2026:MHC:4385

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THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 23.09.2026	Order pronounced on : 30.10.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.Nos.4064 & 4106 of 2026

CRP.No.4064 of 2026:

Susheela Kawar ..Petitioner

Vs.

M.Pettu Lakshmi .. Respondent

Prayer : Civil Revision Petition filed under Section 115 of CPC, to set aside the judgment and decree dated 05.06.2023 in O.S.No.3 of 2019 on the file of the IV Additional District and Sessions Judge, Thiruvallur at Ponneri.

CRP.No.4106 of 2026:

S.Ranjani (Died)
1.S.Jaya Prakash
2.S.Siva Prakash
3.S.Ravi Prakash
4.S.Sukumar
5.R.Thulasi
6.S.Rajasekaran
7.S.Venkatesh Babu
8.S.Ramachandran ..Petitioners

Vs.

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1.Gopi @ Gopala Krishnan
2.Hacienda Realtor Private Limited,
Represented by its Managing Director,
Dr.G.Madhusudhana Reddy,
having office at No.766, Anna Salai,
Nandanam, Chennai – 600 035. ..
Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the Trial Court to order the refund of the entire Court fee of Rs.2,54,326/- paid in the plaint in O.S.No.133 of 2007 on the file of the Sessions Judge, Mahila Court, Chengalpattu.

For Petitioners : Ms.M.Meenarukmani
in CRP.No.4064 of 2026
: Mr.K.Sukumaran in CRP.No.4106 of 2026

: Mr.Suresh Sampath, Amicus Curiae

COMMON ORDER

A very interesting point falls for consideration in these two revision petitions. It is regarding the entitlement of a plaintiff to refund of Court fees paid on the plaint, after trial has commenced.

2.I have heard the learned counsel for the revision petitioners, Ms.M.Meenarukmani in CRP No.4064 of 2026 and Mr. K.Sukumaran in CRP No.4106 of 2026.

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3.The submissions of the learned counsel for the petitioners are briefly summarized hereunder:

Relying on the dictum of the Hon'ble Supreme Court in *High Court of Judicature at Madras vs. M.C. Subramaniam and others*, reported in *(2021) 3 SCC 560*, wherein the Hon'ble Supreme Court upheld the decision of this Court, holding that even in cases where parties negotiated an out of court settlement, the plaintiff would be entitled to refund of 100% court fees paid on the plaint, learned counsel for the petitioners, Mr. K.Sukumaran and Ms. M.Meenarukmani, took me through Section 69-A of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 *(hereinafter referred to as the "Court Fees Act" for the sake of brevity).* Learned Counsel would also state that their respective cases clearly fell within the domain of the ratio laid down by the Hon'ble Supreme Court in the above referred decision and therefore, the Trial Court, in the case of CRP No. 4064 of 2026, ought not to have restricted the refund to 50% of the total court fee, leave alone erroneously further deducting 5%, which, according to the counsel for the revision petitioner, Ms. M.Meenarukmani, is *ex facie* illegal, arbitrary and against the ratio laid down by the Hon'ble Supreme Court. The counsel further contended that Courts have consistently held that private settlements should not be given step motherly

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treatment and the benefits under Section 69-A should be extended to such private settlements.

4. In so far as the other revision, learned counsel for the petitioner, Mr. K.Sukumaran contended that the Trial Court clearly erred in disentitling the plaintiff to refund of court fee paid on the plaint, despite the parties recording a joint compromise memo dated 09.10.2025 and as a consequence, dismissing the suit itself.

5.The learned counsel for the petitioner, Ms. M.Meenarukmani relied on the following decisions:

i. *Bosco Prabu vs. P.S.Mithran and Others [C.S. No. 724 of 2019 and A.No.276 of 2020 dated 30.06.2021]*
ii. *Proud Securities and Credits Pvt. Ltd vs. Urrshila Kerkar,* reported in *2023 SCC OnLine Del 2270*
iii. *M.Sebastian Micle vs. V.Murugan and Another [A.S. (MD) No. 28 of 2014 dated 27.07.2023]*
iv. *Indian Overseas Bank vs. Suryadev Alloys and Power Pvt Ltd. [O.S.A. Nos. 214 & 264 of 2020 dated 25.06.2024]*
v. *J.Indirani vs. G.Subba Reddy [O.S.A No. 171 of 2021 dated 16.07.2024]*
vi. *Thangapandian and others vs. Jagadeesan,* reported in *2024 SCC OnLine Mad 12735*
vii. *Tirupati Enterprises vs. APM Terminals India Pvt Ltd. [Appeal (CAD) No. 15 of 2023 dated 20.08.2025]*

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viii. *The Board of Trustees vs. M/s. Priya Ltd and others [Appeal (CAD) No. 40 of 2024 dated 24.02.2026]*

ix. *R.Annakamu vs. K.Ramamurthy and Others [A.S. (MD) No. 114 of 2023 dated 17.03.2026]*

x. *Sainik Industries Pvt Ltd vs. Indian Sugar Manufacturing Company Ltd.,* reported in *2026 SCC OnLine Del 4435*

6.The learned counsel for the petitioner, Mr. K.Sukumaran relied on the following decisions:

i. *J. Murugavel vs. Pichai [Arb Appeal (MD) No. 63 of 2026 dated 06.08.2026]*

ii. *V.Lakshmanan vs. Arun [C.R.P. (MD) No. 1316 of 2019 dated 14.08.2019]*

iii. *Venkatachalam and others vs. Sengoda Gounder and others,* reported in *2014 (6) CTC 216*

iv. *N.J. Senthil Kumar vs. N.B. Subash [Second Appeal No. 1374 of 2013 dated 26.02.2015]*

v. *Vidyabai and others vs. Padmalatha and Another,* reported in *(2009) 2 SCC 409*

7. After hearing the counsel for the petitioners, I entertained my own doubts with regard to the legal entitlement of the plaintiff in the respective suits for refund of court fees, be it 100% or 50%, in view of the mandate of Section 69 of the Court Fees Act. Though the court fees that is sought to be refunded in these two revision petitions may not be really significant or actually causing a great strain on the State Exchequer, in view of this decision being relied on and followed subsequently by

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Trial Courts and applying the decision of Hon'ble Supreme Court in *M.C.Subramanaiam's* case (referred herein supra), without reference to Section 69 of the Court Fees Act and also in view of the fact that there may be cases where refund sought is not only a huge amount, but also consequent to compromise being recorded after trial has commenced, which aspect has not been dealt with in *M.C. Subramaniam's* case (referred herein supra), I deemed it fit and necessary to hear the views of the learned Advocate General Mr. Vijay Narayan, assisted by Mrs. S.Yogalaskhmi, Assistant Government Pleader. I also appointed Mr. S.Suresh Sampath, Advocate, as *amicus* to assist me in these matters.

8. The learned Advocate General, would contend that though the decision of this court in *M.C.Subramaniam's* case (referred herein supra) was upheld by the Hon'ble Supreme Court, the said decision did not factor the earlier decision of the Hon'ble Supreme Court in *Afcons Infrastructure Ltd. and another vs. Cherian Varkey Construction Private Ltd,* reported in *(2010) 8 SCC 24*. Taking me through the said decision, the learned Advocate General contended that neither this court nor the Hon'ble Supreme Court, has taken note of *Afcons* (referred herein supra), which clearly and in great detail discusses the stage at which parties can be referred to an out of court settlement, invoking Section 89 of the Code of Civil

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Procedure and as a result of which, the plaintiff becomes entitled to a refund of the entire court fees paid on the plaint.

9. In fact, Mr. S.Suresh Sampath, learned *amicus* appointed by me, toed the same line of arguments that was advanced by the Learned Advocate General and would state that though several judgments were cited on the side of the learned counsel for the petitioners, all the judgments were only relying on the decision in *M.C.Subramaniam's* case (referred herein supra) and following the same, disposed of the respective matters, entitling the plaintiff to refund of full Court fees. The learned *amicus* also relied on the following decisions:

i. *A.Gnanaselvan vs. B.A.Xavier (Died) and others,* reported in *2014-5-L.W. 577*
ii. *Sundaram Finance Services Ltd. vs. Shoba Garments (P) Ltd,* reported in *2005 (5) CTC 526.*
iii. *A. Padmanabha Naidu and another vs. Naraindas Vishandas by partners Naraindas and others,* reported in *1976 LW 52*
iv. *The Official Receiver, Coimbatore vs. S.A. Ramaswami Gounder and others,* reported in *93 L.W. 468*
v. *Sanjeevkumar Harakchand Kankariya vs. Union of India and others,* reported in *2024 SCC OnLine SC 3811*
vi. *K.Swaminathan vs. M.Visalakshi and others,* in CRP (PD) No. 2309 of 2009
vii. *Gaddam Jithendra Kumar vs. Kovvuri Srinivasa Reddy and others,* reported in *2025 SCC OnLine AP 1939*
viii. *Polyene General Industries Pvt Litd vs. Great Western Industries,* reported in *2019 SCC OnLine Mad 2694*

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ix. *Ranganathan vs. In the Court of District Judge*

x. *S.V.K.M. Ratnasamy Nadar and Brothers through its partners M.Manickavelu Nadar vs. K.Subbuswamy Iyer and another,* reported in *78 LW 752.*

10. It is his further and additional submission that the Hon'ble Supreme Court, only made a detailed analysis of the scope of Section 69-A of Court Fees Act in the context of Section 89 CPC and therefore, the said decision cannot be extended to cases which fall within a different category altogether namely, Section 69 of the Court Fees Act, which incidentally was not the subject matter in controversy or issue before the Hon'ble Supreme Court. He would further state that Section 69-A of the Court Fees Act was introduced by Act 44 of 2007, which was subsequently substituted by the Act 6 of 2017 with effect from 01.03.2017. In and by the very same amendment, by inserting Section 69-A in the Court Fees Act, the Legislature also substituted the expression "half amount" with "full amount". He would therefore state that in view of Section 69 of the Court Fees Act, a plaintiff is entitled to refund only when no evidence has been recorded in the matter in claim. Referring to the revisions on hand, he would state that, in both cases, trial had already commenced, at which stage, the parties reached a settlement out of court, and therefore, Section 69-A would not be the appropriate provision to be invoked and relied on, but both the revisions would have to be dealt with under Section 69

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of the Court Fees Act. He also elaborated on what is "before evidence recorded in the matter in claim" by relying on the decision of this Court in *S.V.K.M. Ratnasamy Nadar's* case (referred herein supra).

11. I had also requested all Members of the Bar to advance their arguments, to assist me in the matter. On considering the arguments of all the Advocates, starting from the learned Advocate General to the youngest member of the Bar who advanced submissions before me, the fine point of distinction between Section 69 and Section 69-A would ultimately give the answer to the question that arises in these two revision petitions. On facts, it is not in dispute that in both the cases, only after issues were framed and trial commenced, the parties requested the Court to record a compromise. In one of the suits, the Trial Court did not even entertain the relief for refund of court fees, whereas, in the other matter, the Trial Court thought it fit to grant refund of 50% of court fees paid on the plaint, with a further deduction of 5% towards the administration charges. Admittedly, the State is not on appeal, challenging the refund awarded. This also needs to be kept in mind in drawing final conclusions in these revision petitions.

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12. Section 69 of the Court Fess Act as it originally stood, right from the inception of the Court Fees enactment in 1955, entitled a party who has paid court fee, to refund of half of the fees paid in the suit, provided, the suit is dismissed as settled out of court, before any evidence has been recorded on the merits of the claim. It was much later, by Act 6 of 2017, that Section 69 was amended substituting "half amount" with "full amount", thereby entitling the party who paid court fee, be it the plaintiff or defendant, to refund of full court fees paid by such party, on a suit or a counter claim, being dismissed, as settled out of Court. In and by this amendment, in its wisdom, the Legislature did not deem it necessary to amend the remaining portions of Section 69, especially tinkering with "before any evidence has been recorded on the merits of the claim".

13. Curiously, in and by the very same Amendment Act 6 of 2017, the Legislature also chose to amend Section 69-A, by entitling the parties to the suit to refund of fees paid, upon the dispute being referred under Section 89 CPC, without awaiting a settlement of the dispute. Section 69-A was introduced by Act 44 of 2007, which entitled the parties to the suit to a certificate from the Court, authorising the parties to receive back the full amount of the court fees paid, in the event of the dispute referred by the Court, being settled. It is noteworthy to be

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aware and conscious of the fact that, both while introducing Section 69-A in the Court Fees Act, in and by Act 44 of 2007 and as well as while amending and substituting Section 69-A, as it presently stands under Act 6 of 2017, the Legislature did not deem it necessary to either omit or even amend Section 69 of the Court Fees Act.

14. As rightly contended by the learned Advocate General and the *amicus*, the entire scope of discussion before this Court and Hon'ble Supreme Court in *M.C.Subramaniam's* case (referred herein supra) was only revolving around the scope of Section 69-A of the Court Fees Act and whether dehors the mode of settlement contemplated under Section 89 CPC, when a settlement is reached, the parties are still entitled to claim refund of court fees, taking umbrage under Section 69-A. Neither this Court, nor the Hon'ble Supreme Court, while approving the decision in *M.C.Subramaniam's* case (referred herein supra) dealt with the ratio and binding precedent in *Afcons* case (referred herein supra).

15. Section 89 has been consciously brought under Part V of CPC, under the heading "Special Proceedings" and enables a Court, when it appears to it that an element of settlement exists and may be acceptable to the parties, then, the Court is

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required to formulate the terms of settlement and after furnishing the same for either parties for their observations, discretion is vested with the Court to reformulate the terms of a possible settlement and refer the same for

i. Arbitration;

ii. Conciliation;

iii. Judicial Settlement, including Lok Adalat; and

iv. Mediation.

16.For better appreciation, Section 89 is reproduced in its entirety

> ***"89. Settlement of disputes outside the Court. -*** *Where it appears to the Court that the dispute between the parties may be settled and there exists elements of settlement which may be acceptable to the parties, the Court may –*
> *(a) refer the dispute to arbitration, and thereafter, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration were referred for settlement under the provisions of that Act; or*
> *(b) refer the parties to mediation, to the court-annexed mediation centre or any other mediation service provider or any mediator, as per the option of the parties, and thereafter, the provisions of the Mediation Act, 2023 shall apply as if the proceedings for mediation were referred for settlement under the provisions of that Act; or*
> *(c) refer the dispute to Lok Adalat, in accordance with the provisions of sub-section (1) of section 20 of Legal Services Authorities Act, 1987 (39 of 1987) and thereafter, all other provisions of that Act shall apply in respect of the dispute;*
> *(d) effect compromise between the parties and shall follow such procedure as deemed fit for judicial settlement."*

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17. The question that arose before this Court in *M.C.Subramaniam's* case (referred herein supra) was whether, if a settlement is reached outside of the four modes contemplated under Section 89 CPC, the party would still be entitled to a refund. For example, as in both the present cases, admittedly, none of the modes contemplated under Section 89 were resorted to. However, the parties negotiated for a private settlement, which was required to be recorded before the Trial Court and the benefit available under Section 69-A of the Court Fees Act was claimed in both these cases. The Trial Court, as already referred hereinabove, at the risk of repetition, in one case, did not grant any refund, while in another case, granted refund of half court fees less 5%, invoking Section 69 of the Court Fees Act, without applying the benefit under Section 69-A of the Court Fees Act.

18. No doubt, this Court as well as the Hon'ble Supreme Court, while affirming the ratio laid down by this Court in *M.C.Subramaniam's* case (referred herein supra), held that even when the parties reach a private settlement and seek to record the same, they would still be entitled to refund of entire court fee paid by them, invoking Section 69-A of the Court Fees Act. However, neither this Court nor the Hon'ble Supreme Court, dealt with the stage at which such settlement was

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sought to be recorded. In this context, the ratio laid down by the Hon'ble Supreme Court earlier in *Afcons'* case (referred herein supra) assumes a lot of significance. The Hon'ble Supreme Court, at great length, discussed the scope of Section 89 CPC and also the stage at which Section 89 CPC can be exercised by the court. In my considered opinion, it is more relevant to understand the scope and object of Section 89 CPC and requirement to read it into Section 69-A of the Court Fees Act. I have already observed specifically that while introducing Section 69-A, as well as by amending it, by Act 44 of 2007 and also at the time of amending Section 69-A in and by Act of 6 of 2017, the Legislature did not tinker with Section 69 of the Court Fees Act, except for substituting the expression "half amount" with "full amount". In this backdrop, it is therefore clear that, the Court has to be very cautious in applying the correct provision of law, and whether the plaintiff is entitled, if at all, to any refund under Section 69 or 69-A of the Court Fees Act. As long as Section 69 remains in the statute book, the provision cannot be rendered otiose by applying the mandate of Section 69-A universally across the board, to all categories of cases.

19. In this context, it is to be kept in mind that parties are required to pay court fee for a reason. The court fees paid by the party, either on a plaint or counter

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claim is towards the State Exchequer, to facilitate meeting of all necessary and incidental expenses relating to provision of infrastructure for Courts, conduct of trials, payment of salaries and allowances, etc. Therefore, the Legislature was conscious of this fact, while clearly placing an embargo on refund of court fees in cases where evidence has been recorded on the merits of the claim. I have already discussed the facts on hand in these two revision petitions. In one case, trial has commenced with proof affidavit being filed on the plaintiff's side and in the other case, witnesses have been examined on both sides, besides also a court witness. Substantial judicial time and money has been consumed in the said process. This, in my considered view is why Section 69 still remains in the statute book, despite the introduction of Section 69-A and also subsequent amendment to the same by Act 6 of 2017. As held by the Hon'ble Supreme Court, no doubt, if there is any doubt with regard to interpretation of the provisions in the Court Fees Act, such interpretation would have to be in favour of the litigant. However, there is no doubt in my mind that a party is not entitled to any refund once evidence is recorded, if whatever little worth it may be.

20. Coming back to the decision of the Hon'ble Supreme Court in *Afcons* case (referred hereinabove), the Hon'ble Supreme Court, while interpreting Section

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89 CPC held that the Section should be given its plain and normal meaning, without adding or rejecting any words. Despite being conscious of the general rule, where words used in the statutory provision are vague and ambiguous, or where a plain and normal meaning would lead to confusion, absurdity, repugnancy with other provisions, in such cases the Court may, instead of adopting a plain and grammatical construction, may use the interpretative tools to set right the situation, by adding or omitting or substituting the works in the statute. The Hon'ble Supreme Court also held that Section 89 CPC should also be read with Rule 1-A of Order X, Code of Civil Procedure, which requires the Court to direct the parties to opt for any of the modes of alternative dispute resolution process, under Section 89 of the Code.

21. At paragraph 29, in the decision of *Afcons case* (referred herein supra), while answering the question "How to decide the appropriate ADR process under Section 89?" the Hon'ble Supreme Court held as follows:

"*The object of Section 89 of the Code is that settlement should be attempted by adopting an appropriate ADR process before the case proceeds to trial.*"

In the summation of the ratio in *Afcons* (referred herein supra), the Hon'ble Supreme Court held that, having regard to provisions of Section 89 and as well as

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Rule 1-A of Order X, CPC, that the stage at which the Court should explore whether the matter should be referred to ADR processes, is after the pleadings are complete, and before framing the issues, when the matter is taken for preliminary hearing for examination of parties under Order X of CPC. The Hon'ble Supreme Court, however, also made it clear that in the event of the Court missing such opportunity to consider and refer the matter to ADR process, before framing issues, still nothing prevents the Court from resorting to Section 89 CPC, even after framing issues. Very importantly, Hon'ble Supreme Court, in no uncertain terms held that once evidence is commenced, the Court will be reluctant to refer the matter to the ADR processes, lest it becomes a tool for protracting the trial. The Hon'ble Supreme Court was therefore very conscious of the availability of Section 69 of the Court Fees Act, though Section 69 of the Court Fees Act has not been specifically referred to in the said decision. Unfortunately, *Afcons* case (referred herein supra) was not brought to the notice of the Hon'ble Supreme Court, while deciding *M.C.Subramaniam's* case (referred herein supra). At the risk of repetition, the Hon'ble Supreme Court merely dealt with the entitlement of a party to a full court fee, despite the mode of settlement not being contemplated under Section 89 CPC.

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22. It is settled law that when there is an earlier ratio of a Coordinate Bench, it is binding on a later Bench of equal strength and if at all the later Bench is not agreeable to the ratio laid down in the earlier decision, it is only open to the later Coordinate Bench to refer the matter to a larger Bench and not take a contrary view. In such view of the matter, I am emboldened to follow and rely upon the ratio laid down in *Afcons* case (referred herein supra) instead of following the ratio laid down in *M.C.Subramaniam's* case (referred herein supra) for more than one reason,

i. In *M.C.Subramaniam's* case (referred herein supra), as already as discussed at length, Section 69 of the Court Fees Act and its scope has not been discussed at all.

ii. Despite *Afcons* case (referred herein supra) being a binding precedent, the Hon'ble Supreme Court while deciding *M.C.Subramaniam's* case (referred herein supra), on facts, did not deem it necessary to discuss about the stage of reference under Section 89 CPC.

For the above strong reasons, I am of the considered opinion that the Trial Court has not committed any error in CRP No. 4106 of 2026, while disallowing the claim for refund of court fees in entirety. However, in CRP No. 4064 of 2026,

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though the Trial Court has awarded refund of 50% less 5%, falling back on the pre-amendment position to Act 6 of 2017, since even in the said case, evidence has been recorded, the plaintiff, was actually not entitled to any refund.

23. Even coming to the scope of Section 69 of the Court Fees Act, in so far as CRP No. 4064 of 2026 is concerned, it was a suit for specific performance and the parties had entered into a settlement, which was placed before the Trial Court for being recorded. Decree in the suit itself reads as follows:

"1. That the suit be and the same is Withdrawn due to out of Court Settlement.

2. Half of the Court fee is refunded to the plaintiff after deduction of 5% as per rules.

3. That there is no order as to cost."

24.The memorandum of compromise presented before the Trial Court in the said suit records an out of court settlement reached between the parties and the plaintiff agreeing to withdraw the suit and return all original documents to the defendant. Though the compromise includes a clause for refund of court fees to the plaintiff in view of the withdrawal of the suit through out of court settlement,

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admittedly, on facts, issues had been framed and trial had commenced by filing of proof affidavit by Plaintiff Witness No.1 and it was at that stage, a decree came to be passed. Therefore, even applying Section 69 of the Court Fees Act, the plaintiff was not entitled for any refund at all in the first place. However, since the order for refund is not under challenge by the State, I do not propose to interfere with the refund of 50% awarded, less 5% towards administrative charges.

25. In so far as the other revision also, issues had been framed and not only did trial commence, it was in an advanced stage when the out of court settlement was recorded. In fact, the judgment passed in the said suit, clearly records the fact that, on the side of the plaintiffs, the 4th plaintiff, was examined as PW-1 and Exhibits A1-A10 had been marked. On the side of the defendants, 2 witnesses namely, DW-1 and DW-2 were examined and Exhibits B1 – B11 were marked, besides, the Court Witness, CW-1, through whom 3 documents were marked. Therefore, the Trial Court was absolutely right in rejecting the claim for refund of court fees, even though it was a part of the compromise memo, rightly invoking Section 69 of the Court Fees Act.

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26. In so far as the decisions that have been relied on the by the learned counsel for the petitioners, Ms. M.Meenarukmani, in CRP No. 4064 of 2026, as rightly contended by the learned *amicus*, Mr. S.Suresh Sampath, most of the decisions on which strong reliance has been placed are only a fallout of the decision of the Hon'ble Supreme Court in *M.C.Subramaniam's* case (referred herein supra). I have already held that in *M.C.Subramaniam's* case (referred herein supra), the Court was not dealing with the stage of reference under Section 89 CPC, as well as the scope of Section 69-A of the Court Fees Act read with Section 89 CPC, leave alone any discussion about Section 69 of the Court Fees Act. In the case of *J. Murugavel's* case (referred herein supra), the subject matter of dispute was whether Section 70 of the Court Fees Act, could be applied to the facts on hand and incidentally this court referred to the decision of the Hon'ble Supreme Court in *M.C.Subramaniam's* case (referred herein supra). Similarly, in *V.Lakshmanan's* case (referred herein supra) also, relying on the decision of this Court in *Venkatachalam's* case (referred herein supra), this court directed refund of court fee. However, there is no reference as to the stage of the proceedings as which point of time, the settlement was reached, leave alone any reference to Section 69 of Court Fees Act. In the case of *N.J. Senthil Kumar's* case (referred herein supra), again this Court only relied on the ratio laid down in

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Venkatachalam's case (referred herein supra) to direct the refund of entire court fee paid in the second appeal.

27. The Hon'ble Supreme Court in *Vidya Bhai's* case (referred herein above), after referring to *Afcons* case (referred herein above), was dealing with the permissibility of amendment to a plaint after trial had commenced. This Court relied on the Full Bench decision in *Union of India and Others vs. Major General Madan Lal Yadav (Retd.),* reported in *(1996) 4 SCC 127,* which held that *"trial means an act of proving or judicial examination or determination of the issues including its own jurisdiction or authority in accordance with law or adjudging guilt or innocence of the accused including all steps necessary thereto. The trial commences with the performance of the first act or steps necessary or essential to proceed with the trial.*" Therefore, at best, I can only interpret the said decision, though relating to amendment of pleadings, to actually go against the very case put forth by the revision petitioner. In fact, this Court considered Order XVIII Rule 4(1) CPC and also the ratio laid down by the Supreme Court in *Ameer Trading Corporation Ltd vs. Shapoorji Data Processing Ltd*, reported in *(2004) 1 SCC 702*, discussed the scope of Order XVIII Rule 4(1) CPC and held that examination of a witness would include evidence in chief, cross examination and re-examination

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and also took note of the fact that examination in chief of a witness is, in every case, shall be on affidavit after the amended provisions came into effect. Therefore, I do not see how this decision will apply to the facts of the present case, much less, to the benefit of the revision petitioners.

28. The Hon'ble Supreme Court in *State of Bihar vs. Kalika Kuer alias Kalika Singh and others,* reported in *(2003) 5 SCC 448*, held that a decision of the Coordinate Bench, is binding on a later Coordinate Bench and the later Coordinate Bench should either follow it or refer the matter to a larger Bench. I have also applied this ratio in the course of my discussion herein above, to the facts of the present case. In *Union Territory of Ladkh and others vs. Jammu and Kashmir National Conference and another,* reported in *2023 SCC OnLine SC 1140,* the Hon'ble Supreme Court, again reiterated the very same principle and applied the ratio laid down in *National Insurance Company Limited vs. Pranay Sethi and others,* reported in *(2017) 16 SCC 680,* and that it was not proper for the High Courts, refusing deference to judgments of the Hon'ble Supreme Court, on the score that a later Coordinate Bench doubted its correctness, held that the High Courts will have to proceed to decide matters on the basis of the law as it stands and it is not open to a High Court to refuse to follow a judgment even it is doubted

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by a later coordinate bench. Hitting the nail on its head, the Hon'ble Supreme Court held that when the High Court is faced with conflicting judgments by benches of equal strength of the Apex Court, it is the earlier one which is to be followed by the High Courts.

29. Coming to the decisions relied on by the *amicus*, in *Official Receiver's* case (referred herein supra), the Full Bench of this Court held that refund of court fees is a judicial power and cannot be invoked to pass administrative and ministerial orders and at best, Section 151 of the Code of Civil Procedure can be invoked when excess court fee has been paid. In *Swaminathans'* case (referred herein above), this Court found that suit was filed in year 2008, prior to Act 6 of 2017 coming into force and therefore, held that the plaintiff was entitled to refund of half court fee and was not entitled to full court fee taking advantage of the substituted Section 69 of the Court Fees Act. The Division Bench of the Andra Pradesh High Court in *Gaddam Jithendra Kumar's* case (referred herein supra), deciding the issue under the Andra Pradesh Court Fees Act, held that, when pending an appeal, parties had withdrawn the suit and sought refund of court fees, only half court fees could be refunded and held that that was the legislative intent.

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30. A Division Bench of this Court in *Polyene's* case (referred herein supra), held that Section 66 of the Court Fees Act can be applied to cases of review petitions. Much later, in *Sanjeev Kumar Harakchand Kankariya's* case (referred herein supra), the Hon'ble Supreme Court held as follows:

> *"It is inconceivable as to how a reference to mediation under the CPC can be read to be the same or equal to proceeding before a Lok Adalat for any reference thereto, to be helpful to the case put forward by the appellant. Simply because a refund under CFA, 1870 is statutorily prescribed, to be given when a dispute is settled by way of a situation be adopted to the settlement of a dispute by mediation. This argument has to be necessarily rejected. No error can be found, in this regard with the reasoning of the High Court."*

This decision was rendered in the context of the Maharashtra Court Fees Act. However, the Hon'ble Supreme Court has elaborately dealt with the question whether there was any inconsistency between Court Fees Act, 1870 and Maharashtra Court Fees Act, 1959 and answering the said question, the Hon'ble Supreme Court held that though there are similarities in the two processes namely, mediation and Lok Adalat, there are certain undeniable differences, foremost being, mediation is governed by an independent legislation, viz., Mediation Act, 2023. While concluding, the Hon'ble Supreme Court held that persons whose matters were settled by way of ADR would not be entitled to 100% refund, but any matter settled after the processes mentioned in Section 89 CPC, after coming into

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force of the Maharashtra Amendment Act 10 of 2018 by introduction of Section 16A alone, parties shall receive refund of court fees in entirety.

31. In view of the foregoing discussions, I do not see any merit in these revision petitions. These Civil Revision Petitions are dismissed. At this juncture, while dismissing the revision petitions for the various reasons and conclusions reached herein above, I have to necessarily place the matter for the consideration of the Tamil Nadu State Law Commission. Section 69-A, as it stood prior to the amendment, by Act 6 of 2017, in my considered opinion requires to be reintroduced, since the position as it stands today, entitles a party to refund of the entire Court fee the moment the matter is referred to alternate dispute resolution, under Section 89 CPC, which benefit has now even been extended to out of court settlement in view of the law laid down in *M.C.Subramaniam's* case (referred herein supra) and various other decisions referred herein supra. In such circumstances, in the event of the dispute not being settled post the reference under Section 89 CPC, the party would gain an undue advantage by already getting refund of the entire court fees. There is no clarity or statutory provision or rule with regard to a situation where a reference to alternate dispute resolution fails and the parties are forced to come back to the court for trial. There is total silence with

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regard to whether the court fee which has already been refunded by then, would have to be repaid by the party, before proceeding with the trial of the case. In my considered opinion, the Section 69-A as introduced by Act 44 of 2007 is more practical and logical. That is the position that also stands today under the Maharashtra Court Fees Act, 1959 as seen in *Sanjeev Kumar's* case (referred herein above) discussed herein above. A copy of this order shall be marked to the Tamil Nadu Law Commission to look into this grey area and see whether the provision as it stood prior to the substitution by Act 6 of 2017 would have to be restored, as it safeguarded the State Exchequer, by entitling the party to only a certificate for refund, with the refund actually taking place only if the dispute is settled and not otherwise.

32. Before concluding, I would also like to place on record my deep appreciation to Mr.N.Vijay Narayan, learned Advocate General, assisted by Mrs.S.Yogalakshmi, learned Additional Government Pleader and two Senior Counsels, Mr. S.Subbiah and Mr. S.Parthasarathy and also to Advocates, Mr. S.Ramesh, Mr. S.R.Sundar, Mr. A.V.Arun and the learned *amicus*, Mr. S.Suresh Sampath and the Additional Government Pleader, Mrs. S.Yogalakshmi, whose valuable inputs have been of invaluable assistance in deciding the moot and

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interesting question that was thrown up for consideration. In fine, Civil Revision Petitions are dismissed. There shall be no order as to costs.

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Index : Yes/No
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To

The IV Additional District and Sessions Judge, Thiruvallur at Ponneri.

P.B.BALAJI.J,

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