

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 5221 of 2013 (O&M)
Date of Decision : 14.01.2015

Dhanna Singh and anotherPetitioners

Versus

Shingara SinghRespondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Manish Kumar Singla, Advocate
for the petitioners.

Mr. R.M. Sharma, Advocate
for the respondent.

R.P. Nagrath, J.

Petitioner-defendants have invoked the revisional jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the order dated 05.04.2013 passed by the learned trial Court.

2. The facts briefly are that the respondent filed a suit for damages of ₹ 8 lacs on account of injuries caused by the petitioners in an incident dated 24.02.2010. The respondent also recorded FIR No. 43 dated 27.02.2010 for offences under Sections 452, 325, 323, 506 read with Section 34 of Indian Penal Code against the petitioners. Challan was also presented before the Magistrate on completion of investigation and charges against the petitioners have been framed on 14.06.2010 by the trial Court.

The respondent, however, valued the suit for the tentative amount of ₹ 3 lacs and paid the amount of court fee thereon.

3. On an application filed by the petitioners under Order VII Rule 11 of the Code of Civil Procedure (CPC), the trial Court directed the respondent-plaintiff to pay the court fee on the amount of ₹ 8 lacs. That order dated 08.09.2011 passed by the trial Court was challenged in CR No. 6095 of 2011 before this Court but the revision was dismissed on 17.10.2011. When the matter was fixed before the trial Court on 20.10.2011, it was observed that the respondent having failed to make good the deficiency in court fee, the plaint was rejected in terms of Order VII Rule 11 (b) CPC.

4. Thereafter, an application was filed by the respondent for restoration of the suit and for permission to pay the court fee. Learned trial Court observed in the impugned order dated 07.05.2013 that the respondent was ready to furnish the court fee and there being no bar to restore the suit the application was allowed and the respondent was directed to furnish the court fee by 07.05.2013.

5. I have heard learned counsel for the parties and given my thoughtful consideration to the rival contentions.

6. In **Kashmiri Devi vs. Aziz-u-Din**, 1978 PLR 178, a judgment of this Court, the suit was filed by the plaintiff for possession by pre-emption of land in question. The trial Court had directed the plaintiff to deposit the pre-emption money of ₹ 3400/- before 01.08.1977. Since direction was not complied with, the

plaint was rejected. Thereafter, the plaintiff moved an application under Section 151 CPC for restoration of the suit on the ground that the amount in fact had been deposited in the State Bank of India on 30.07.1977. Since the plaintiff was taken ill, he could not attend the court on the date fixed i.e. 01.08.1977 and thus unable to inform the Court about the deposit. The trial Court accepted the plea on the basis of material placed before it and the suit was restored to its original number. This Court had set aside the order passed by the trial Court by holding that rejection of the plaint amounts to a decree in terms of Section 2(2) CPC and therefore, the appeal lay against the said order of rejection under Section 96 CPC.

7. In **Molugu Ram Reddy vs. Molugu Vittal Reddy**, **2012 (3) RCR (Civil) 731**, the question before Full Bench of Andhra Pradesh High Court was “whether an appeal against the order as Civil Miscellaneous Appeal under Section 104 read with order 43 Rule 1 CPC or a regular appeal under Section 96 CPC, is maintainable against the judgment/order passed under Rule 11 of Order VII CPC ? It was held that rejection of a plaint is a “decree” and appealable under Section 96 CPC and further that a miscellaneous appeal against an order rejecting the plaint would not lie.

8. In view of the aforesaid facts as broadly outlined the question would be what appropriate course of action should be adopted in such a situation? In **Kaderbhai Peerbhai vs.**

Husenabu Chandbhai, AIR 1962 Gujarat 59, the facts of the case were almost similar. Gujarat High Court noticed the relevant clauses of the Order VII Rule 11 of the Code of Civil Procedure, providing as follows:-

"The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so."

9. Looking into the facts and circumstances of the said case, Gujarat High Court held as under:-

"5. Now, in this case on the amendment being allowed, the proper court-fee was not paid on the amended plaint and therefore the plaintiff was required to pay the proper court-fee stamp. Therefore, it would fall under clause (c) above. As the court-fee stamp was not paid within the

*time required by the Court, the Court was bound to reject the plaint under the provisions of the said Rule 11. Now, when the Court rejects a plaint, by Section 2 of the Civil Procedure Code it is provided that a decree shall be deemed to include the rejection of the plaint. Therefore, the Court's order in this case amounted to a decree. In these circumstances, after making the said order the Court was functus officio and the plaintiff's remedy was by way of an appeal or review. Of course, it was open to the plaintiff to present a fresh plaint in respect of the same cause of action as provided by Order VII, Rule 13 of the Code of Civil Procedure. In these circumstances, the Court's order dismissing the suit amounted to a rejection of the plaint. This was also the view taken by a Full Bench of the Allahabad High Court in the case of **Muhammad Sadiq v. Muhammad Jan**, ILR 11 All 91. As stated earlier, that once the Court dismissed the suit in the circumstances narrated above and once that order amounted to a decree, two courses were open to the plaintiff- She could have either gone in appeal or review on proper grounds made out against the order of rejection*

of the plaint on the basis that it was a decree or she could have filed a fresh plaint on the same cause of action under the provisions of Order VII, Rule 13 as stated earlier. The plaintiff did not file an appeal but apparently she made an application to set aside the order of dismissal of the suit which dismissal was set aside by the Court acting under inherent jurisdiction. Since the order of dismissal amounted to a decree and the Court was functus officio in this case it was open to the learned trial Judge to treat the application as a review application on proper grounds being made out or as a fresh plaint under Order VII, Rule 13 of the Civil Procedure Code, as the court-fee had been deposited, and to proceed with the suit according to law. It is true that the plaintiff did not say in so many words that her application may be treated as a plaint 'but there was nothing to prevent the Court from treating that application on this footing and doing substantial justice between the parties.

6. *In the circumstances, in this case, to do substantial justice between the parties, I propose to adopt this course viz., that the application to set aside the order of dismissal of the suit should*

*be treated as presentation of a fresh plaint and in doing so the Court is influenced to a great extent by the fact that this suit might otherwise become time-barred and work injustice to the plaintiff. Reference may be made in this connection to **Munshiram v. Sun Life Assurance Co., Canada (AIR 1944 Oudh 327) : ILR 20 Luck 268.** Accordingly I direct that the trial Court to accept the application to set aside the order of dismissal of the suit as a fresh plaint under Order VII, Rule 13 of the Code of Civil Procedure and dispose of the suit according to law. The trial Court will treat the Written Statement already filed by the defendant as a written statement in answer to the fresh plaint. The defendant will be at liberty to file a supplementary Written Statement, if he so desires. The trial Court will then proceed to dispose of the suit according to law. The trial Court set aside the order of the dismissal of the suit under its inherent jurisdiction apparently thinking that the dismissal order was analogous to an order of dismissal passed under Order IX, Rule 9 of the Code of Civil Procedure. But in this case this provision could not possibly apply as the suit was not set down for hearing on*

the relevant date as would be the position under Order 9, Rule 9 of the Code of Civil Procedure. In the circumstances, the trial Court's order of restoration under its inherent jurisdiction could not be sustained. In the view, however which I have taken the defendant's application will fail but for different reasons."

10. Similarly in **Mohd. Yunus and another vs. Sugra Begum and others, AIR 1955 Hyderabad 156**, it was held that there being a specific provision under the Code prescribing a particular remedy the Court would not exercise its inherent powers under Section 151 CPC as it amounts to depriving the defendant of a valuable right that he had acquired viz. of contending that the suit was barred by limitation. Section 151 should be applied with great caution and that in exercising its powers under that section the Court has to keep in view not only the interest of the applicant but also that of the other party who may be affected by this order. It was ultimately held that where court fee is paid subsequent to the date fixed by the Court for making up the deficit court fee the Court would treat it as a fresh plaint.

11. I am in respectful agreement with the views expressed by Gujarat High Court in ***Kaderbhai Peerbhai's case (supra)*** and Hyderabad High Court in ***Mohd. Yunus'case (supra)***.

12. In view of the aforesaid discussion, I find the impugned order passed by the trial Court restoring the suit to its original

number cannot be sustained and same is set aside. However, the trial Court had directed the respondent to pay the court fee till 07.05.2013 and, therefore, ends of justice would require that on the said deposit of amount of court fee as directed by the trial Court, the trial Court would treat the plaint accompanied by application for restoration, as a fresh suit to be registered accordingly on the date when the court fee was made good.

13. By setting aside the impugned order, the instant petition is disposed of with the aforesaid observations and directions.

January 14, 2015
jk

(R.P. NAGRATH)
JUDGE