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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 610/2019 & I.A. 15338/2019 (for exemption)
A-ONE REALTORS PVT.LTD. Plaintiff
Through: Ms. Mahima Ahuja, Advocate.

versus

ENERGY EFFICIENCY SERVICES LTD. Defendant
Through: Mr. Samdarshi Sanjay, Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **23.05.2022**

CS(COMM) 610/2019

1. The application filed on behalf of the defendant under Section 8 of the Arbitration and Conciliation Act, 1996, being I.A. No.2863/2020, was allowed by this Court on 31st March, 2022 and a sole arbitrator was appointed.
2. The only issue to be adjudicated in the suit was whether the plaintiff is entitled to refund of court fees in terms of Section 16 of the Court Fees Act, 1870 read with Section 89 of the Code of Civil Procedure, 1908 (CPC).
3. Counsel for the plaintiff submits that in terms of Section 89, the plaintiff is entitled to refund of court fees in view of the fact that the matter has been referred to arbitration. In this regard, reliance has been placed on the order dated 15th January, 2019 in *RV Solutions Pvt. Ltd. v. Ajay Kumar Dixit*, 2019 SCC OnLine Del 6531.
4. On the other hand, the counsel for the defendant opposes the said request.
5. At this stage, reference may be made to relevant provisions for the

refund of court fees. Section 16 of the Court Fees Act, 1870 is set out below:

“16. Refund of fee.—Where the Court refers the parties to the suit to any one 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 the fee paid in respect of such plaint.”

6. The relevant portion of Section 89 of the CPC has been set out below:

“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) Were 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

...”

7. Sub-section (1) of Section 89 provides that if it appears to the Court that settlement may be arrived between the parties, the court may refer the matter for arbitration or conciliation or mediation or to the Lok Adalat. The key word here is “settlement”. A reading of the aforesaid provisions leaves no doubt in my mind that the said provisions for refund of court fees are

only applicable when the matter is referred for arbitration in the context of “settlement”.

8. In the present case, an application under Section 8 of the Arbitration and Conciliation Act filed on behalf of the defendant has been allowed and the matter has been referred for adjudication to a sole arbitrator. The matter was not referred in terms of Section 89 of the CPC for settlement. Therefore, the plaintiff is not entitled to refund of court fees in terms of Section 16 of the Court Fees Act, 1870.

9. It is settled law that a litigant is not entitled to refund of court fees in case of rejection of plaint under Order VII Rule 11 of the CPC where the plaint does not disclose a cause of action. On the same analogy, the plaintiff cannot be entitled for refund of court fees in the event of an application under Section 8 of the Arbitration and Conciliation Act being allowed and the parties being referred for arbitration. The rationale being that the plaintiff has invoked a wrong remedy of filing the suit when it should have invoked the arbitration proceedings.

10. The reliance placed by the counsel for the plaintiff on the judgment placed in *RV Solutions* (supra) is misplaced. There is only a direction given in the said case that court fees may be refunded as the matter has been referred to arbitration. The same would not constitute a *dicta* to hold that any of the cases where Section 8(1) of the application is allowed and the matter is referred for arbitration, the plaintiff would be entitled to refund of court fees.

AMIT BANSAL, J.

MAY 23, 2022/at