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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **C.R.P. 193/2018**

DAYA MEENA ..... Petitioner  
Through: Mr. Aditya Agarwal, Advocate.

versus

SATISH & ORS ..... Respondent  
Through:

**CORAM:**  
**HON'BLE MS. JUSTICE JYOTI SINGH**

**ORDER**  
% **26.04.2019**

The present writ petition has been filed seeking a direction that the court fees affixed in Civil Suit No. 139/2018 amounting to Rs. 28,100/- be returned or adjusted in the other civil suit filed by the same petitioner in Civil Suit No. 621/2018 pending before the Additional District Judge, Delhi.

Learned counsel for the petitioner submits that a suit for cancellation of an instrument was filed by the petitioner on 06.03.2014 under Section 31 of the Specific Relief Act, 1963. The learned trial court issued notice to the respondents. The petitioner then filed an application under Order VI Rule 17 CPC along with an amended plaint for Cancellation, Declaration, Eviction and Possession under Section 31 and 34 of the Specific Relief Act, 1963, and the respondent moved an application under Order VII Rule 11 CPC read with Section 151 CPC.

Vide order dated 18.04.2018, the trial court adjudicated both the applications and allowed the application for amendment of the petition but dismissed the application of the respondent under Order VII Rule 11 CPC.

The suit after amendment had been valued at Rs. 26,33,400/-, and therefore, by the same order, the plaint was returned to be filed in the appropriate Court having pecuniary jurisdiction.

The claim of the petitioner is that in compliance of the said order, the petitioner then filed a Civil Suit No. 139/2018 and vide order dated 15.05.2018, the trial court observed that the petitioner instead of filing the returned plaint, had filed the said suit which was a fresh suit and which was not permissible under law.

The petitioner thereafter moved an application under Section 151 CPC for adjustment/return of the court fees filed in suit no. 139/2018 to be adjusted/ refunded for filing the returned plaint. However, the said application was dismissed by the impugned order dated 03.07.2018.

Learned counsel for the petitioner submits that in terms of the liberty granted, the petitioner has, in fact, filed the returned plaint without the court fees before the learned District and Sessions Judge, which was listed before the Court on 11.07.2018. He submits that on 31.07.2018, the Court has kept the matter for consideration as the court fees has not been affixed along with the plaint.

The contention of the learned counsel for the petitioner is that insofar as the petitioner is concerned, he has already paid the court fees of Rs. 28,100/- in the fresh suit which had to be withdrawn as it was wrongly filed but the petitioner should not be burdened with the payment of court fees twice over. He submits that although there is no provision under the Courts Fees Act to return/adjust the court fees on account of resorting to a wrong remedy, but in the interest of justice, court fees should be refunded to him or be adjusted in the plaint, which has been filed by him on return.

In support of his contention, learned counsel has placed reliance on the judgment of the Supreme Court in the case titled as *ONGC Limited Vs. M/s Modern Construction and Co. (2014) 1 SCC 648* and the judgment of the High Court of Kerala in the case titled as *Valia Veettil Komappan Vs. Karthiyayani and Ors. 1968 SCC Online Ker 73*.

It is submitted by the learned counsel that in the case of *Valia Veettil Komappan (supra)*, the question involved was whether the court fee paid on a plaint presented in the wrong court could be given credit when the suit is represented in a proper court. The Kerala High Court had noted that while there is no provision in the Court Fees Act for refunding the court fee paid on a plaint presented in a wrong court, as the same is permissible only in cases of compromise or remand of a suit for fresh disposal, however, in the ends of justice, the only order that the court can pass is to give credit to the fee paid in the first suit which was wrongly filed as a litigant should not be made to pay twice in the same matter.

Learned counsel then submits that the order dated 03.07.2018, whereby his application for return/adjustment of the court fees has been dismissed as not maintainable, is erroneous. He prays that the courts fees paid by him should therefore be adjusted in the plaint that he has now filed after return.

Issue notice to the respondents by all modes, returnable on 12<sup>th</sup> July, 2019.

**JYOTI SINGH, J**

**APRIL 26, 2019**  
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