **Nutan Batra** are perfectly clear in their understanding that the party would be entitled only to half the court fees paid.*

13. The decision in *M.C. Subramaniam*

13.1 Section 69A⁶ of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 (“the Tamil Nadu Act”, hereinafter) is *pari materia* with Section 16 of the Court Fees Act. It provides for refund of the entire court fee paid, where the dispute is settled under Section 89 of the CPC.

13.2 Section 69A of the Tamil Nadu Act, vis-à-vis Section 89 of the CPC, came up for interpretation before the Supreme Court in ***High Court of Judicature at Madras v. M.C. Subramaniam***⁷.

13.3 As in the present case, the Supreme Court was, in ***M.C. Subramaniam***, concerned with whether parties, who settled the dispute privately between themselves were entitled to complete refund of court fees, in the light of Section 69-A of the Tamil Nadu Act. It was sought to be contended before the Supreme Court that Section 69-A applied only to settlement through ADR. The Supreme Court rejected the submission in paras 13, 17, 19 and 23 of the report, which

⁵ 2010 (8) SCC 24

⁶ **69-A. Refund on settlement of disputes under Section 89 of the 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.

⁷(2021) 3 SCC 560



read thus:

“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 Section Report on Amendment of 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 69A 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.

17. 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 69A 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, clearly 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 69A 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. Section 16 of the Court Fees Act, 1870 is in pari materia with Section 69A of the 1955 Act, and hence the above stated principles are equally applicable to the present case.



23. We find ourselves in agreement with the approach taken by the High Courts in the decisions stated supra. The purpose of Section 69A 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 *Kamalamma & ors. v. Honnali Taluk Agricultural Produce Cooperative Marketing Society Ltd*⁸ (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: 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 69A should only incentivize the methods of out of court settlement stated in Section 89, CPC and afford step brotherly treatment to other methods availed of by the parties."

14. If one were to read para 13, 17, 19 and 23 of the judgment of the Supreme Court in *M.C. Subramaniam* in isolation and in the context of Section 16 of the Court Fees Act – without considering Section 16-A as has been made applicable to Delhi – it would seem to appear that, irrespective of whether the settlement is arrived at through mediation or privately between the parties, refund of full court fees would be justified.

15. The clarity of this position is, however, compromised, where the dispute relates to Delhi, because of the insertion, in the Court Fees

⁸ (2010) 1 AIR Kar. R 279



Act, of Section 16A, uniquely applicable to Delhi. If the judgment of the Supreme Court is to be applied straightway to suits filed in Delhi, Section 16A of the Court Fees Act may be rendered otiose as a result. Besides, such a view would also be contrary to the judgment of the Division Bench of this Court in *Nutan Batra*, though, no doubt, the said decision was rendered prior to the decision in *M.C. Subramaniam*.

16. The skein of the precedential wool is further entangled by the fact that a view contrary to that taken by the Division Bench in *Nutan Batra* has been taken by a subsequent Division Bench of this Court in *Ajay Mahajan v. Mridula Mukherjee*⁹. In that case, though the dispute was privately settled between the parties, *the Division Bench directed refund of full court fee, applying Section 16 of the Court Fees Act*. Section 16A of the Court Fees Act, however, was apparently not brought to the attention of the Division Bench which decided *Ajay Mahajan*.

17. The position that results, is, therefore, this:

- (i) There are two Division Benches of this Court which take opposite views, the first in *Nutan Batra* and second in *Ajay Mahajan*. *Nutan Batra* holds that a plaintiff is entitled to refund of full court fees only where the settlement is via ADR (under Section 16), and is entitled only to refund of half the court fees if the settlement is private between the parties (under

⁹ 2023 SCC OnLine Del 2389



2023 : DHC : 9105



Section 16A). *Ajay Mahajan* holds, however, in a case of private settlement without ADR intervention, that the plaintiff was entitled to refund of the entire court fees paid, under Section 16.

(ii) *Ajay Mahajan* does not, however, notice Section 16-A.

(iii) *Nutan Batra*, however, was rendered before the Supreme Court in the judgment in *M.C. Subramaniam*. *M.C. Subramaniam* interprets Section 69-A of the Tamil Nadu Act, which is *in pari materia* with Section 16 of the Court Fees Act and envisages settlement only through ADR, as entitling the party to complete refund of court fees irrespective of whether the dispute was settled privately between the parties or through ADR.

(iv) Though the Supreme Court has, in *M.C. Subramaniam*, accorded an expansive interpretation to Section 69-A as also including settlement privately between the parties, it remains to be considered whether that decision can apply in Delhi in the face of a separate statutory dispensation for private settlement contained in Section 16A of the Court Fees Act, applicable exclusively to Delhi.

18. As there are two Division Benches and the judgment of the Supreme Court to be considered, I am of the view that this issue would have to be resolved at least by a Division Bench of this Court.



2023 : DHC : 9105



19. Accordingly, I respectfully refer, to the Division Bench, for decision, the question of whether, if plaintiff and the defendant settle the dispute between themselves privately, without intervention of any ADR mechanism, the plaintiff would be entitled to complete refund of court fees or would be entitled only to refund of half the court fees paid.

20. In my respectful opinion, the issue may have to be considered and decided in the light of Sections 16 and Section 16A of the Court Fees Act and taking into consideration the judgment of the Supreme Court in *M.C. Subramaniam* and of the Division Benches of this Court in *Nutan Batra* and *Ajay Mahajan*.

21. Let the papers be placed before Hon'ble the Acting Chief Justice for reference of the above question to the Division Bench for adjudication.

22. Renotify on 31 January 2024, only on the aspect of the extent of court fees to refund of which the plaintiff would be entitled, awaiting the decision of the Division Bench on the above question.

C.HARI SHANKAR, J

DECEMBER 14, 2023

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Click here to check corrigendum, if any