

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.3209 of 2013  
Date of decision:13.02.2015

Jaspal Singh & another

.....Petitioners

Versus

Gurbinder Singh

.....Respondent

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

Present: Mr.T.P.S.Makkar, Advocate, for  
Mr.Manpreet Singh, Advocate, for the petitioners.

Mr.Mohit Garg, Advocate, for the respondent.

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**G.S.Sandhawalia J. (Oral)**

Challenge in the present revision petition, filed by defendant No.1, is to the order dated 22.02.2013 (Annexure P1), passed by the Civil Judge (Sr.Divn.) Sangrur, whereby the application, filed under Order 7 Rule 11 CPC, for rejection of the plaint on the ground that the plaintiff had not affixed *ad valorem* Court fees, has been rejected.

The reasoning given by the Trial Court is that the suit was for unliquidated damages and compensation could not be assessed till the final disposal of the suit by the Court. At the time of decision, the Court would decide the damages and the Court fees could be paid at that point of time. Reliance has been placed upon the judgments of this Court in **State of Punjab & others Vs. Jagdip Singh Chowhan 2005 (2) CCC 37** and **Hem Raj Vs. Harchet Singh 1993 (1) CCC 48.**

A perusal of the paperbook would go on to show that the suit was filed for unliquidated damages and compensation to the extent of damages on account of causing grievous injury to the plaintiff by the petitioner-

defendant on account of a gun shot injury which led to the amputation of his left hand. In such circumstances, Court fees of ₹50/- was affixed and the relief was claimed for unliquidated damages to the extent of ₹10 lacs. Resultantly, the application was filed for rejection.

The maintainability of the revision itself, firstly, comes under a cloud in view of the observations of the Apex Court in **Rathnavarmaraja Vs. Vimla AIR 1961 SC 1299** wherein it was noticed that entertaining petitions preferred before the High Court in exercise of revisional jurisdiction and stalling progress in the suits for trial could not be appreciated. The Court Fee Act, 1870 was primarily a question between the plaintiff and the State and not to give leverage to the contesting party to obstruct trial of the proceedings. Relevant observations read as under:

“The Court-fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction against the order adjudging court-fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court-fee on his plaint. Whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court-fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. Again, the jurisdiction in revision exercised by the High Court under section 115 of the Code of Civil Procedure is strictly conditioned by cls. (a) to (c) thereof

and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the court does not possess or on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction. The defendant who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior court by appeal or in revision against the order adjudging payment of court-fee payable on the plaint.”

The said view was following by a Full Bench of this Court in **Krishan Kumar Grover Vs. Parameshri Devi (1966) 68 PLR 54.** The reference before the Full Bench was that whether the plaintiff could challenge the order whereby the Trial Court had directed the additional Court fees payable. It was, accordingly, held that a revision was maintainable at the instance of the plaintiff against an order directing payment of additional Court fees. The matter again came up before another Full Bench of this Court in **Arjan Motors Vs. Girdhara Singh & others 1978 AIR (Punjab) 25** as to whether the defendants had a right to file a revision. Placing reliance upon the judgment of the Apex Court in **Shamsher Singh Vs. Rajinder Prashad & others 1973 (2) SCC 524,** the Division Bench held that the question of Court fees could not be raised by the defendants under Section 115 CPC. In **Shamsher Singh's** case (supra) also, it has been held that unless the question of Court fee involves the jurisdiction of this Court, revision would not be maintainable.

It is clear that the suit is for unliquidated damages and the amount of Court fees can always be fixed once the Court quantifies the damages and the plaintiff can be asked to pay the same. The Trial Court has rightly placed reliance upon the case of **Jagdip Singh Chowhan** (supra) in which judgment, reliance has been placed upon **Subhash Chander Goel Vs.**

*Harvind Sagar AIR 2003 P&H 248* wherein it has been specifically held that in such cases where there is no objective standard and there can never be to assess the amount for which the plaintiff can value the claim, the valuation can be tentative.

Accordingly, keeping in view the said principle in mind, the present revision petition is hereby dismissed.

13.02.2015  
sailesh

(G.S.Sandhawalia)  
JUDGE