



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO. 11177 OF 2023 (GM-DRT)

BETWEEN:

1. SRI NARAYANA MURTHY H M
S/O. MADAPPA H.T.,
AGED ABOUT 60 YEARS
RESIDING AT NO.117, SAPTHAGIRI,
N BLOCK, KUVEMPU NAGARA,
MYSORE - 570 023.
2. SMT. CHANDRAKALA R.,
W/O. SRI. NARAYANA MURTHY H. M.,
AGED ABOUT 51 YEARS
RESIDING AT NO.117, SAPTHAGIRI,
N BLOCK, KUVEMPU NAGARA,
MYSORE - 570 023.

...PETITIONERS

(BY SRI. SAMEER SHARMA., ADVOCATE)

AND:

1. THE REGISTRAR
DEBT RECOVERY TRIBUNAL,
BANGALORE, BSNL BUILDING,
TELEPHONE HOUSE,
RAJBHAVAN ROAD,
BANGALORE-560 001.
2. UNION BANK OF INDIA
MYSORE-KAMAKASHI HOSPITAL BRANCH,
KAMAKSHI HOSPITAL, SARAWATHIPURAM,
MYSORE - 570 009.
REPRESENTED BY ITS
AUTHORIZED SIGNATORY/BRANCH MANAGER.





3. STATE OF KARNATAKA
DEPARTMENT OF REVENUE,
VIDHANA SOUDHA,
BENGALURU-560 001.
(AMENDED VIDE COURT ORDER DT.12.6.2023)

...RESPONDENTS

(BY SMT. NAYANA TARA B.G., ADVOCATE FOR R1;
SMT. DIVYA PURANDAR, ADVOCATE FOR R2;
SRI. NAVEEN CHANDRASHEKAR, AGA FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH AND SET ASIDE THE ORDER DTD 08/08/2022 RENDERED BY THE R-1 (HONBLE DEBT RECOVERY TRIBUNAL, BANGALORE) IN S.A.NO. 277 OF 2022 (IMPUGNED ORDER AT ANNEXURE-A) IN RESPECT OF INTERLOCUTORY APPLICATION BEARING NO. 2280 OF 2022 PREFERRED BY THE PETITIONERS HEREIN (AT ANNEXURE-J) AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

ORAL ORDER

The petitioners before this Court are seeking a writ in the nature of Certiorari to quash and set aside the order dated 08.08.2022 passed by the Debt Recovery Tribunal II, Bengaluru, dismissing the I.A. No. 2280/2022, in S.A. No. 277/2022 filed by the petitioners herein, seeking a refund of the court fees as deposited, on account of disposal of the main petition as infructuous. The petitioners seek an order granting a refund of INR 79,225/- (Rupees Seventy-nine Thousand and Two Hundred and Twenty-five Only), and in the alternative, seek to quash the order impugned herein, and



remand the matter back to file of the DRT II, Bengaluru, for a time-bound reconsideration of the same.

2. The petitioner No.1 is a Class -1 Contractor (PWD) and had availed loan of an amount of INR 2,50,00,000/- (Rupees Two Crore and Fifty Lacs Only) vide sanction letter dated 30.03.2016, against the mortgage of several properties. The petitioner No.2 (wife of the petitioner No.1) had guaranteed the same as a surety. Thereafter, vide letter dated 23.09.2019 and Amendment Agreement to Rephase Payment dated 30.09.2019, the respondent No. 2 sanctioned another loan of INR 30,00,000/- (Rupees Thirty Lacs Only) and INR 6,50,000/- (Rupees Six Lacs and Fifty Thousand Only), respectively.

3. The petitioner contends that despite not having defaulted in the making of monthly payments for more than a continuous period of ninety (90) days, the Bank had issued a demand notice classifying the accounts of the petitioner No. 1 as a Non-Performing Asset (NPA). The petitioner further contends that despite repeated assurances, the Bank issued a notice dated 17.02.2022 under Section 13(4) of the SARFAESI Act, 2002 to take possession of the secured assets.



4. Thereafter, the Bank issued an E-Auction notice bearing no. OR/E-Auction/061/2022-23, dated 11.05.2022, which was physically served on the petitioner No.1 on 17.05.2022. Consequently, the petitioner No.1 issued a representation dated 27.05.2022 offering to pay an amount of INR 50,00,000/- (Rupees Fifty Lacs Only) in two installments on or before 30.06.2022, subject to the Bank not proceeding with the auction of the secured assets and that the remaining loan amount to be cleared over a period of time.

5. Apprehensive of a precipitative action when the Bank did not respond to the same, the petitioners made an application under Section 17 of the SARFAESI Act, 2002 before the DRT, Bengaluru in S.A. No. 277/2022, dated 08.06.2022, seeking quashing of the same. During the pendency of the said proceedings, the petitioners preferred an I.A. No 2280/2022 seeking disposal of the said proceedings as having become infructuous upon regularisation of the said loans, and thereby refund the entire court fees paid.

6. The DRT II, Bengaluru, vide order dated 08.08.2022 disposed of the main petition as having become infructuous in light of the settlement, evidenced by the no dues certificate issued by the Bank. However, it dismissed the interlocutory application insofar as the prayer for return of court fees was



sought, on the grounds that there is no provision under the SARFAESI Act, 2002 for refund of the court fees.

7. Aggrieved by the same, the applicant-borrower has preferred the instant petition.

Submissions

8. Sri Sameer Sharma, representing the petitioners, argued that the impugned order denying a refund of court fees is unreasonable and contradicts decisions of this Court and other High Courts. He stated that litigants have a right to a refund of court fees when no final order is passed, especially when cases are settled before judgment. Court fees, he contended, are not akin to a mandatory tax when no formal adjudication occurs.

8.1. He further pointed out that Courts have previously held that a lack of explicit statutory provision does not bar courts from refunding fees. He cited a ruling of the High Court of Telangana (in the case of M/s. Progressive Aquatech Enterprises v. The Debt Recovery Tribunal II) where it was held that the SARFAESI Act allows refunding fees under certain circumstances.



8.2. In conclusion, he emphasised that fiscal laws, including the Court Fees Act, should be interpreted to reduce the burden on litigants. Therefore, the refusal to refund fees in this case, despite a settlement, is against established legal principles and fairness.

In support, he places reliance upon the following :

(Nature of court fees - as to how the element of quid pro quo is inherent in its conception)

I. The Secretary, Government of Madras, Home Department and Anr. v. Zenith Lamp and Electrical Limited, (1973) 1 SCC 162

(The power of the Court to receive court fees under the General Clauses Act, 1897, equally contemplates the power to refund the same)

II. Syndicate Bank, Gandhinagar, Bangalore v. Cantreads Private Limited and Orss, (2000) 7 Kant LJ 636

(The unavailability of an express provision in a statute to refund the court fee is not a sufficient reason to deny such refund)

III. Sri R Prakash v. Sri D.M. Ravikumar and Anr., ILR 2010 KAR 2198

IV. E.K. Jayachandran and Anr. v. The Registrar, DRAT, and Anr., 2019 Mad LJ 641

V. Nagpur District General Cooperative Bank Ltd. and Anr. v. Union of India, W.P. No. 4369/2009.

(There exists sufficient power for a Court or a Tribunal under the DRT (Refund of Court Fee) Rules, 2013 to grant refund of court fees)

VI. M/s. Progressive Aquatech Enterprises v. Debt Recovery Tribunal and Ors., W.P. No. 30437/2021

(Fiscal statutes such as those relating to payment of court fees must be interpreted liberally so as to lessen and not add to the burden of the litigant, especially when the services of Court/Forum have not been availed of at all)



VII. Gayathri v. Indira Rajasekhar, ILR 2000 KAR 3001

VIII. Amit Jain v. Mahavir International Pvt. Ltd. & Ors., (FAO(COMM) 27/2023)

9. Ms. Nayana Tara B.G., representing respondent No. 1, argued that court fees payable for applications under Section 17 of the SARFAESI Act are governed by Rule 13 of the Security Interest (Enforcement) Rules, 2002. She highlighted that neither Section 17 nor Rule 13 provides for a refund of court fees in such cases.

9.1. She further stated that while Section 17(7) of the SARFAESI Act requires Debt Recovery Tribunals to follow procedures under the Recovery of Debts Due to Banks Act, 1993, the refund of court fees is not a procedural matter. Thus, the Debt Recovery Tribunals (Refund of Court Fee) Rules, 2013 cannot be extended to SARFAESI Act cases.

9.2. Additionally, she argued that Section 35 of the SARFAESI Act contains an overriding clause, meaning that rules under the 1993 Act cannot contradict or be applied to the SARFAESI Act. Even if a case is settled, the RDB Rules, 2013 only permit a partial refund of court fees at the rate of 50% or 25%, as prescribed under Rule 4 thereof. Therefore, without a specific provision under the SARFAESI Act, refunds cannot be



granted, and in any event, rules cannot override statutory provisions.

Issues

10. Heard the learned counsels for the parties and perused the material on record. The issues that arise for consideration are the following:

10.1 Whether the petitioners are entitled to the refund of the court fee, so deposited, when the securitisation application made under Section 17 of the SARFAESI Act, 2002, is disposed as infructuous on the basis of a settlement arrived at the between the applicant-petitioner and the Bank?

10.2. What order?

Observation

11. The impugned order dated 08.08.2022 passed by the DRT II, Bengaluru dismissed I.A. No. 2280/2022, which sought a refund of court fees following the disposal of the main Section 17 application (S.A. No. 277/2022) under the SARFAESI Act, 2002 as infructuous.



12. Section 17 of the SARFAESI Act requires court fees for applications challenging recovery measures on secured assets, with different fees prescribed for borrowers and non-borrowers. Rule 13 of the Security Interest (Enforcement) Rules, 2002, amended on 02.02.2007, sets a maximum court fee of INR 1,00,000/- for borrowers with debts of INR 10,00,000 /- or more.

13. While the SARFAESI Act and its Rules framed thereunder do not contain provisions for refunding court fees, Section 17 of the Act, 2002 requires that Debt Recovery Tribunals dispose of applications expeditiously and, where applicable, in line with the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Section 37 clarifies that the provisions of SARFAESI Act are supplementary to the 1993 Act.

14. A perusal of Rule 4 of Debts Recovery Tribunals (Refund of Court Fee) Rules, 2013 indicates that court fee shall be remitted at the rates hereunder:

Rule 4(a) - 50 per cent of the fee remitted in the case which are settled prior to commencement of the hearing before the Tribunal;



Rule 4(b) - 25 per cent of the fee remitted in the cases which are settled at any stage of the proceedings before the passing of the final order by the Presiding Officer.

15. It is now pertinent that we advert to the relevant decisions pronounced by the Hon'ble Supreme Court and various High Courts on the point of refund of court fee upon settlement under the SARFAESI Act.

16. In **The Secretary, Government of Madras, Home Department and Anr v. Zenith Lamp and Electrical Limited (1973 1 SCC 162)**, the Hon'ble Supreme Court opined that although the court fees deposited at the time of the filing of the case were factored on the basis of costs involved in administration of civil justice, they were not levied as taxes. It was concluded therein that Legislature is not competent to tax litigation for the purpose of increasing general public revenue, to be disbursed in the satisfaction of various welfare schemes, and that any levy of court fee has to have a broad reasonable co-relationship with the service of administration of civil justice, so rendered by the Government, which is a special benefit conferred upon all litigants, in a society governed by the rule of law.



17. In **Syndicate Bank, Gandhinagar, Bangalore v. Cantreads Private Limited, Mangalore and Ors., 2000 SCC OnLine Kar 510**, a civil revision petition was preferred against the rejecting of an application made under Section 66 of the Karnataka Court Fees and Suit Valuation Act, 1958 seeking a refund of half of the remitted fee, on the grounds that a civil court had no jurisdiction to order a refund, when recovery proceedings under the RDDBFI Act, 1993 were transferred from the Civil Court to the Debt Recovery Tribunal and the same was disposed of in light of an out of court settlement. The petitioner therein was compelled to approach the Civil Court after the Tribunal had declined to pass an order for refund citing lack of authority or jurisdiction.

A coordinate Bench of this Court observed therein that where an enactment (such as that of RDDBFI Act, 1993 until the framing of the Debts Recovery Tribunals (Refund of Court Fee) Rules, 2013) did not contain any provision for return of excess court fee paid by mistake or inadvertence, and even the Karnataka Court Fees and Suit Valuation Act, 1958 did not contain any provision to meet such exigency, the General Clauses Act, 1897, contemplates equally the power to receive and the power to refund court fee, lest there arise a fallacy that the court fee, so deposited is retained despite not having had to render any service of adjudication. The Learned Judge also observed where an application was transferred to the



Tribunal and was called upon to act against the payment of court fee, the excess fee paid by any litigant must be directed to be refunded. Finally this Court held that Section 66 Karnataka Court Fees Act of 1958 - 'refund on settlement before hearing' was directly applicable to the facts therein, and ordered in the interest of equity, a refund of court fee.

18. In **Gayathri v. Indira Rajashekhar**, ILR 2000 KAR 3001, where a regular first appeal before this Court was withdrawn in light of a settlement arrived at between the appellant and the respondent - decree holder before the Executing Court, the Division Bench of this Court opined that disposal via settlement between the parties before the commencement of hearing of the appeal under Section 66(c) of the Karnataka Court Fees and Suits Valuation Act, 1958 means any hearing conducted in terms of Order 41 and Rules 16 and 17 of Civil Procedure Code, 1908 i.e., hearing of arguments in support of the appeal, excluding the preliminary stages through which the appeal may have passed before coming up for such hearing. Thus, where a settlement was arrived at before such hearing, this Court has held that appellants are entitled to a refund of 50 per cent of the court fees in accordance with the provisions of the Act, 1958.



19. In **Sri R. Prakash v. Sri D.M. Ravikumar and Anr**, **ILR 2010 KAR 2198**, where a suit for recovery of money was withdrawn as settled out of Court even before the filing of the written statement by the defendant, a coordinate bench of this Court placed reliance upon the decision of the Hon'ble Supreme Court in the case of Salem Advocate Bar Assn II, (2005) 6 SCC 344 and opined that merely because the State had not amended the KSF & SV Act, it was not a good ground to refuse a full refund of the court fee so deposited.

20. In the case of **E.K. Jayachandran and Anr. v. Registrar, Debt Recovery Appellate Tribunal and Anr.**, **2019 SCC OnLine Mad 14548**, a prayer for refund of court fee in light of a settlement effected before the Lok Adalat was rejected by the DRAT - Chennai on grounds that the DRAT has no powers/provision for such refund under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993.

The Single Bench of the High Court of Madras placing reliance on its earlier decision of the Division Bench in the case of *Parvathi v. Punjab National Bank, rep by its Branch Manager, K.K. Nagar Branch, Chennai* (2006 1 MLJ 173) where the provisions of Legal Authorities Act, 1997 were construed to be in addition to the Tamil Nadu and Court Fees and Suit Valuation Act or the Madras High Court Fees Rules, 1956, held that that in view of the non-availability of a



provision enabling refund of court fee at the appellate stage under the Act of 1993, recourse may be had to Section 21(1) of the LA Act, 1997 - which granted refund of court fee in accordance with the provisions of Court Fees Act, 1870, by virtue of the non-obstante clause contained in Section 25 of the LA Act of 1997.

It further clarified that mere “non-availability of explicit provision in Section 20 of DRT Act cannot take away the party’s right” to refund of court fee since Section 21(1) of LA Act of 1997 granted an inbuilt right of refund of court fee in case the dispute was decided or settled in the Lok Adalat in pursuance of a reference under Section 20(1) of LA Act of 1997.

In conclusion, the Ld. Single Bench of the High Court of Madras held that since the appellants therein had paid the court fee to the DRAT, “the refund has to be made only by the DRAT,” and remitted the matter back to the DRAT directing refund of the same.

21. In the case of **Nagpur District Central Cooperative Bank Ltd. and Anr v. Union of India and Anr., W.P. No. 4369/2009 : D.D. 21.02.2020** (High Court of Bombay, Nagpur Bench), where the original application for recovery of debts so preferred by the co-operative society was returned by the DRT, Nagpur to be presented before the competent forum, but



declined to refund the court fee, the High Court of Bombay opined that in the absence of any specific legible provision in Debts Recovery Tribunals (Refund of Court Fee) Rules, 2013 in respect of refund of court fees on the return of proceeding, the general provisions of liability and precedents mandate a refund of court fee upon return of plaint/proceeding for want of jurisdiction. In adherence to the decision of the Hon'ble Apex Court in *Allahabad Bank, Calcutta v. Radha Krishna Maity and Ors.*, AIR 1999 SC 3426, the Ld. Single Bench held that where the lis has not been decided on merit by the Tribunal, the order of declining a refund of the court fees is not legally sustainable.

22. In **M./s Progressive Aquatech Enterprises v. Debt Recovery Tribunal and Ors.**, in **W.P. No. 30437/2021 : DD 23.12.2021**, where there was no settlement but the borrower's Securitisation Application challenging an auction notice had been rendered infructuous as the auction itself had not materialised, and the borrower had filed an application under Rule 4 of the DRT (Refund of the Court Fee) Rules, 2013, the High Court of Telangana had observed, "though there is no specific provision in the SARFAESI Act for refund of the court fee, nonetheless from a joint reading of Section 17(7) and section 37 of the SARFAESI Act, a view can be taken that relevant provisions of the 1993 Act would be applicable to a



proceeding before the Tribunal under the SARFAESI Act vis-a-vis refund of court fee”.

It further observed that where the borrower did not pursue the application and there was no proceeding of the Tribunal pending on the said application, it would not be ‘just and proper’ to withhold the entire amount of the court fee so deposited by the applicant.

23. In **Amit Jain v. Mahavir International Pvt. Ltd., FAO(COMM) 27/2023; 2023:DHC:3090-DB**, where the Commercial Court below had framed a clarificatory question as to whether the dispute between the parties could be termed as a commercial dispute within the definitional Section 2(c) of the Commercial Courts Act, 2015, and the appellant-plaintiff thereafter, placing reliance upon decisions dealing with the return of plaint under Order 7 and Rule 10 of the Civil Procedure Code, 1908 had made an application under Section 151 of the Code seeking conditional withdrawal of the suit with liberty to file fresh suit before an appropriate forum, on the grounds that the Commercial Court lacked jurisdiction over the subject-matter of the lis, the Court below allowed the same by treating it as an application made under Order 23 and Rule 3(1) of Civil Procedure Code, 1908, but refused the return of court fees, the plaintiff had preferred an appeal challenging such refusal.



24. The Division Bench of the High Court of Delhi opined that it was trite law that fiscal statutes such as Court Fees Act must be construed liberally in favour of lessening the burden on litigants, and that there having been no formal adjudication of the dispute in light of the jurisdictional infirmity being pointed out at the initial stage itself, refusal to return/refund of court fee is not sustainable in law.

25. Therefore, when there is no formal adjudication of a dispute and more so, when a suit or as in this case, securitisation application made under Section 17 of the SARFAESI Act, 2002 challenging the recovery proceedings initiated by the Bank, has been disposed of as infructuous in light of the settlement arrived at between the applicant-borrower and the Bank, it is an inherent right of the applicant to receive a refund of the court fees, so deposited at the time of the filing of such application. Mere unavailability of an express provision for return/refund of court fees cannot deprive a litigant of the inherently equitable right of a refund of court fee where no order is made on the merits of the arguments canvassed and evidence adduced. Therefore, in concurrence with the ratio enunciated in 'Progressive Aquatech' by the High Court of Telangana, I am of the view that by virtue of Section 37 of the SARFAESI Act, Debts Recovery Tribunals (Refund of Court Fee) Rules, 2013 are



applicable to a proceeding before the Tribunal under the SARFAESI Act vis-a-vis refund of court fee.

26. In view of the above, the impugned order passed by the Debt Recovery Tribunal II, Bengaluru, refusing to exercise the statutory authority conferred upon it, is unsustainable in law.

27. Accordingly, I order the following:

ORDER

1. This Writ Petition is allowed.
2. The impugned order dated 08.08.2022 passed by the Debt Recovery Tribunal II, Bengaluru, dismissing the I.A. No. 2280/2022, in S.A. No. 277/2022 is set aside.
3. The matter is remanded back to the Debt Recovery Tribunal II, Bengaluru to take necessary steps for refund of the court fee in accordance with law.
4. The said exercise shall be completed within a period of four weeks from the date of receipt of the copy of this order.

Sd/-
(HEMANT CHANDANGOUDAR)
JUDGE