

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CR No.7856 of 2015.

Date of Decision: 02.12.2015.

Kuldeep Singh

....Petitioner.

VERSUS

Charanjit Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Arjun Veer Sharma, Advocate for the petitioner.

SNEH PRASHAR, J.

The order dated 05.10.2015 passed by learned Civil Judge (Junior Division), Ludhiana, is assailed by the petitioner by way of present petition filed under Article 227 of Constitution of India.

The facts garnered from the pleadings of the petitioner are that a suit for recovery of an amount of Rs.10 crores as damages was filed by respondent no.1-plaintiff Charanjit Singh Bajaj against the petitioner and proforma respondents no.2 to 6. The learned trial Court vide order dated 05.02.2013 directed respondent no.1 to pay advalorem court fee on the amount of Rs.10 crores claimed by him on or before 20.02.2013. Instead of making good the deficiency in the Court fee, respondent no.1 invoking the provisions of Order XXIII Rule 1 of the Code of Civil Procedure filed an application on 28.02.2013 for abandonment of his claim of Rs.8 crores. The said application was allowed on the same date and he was directed to

deposit advalorem Court fee on his claim of Rs.2 crores. Respondent no.1 deposited the requisite court fee on the said amount and was permitted to amend his plaint to that effect.

Subsequently, petitioner-defendant no.6 as well as defendant no.7 Lakhbir Singh filed an application alleging that since respondent no.1 had failed to comply with the order of the Court directing him to pay advalorem court fee on the amount of Rs.10 crores claimed by him as damages, his suit is liable to be dismissed. Defendant Lakhbir Singh also alleged that respondent no.1 had no cause of action to file the suit against him and the suit being barred under law, his plaint deserves to be rejected.

The applications filed by the petitioner as well as defendant Lakhbir Singh were dismissed by learned trial Court vide the impugned order dated 05.10.2015. Feeling aggrieved, the petitioner preferred the instant petition.

The submissions made by Mr. Arjun Veer Sharma, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argued that as mentioned in the impugned order, although respondent no.1 had abandoned his claim to the extent of Rs.8 crores (Rs.8,00,00,000/-) and had restricted the claim to the extent of Rs.2 crores (Rs.2,00,00,000/-), he was still continuing with his prayer for recovery of damages of Rs.10 crores. Having paid the advalorem court fee on the amount of Rs.2 crores he was very cleverly continuing with his original prayer for recovery of Rs.10 crores as damages which he cannot be allowed to do.

There appears no force in the argument of learned counsel for the petitioner. It has been mentioned by learned trial Court in the impugned order that respondent no.1 has already relinquished his claim for damages of Rs.8 crores and for pursuing his claim for recovery of Rs.2 crores as damages he has already paid advalorem court fee of Rs.1,97,600/-. Once the respondent has abandoned his claim to the tune of Rs.8 crores, he can pursue his claim only to the extent of the remaining amount i.e. Rs.2 crores. When he has paid advalorem court fee on the amount now being claimed, there remains no reason to reject the plaint for not complying with the order passed by the trial Court for paying advalorem court fee on the claim of Rs.10 crores and the learned trial Court has rightly dismissed the application of the petitioner. In case, as submitted by learned counsel for the petitioner the amended plaint filed by the plaintiff-respondent no.1 is not in accordance with the application filed by him for abandonment of his claim to the extent of Rs.8 crores, learned trial Court would be at liberty to take note of the same.

Thus, there being no adversity or perversity in the order of learned trial Court calling for intervention, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

02.12.2015.
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