

2 SCOB [2015] HCD 58**HIGH COURT DIVISION
(ADMIRALTY JURISDICTION)**

ADMIRALTY SUIT NO. 17 of 2015

City Seed Crushing Industries Ltd.

...Plaintiff

-versus-

M.V. TRITON SEAGULL and others.

...Defendants

Mr. M.A. Hannan with

Mr. Abdus Samad Azad, Advocates

...For the Plaintiff

The 6th April, 2015**Court Fees Act, 1870****Section 13-15:**

The parties are entitled to refund of the Court fees if it is found that the apparatus of the Court and its process have not been used for the cause for which the parties have taken recourse to the proceedings of the Court. This underlining principle of the Court Fees Act as well as the provisions under sub-Section (11) of Section 89A of the Code have also been recognized and affirmed in the cases as referred to by Mr. Hannan, in particular the case of *Bhola v. Sardar Muhammad*, PLD 1976 Lahore 1268. ... (Para 9)

JUDGMENT**Sheikh Hassan Arif, J:**

1. This is an application for withdrawal of the suit as well as for refund of the Court fees paid by the plaintiff. This application was partially allowed by this Court vide order dated 23.03.2015. By that order dated 23.03.2015, the suit was allowed to be non-prosecuted/withdrawn, and by the same order this Court fixed 05.04.2015 for necessary orders as regards the prayer of the plaintiff for refund of the Court fees. Consequently, after deferments, the issue of refund of the Court fees will now be disposed of by this order.

2. The aforesaid Admiralty Suit No. 17 of 2015 was originally filed by the plaintiff on 12.03.2015 along with the highest Court fee of Tk. 1,00,000.00 (one lac) as per the provisions of the Admiralty Court Act, 2000 ("the said Act") and the applicable Rules, namely Admiralty Rules, 1912. It appears from record that though the suit was filed claiming compensation for short-landing, the plaintiff did not press for admission of the suit and as such neither the same was admitted by any order of this Court and nor any notices were issued on the defendants. Before such formal admission of the Suit, the plaintiff has come up with the aforesaid application for non-prosecution/withdrawal of the same and for refund of the Court fees. In support of the application for refund of the Court fees, the plaintiff mainly relies on the underlining principles of the provisions under Section 89-A, in particular sub-section (11) thereof, and Order 23, Rule-1 of the Code of Civil Procedure.

3. Mr. M.A. Hannan, learned Advocate appearing for the plaintiff-applicant, has made the following submissions in support of the plaintiff's prayer for refund of the Court fees:

a) Since sub-section (11) of Section 89-A of the Code of Civil Procedure has made it obligatory on the Court to issue certificate directing refund of the Court fee in case of settlement of dispute between the parties through mediation process, and such mediation process can be initiated after filing of the written statement by the defendants, in the present Admiralty Suit there is no bar in allowing refund of the Court fees inasmuch as that the instant suit has even not yet admitted by a formal order and no notices have been issued on the defendants;

b) Since Section 7 of the Admiralty Court Act, 2000 has made the provisions of the Court Fees Act, 1870 applicable, the refund of Court fees should be allowed in the instant case in view of the underlining principles of Sections 13, 14 and 15 of the said Court Fees Act.

4. In support of his above submissions, Mr. Hannan relies upon three decisions of our sub-continent, namely **Bhola v. Sardar Muhammad, PLD 1976 Lahore 1268, Jan Mohammad vs. Amolak Ram, AIR 1936, Lahore 301, Krutibasa Nayak vs. Sri Jagannath Mahaprabu, AIR 1975, Orissa 211.**

5. To reach a conclusion as to whether the court fees in the instant suit at present stage can be refunded or not, we have examined the relevant provisions of the Admiralty Court Act, 2000, applicable Admiralty Rules, namely Admiralty Rules, 1912, relevant provisions of the Code of Civil Procedure as well as the Court Fees Act, 1870. We have also examined the corresponding provisions of the Original Side Rules of this Court as well as the Calcutta High Court (as amended time to time).

6. It must be noted at the very out-set that there is no specific provision for refund of Court Fees either in the said Admiralty Court Act, 2000 and the applicable Admiralty Rules, 1912. There is also no specific provision in the Admiralty Court Act, 2000 as to the applicability of the provisions of the Code of Civil Procedure except Section 6 of the said Act which provides that the presentation or filing of the plaint (جج مڀ لښ) in the Admiralty Court shall be done in accordance with the provisions of the Code of Civil Procedure. For all practical purposes, Admiralty Suits before the Admiralty Court in Bangladesh are now being preceded and disposed of in accordance with the provisions of the said Act of 2000 and the Admiralty Rules, 1912. While Rule 2 of the Admiralty Rules, 1912 has made the said Rules applicable to all suits instituted in the Admiralty Court, Rule 51 of the said Rules provides that in the absence of any provisions in the said Rules regarding any matter, the said Admiralty proceedings shall be regulated by the Rules and practice of the Court in suits brought in it in exercise of its ordinary Original Civil jurisdiction. Therefore, applicability of the Original Side Rules of this Court have been preserved by the provisions under Rule 51 of the Admiralty Rules, 1912 though the Letters Patent of 1865, under the authority of which the said Original Side Rules were framed, have been repealed by the Law Reform Ordinance, 1978. This position of preservation of the Original Side Rules as well as the application of the provisions of the Code of Civil Procedure in absence of specific provisions in the said Act of 2000 and the Rules of 1912 has been confirmed by this Court in two earlier decisions, namely **King Shipping Trading Company vs. M/S. L.S. Lines and others, 1986 BLD-117 and Multicargo Limited vs. M.V. Poul Barcelona and others, 2 L.G. (2005)-287.**

7. However, in the said Original Side Rules (as we have examined), this Court has not found any specific provision as to the refund of the Court Fees. In such a situation, Rule 61 of the Admiralty Rules 1912 provides that this Admiralty Court has inherent power to make orders under the Ordinary Rules and practice in the absence of the specific provisions in the above mentioned Act and Rules.

8. Keeping in mind the above position, let us now examine the relevant provisions of the Code of Civil Procedure as well as the Court Fees Act, 1870. It appears from Section 89A of the Code, in particular sub-section (11), that in case of mediation under the supervision of the Court, or by the Court, after submission of written statements by the defendants, it has been made incumbent upon the Court to issue certificate allowing refund of the court fees in favour of the concerned parties. Sub-

section (13) of Section 89A of the Code also recognizes the right of the plaintiff to withdraw the suit at any stage under the provisions of the Order 23 of the Code. It further appears that in view of the provisions under Rule-1 of Order 23, a plaintiff is allowed to simply withdraw the suit without any condition. In which case, he will not be permitted to file the suit afresh with the same cause of action. However, in view of the provisions under Rules 2 and 3 of Order 23, if the said suit is withdrawn with a permission of the Court to file the same afresh for any formal defect or any other reasons, the Court may impose condition or costs on the plaintiff. In the instant Admiralty Suit, we are dealing with the former situation which is that a plaintiff has simply withdrawn the suit even before admission of the same. This Court is of the view that the conditions as mandated under Rules-2 and 3 of Order 23 of the Code will not apply here as this situation only relates to simple withdrawal of the suit without any entitlement of the plaintiff to file the same afresh.

9. Now, since Section 7 of the Admiralty Court Act, 2000 has made provisions of the Court Fees Act, 1870 applicable, we may take recourse to the relevant provisions of refund of the Court fees as provided under Sections 13-15 of the said Court Fees Act. The underlining principles of the said provisions are that the parties are entitled to refund of the Court fees if it is found that the apparatus of the Court and its process have not been used for the cause for which the parties have taken recourse to the proceedings of the Court. This underlining principle of the Court Fees Act as well as the provisions under sub-Section (11) of Section 89A of the Code have also been recognized and affirmed in the cases as referred to by Mr. Hannan, in particular the case of **Bhola v. Sardar Muhammad, PLD 1976 Lahore 1268**. In the said case, a Lahore Bench of the Pakistan High Court held that in the absence of specific provisions, the underlining principles of Sections 13, 14 and 15 of the Court Fees Act can be taken recourse to in exercise of the inherent powers of the Court to refund the court fees. The situation before the Lahore Bench was withdrawal of an appeal which was only admitted and did not go further. In that case, the appellant was allowed to refund of court fees though that situation was not specifically covered by the provisions under Sections 13, 14 and 15 of the Court Fees Act. In the said Lahore Bench case, after examining several decisions of the superior courts on the point, the Court reached three major legal conclusions, namely-

“(i) The consensus of authorities is that sections 13, 14 and 15 of the Court Fees Act are not exhaustive on the question of the grounds for refund of court-fee;

(ii) that the Court has inherent powers to refund the court fee; and

(iii) that it is only discretionary with the Court to issue a refund certificate in its inherent jurisdiction. While exercising the discretion, some of the relevant factors which might be considered includes the length of proceedings vis-à-vis the proceedings and hearing of the matter ; the fault if any committed by any party ; and the benefit, if any, derived by the party concerned through the filing of the proceedings”.

(Underlines supplied)

10. At the time of hearing of this issue, Mr. Hafizullah, learned senior counsel present in Court, has made submissions that in such a situation the Court should also take into consideration whether the party derived any benefit from filing the case itself.

11. In the instant case, it appears that the suit was not even admitted formally and no notices were issued on the defendants. Therefore, so far as the record is concerned, the defendants did not have any knowledge of the suit. The settlement agreement, a copy of which has been furnished before this Court by the plaintiff, does not also make any reference to the instant suit. Therefore, we cannot hold that the plaintiff has derived any benefit from filing of the instant suit.

12. The provision of refund of Court fees though was not present in the Original Side Rules of this Court, which we inherited from the Calcutta High Court, the Calcutta High Court has subsequently in 1974 (vide Notification No. 44 published in the Calcutta Gazette part-1 dated 1st

August, 1974) added a new Chapter, being Chapter VIA, to its Original Side Rules dealing with “Court Fees on Plaint Etc”. Rule- 8 of the said Chapter of the Calcutta High Court Original Said Rules provides as follows:

“8. Where any order is made by the Court for refund of any Court-fees paid by a party or his advocate or advocate acting on the Original Side as the case may be, the Registrar shall grant a certificate in terms of the order made by the Court authorizing the party or his advocate or advocate acting on the Original Side to receive back from the Collector the amount directed by the Court to be refunded.”

13. Therefore, it appears that though in case of order of refund of the Court fees under Section 89A it was the Court to issue certificate, the Original Side Rules of the Calcutta High Court has adopted a procedure to issue such certificate by the Registrar authorizing the party or its advocate of the original side to receive back from the Collector the amount of the refunded Court fees.

14. Therefore, since in the instant Admiralty Suit, which has not even gone beyond just filing, by applying the underlining principles of Sections 13, 15 and 16 of the Court Fees Act, 1870 and Section 89A (11) of the Court of Civil Procedure, this Court is of the view that the plaintiff has not at all used the apparatus of this Court, it is entitled to get back the entire Court fees deposited by it, namely Tk. 1,00,000/-(one lac), in the Sonali Bank Limited, Supreme Court Branch, Dhaka through Chalan No. 20 dated 12.03.2015 and, accordingly, a certificate in this regard should be issued by the Registrar/Marshal of this Court in favour of the plaintiff.

15. In view of above legal position and circumstances of the case, we find substance in the application for refund of the Court fees and, accordingly, the same is allowed. Thus, the Registrar/Marshall of this Court is directed to issue a certificate for refund of the aforesaid Court Fees of Tk. 1,00,000/-(one lac) in favour of the plaintiff or its advocate acting on his behalf authorizing the plaintiff or his advocate to receive back from the Collector of Dhaka the said Court fees, namely Tk. 1,00,000/-(one lac), within 30(thirty) days from the date of issuance of such certificate.