

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.1941 of 2013
Date of decision: 21.1.2015

Dr. B.L. Kapoor Memorial Hospital

....Petitioner

Versus

Balbir Aggarwal

...Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Vishal Gupta, Advocate for the petitioner.

Mr. Anil Bansal, Advocate for the respondent.

G.S.Sandhawalia J.(Oral)

Challenge in the present revision petition filed by the petitioner-plaintiff is to the order dated 31.1.2013 (Annexure P/4) passed by the Civil Judge (Junior Division), Ludhiana whereby the petitioner-plaintiff has been directed to furnish proper Court fee on the plaint in view of the application filed under Order 7 Rule 11 CPC for rejection of plaint by the defendant.

The reasoning given by the trial Court is that the suit for recovery of ₹ 20 lacs as damages has been filed but proper Court fee has not been paid. Reliance has been placed upon **R.S.Malik Vs. Krishan Mohan** 2010(1) Civil Court Cases 388. Even though word 'tentatively' had been added but in view of the fact that the claim was for recovery of ₹ 20 lacs as damages, the application was allowed. Reliance was also placed upon the judgment of the Apex Court in **M/s Commercial Aviation & Travel Company and others Vs. Mrs. Vimla Panna Lal** AIR 1988 SC 1636.

While issuing notice of motion, this Court granted stay of operation of impugned order but on 8.7.2013 it was clarified that suit should proceed.

A perusal of the paper-book would go on to show that suit was filed for recovery of ₹ 20 lacs on account of damages for defaming the name and reputation of the plaintiff hospital and its officials by making false accusations. It

has been pleaded that the plaintiff hospital was one of the oldest hospital in Ludhiana and to discipline its employees, certain steps had been taken. An Administrator had been appointed and certain old employees had adopted uncooperative attitude towards change in the administration and applications were filed by the defendant claiming himself to be an RTI activist for seeking information about the hospital from various departments under the Right to Information Act, 2005. The State Information Commission had declined the request of the defendants to provide information pertaining to the hospital on the ground that it was run by a private society registered under the Societies Registration Act, 1860 and was not getting any financial aid from the Government. The issue was upheld by this Court also vide order dated 29.3.2011. Thereafter, fresh application was filed which was also rejected. After having failed to get information, the defendants had got certain news items published in the news papers by twisting the factual position much to the detriment of the plaintiff hospital that the hospital was being run in an unauthorised manner on the Government land. The land has been leased out to the society for which the lease deed could not be executed by the concerned department and the School of Nursing run by the plaintiff was also sought to be defamed by publishing that it was an unapproved and unauthorised institute imparting education. Accordingly, a tentative claim of ₹ 20 lacs as damages was sought by filing the suit against the defendant.

Court fee of ₹ 49,300/- was payable but since damages for the omissions and commissions of defendant were tentative, the Court fee of ₹ 2500/- was affixed for the time being at the time of filing of the suit. The plaintiff undertook to pay actual Court fee on the amount of damages actually assessed. Resultantly, the suit was filed and an application under Order 7 Rule 11 CPC as noticed was filed by the defendant and the same was objected to by the plaintiff on the ground taken in the suit itself, that the plaintiff would deposit the Court fee on the amount actually assessed.

This Court in **Subhash Chander Goel Vs. Harvind Sagar AIR 2003 (Punjab) 248** also considered the judgment of the Apex Court in **M/s Commercial Aviation and Travel Company's case** (supra) and noticed that the Court fee is a matter between the plaintiff and the State and judgment of this Court in **Hem Raj Vs. Harchet Singh and others 1993 Civil Court Cases 48** which was also considered in **R.S.Malik's case** (supra) was also taken into consideration. It was noticed that the Full Bench of this Court in **Ram Niwas Vs. Rakesh Kumar AIR 1981 Punjab and Haryana 397** had taken a view that the plaintiff can be directed later on to pay the Court fee as the Court may assess after granting the relief. It was accordingly held that in cases of amount of compensation there is no objective standard available which can help in determining the amount for which the plaintiff has to value the relief claimed by him and it is a tentative valuation. The revision petition filed by the defendants was thus dismissed.

In **State of Punjab and others Vs. Jagdip Singh Chowhan 2005 (2) Civil Court Cases 37 (P&H)** suit had been filed for damages and it had been pleaded that the requisite Court fee on the amount of ₹ 2 Crores claim as damages would be deposited as and when the Court would deem and proper. It was accordingly held that in the absence of objective standard available, the claim has to be tentatively determined and the revision petition was dismissed, The observations read as under:-

“12. The plaintiff-respondent's suit as framed is similar to the suits for damages considered by this Court in Hem Raj v. Harchet Singh and Ors., 1993 Civil Court Cases 48 (P&H) and Subhash Chander Goel v. Harvind Sagar, A.I.R. 2003 P&H 248. In the former case the plaintiff had sued for damages on account of injuries suffered by him and valued his suit for purposes of jurisdiction at Rs. 1.00 lac while for the purpose of court-fees suit was valued at Rs. 500.00. In the later case also the plaintiff had sued for damages and compensation and affixed Rs. 50,00 as court-fees. In both cases tentative valuation of the suits for the purposes of court-fees was accepted.

The opinion of this Court as expressed in the above two cases is that where the Court is unable to say what the correct valuation of the relief is, it cannot require the plaintiff to correct the valuation and has been made by him. In such cases, Court had no other alternative than to accept the plaintiff's tentative valuation. In case of compensation, there is no objective standard available and indeed there never can be, which can help to determine the amount to which the plaintiff should value the relief claimed by him. It is the nature of things that valuation put by the plaintiff has to be tentative and cannot be disputed. Similarly, in the later case the view expressed in Hem Raj case (supra) was followed and petition's tentative valuation was accepted.

13. Considering all the aspects of the case and the law laid down on the point it is held that the petition is totally devoid of any merit and deserves to be dismissed. It is accordingly dismissed with costs. Costs Rs. 10,000/-."

The Apex Court in **Shiv Kumar Sharma Vs. Santosh Kumari (2007) 8 SCC 600** has held that damages cannot be granted without payment of Court fee. The amount of Court fee to be paid is on the quantum determined by the Court where damages are required to be calculated and the balance Court fee is to be paid when final decree is to be prepared.

Thus keeping in view the above settled position that in the suit of damages the tentative value is to be seen, this Court is of the opinion that order dated 31.1.2013 is not liable to be sustained and is accordingly set aside. It is made clear that the trial Court while adjudicating finally, shall direct the plaintiff to deposit the Court fee as undertaken by him on the amount of damages assessed in case the trial Court decides in favour of the plaintiff.

The Civil Revision Petition stands allowed accordingly.

21.1.2015
Pka

(G.S.SANDHAWALIA)
JUDGE