

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1139 of 2015

Date of Decision: 25.04.2016

M/s R X Computer Systems

... Petitioner(s)

Versus

M/s Infresh Methodex Limited and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Rakesh Dhiman, Advocate
for the petitioner(s).

Mr. Amit Jain, Advocate
for respondent No.1.

Mr. Amit Kumar Singh, Advocate
for respondent No.2.

Shekher Dhawan, J.

Present petition is challenge to the order dated 17.1.2015, passed by learned Civil Judge (Junior Division), Gurgaon, whereby application under Order 7 Rule 11 CPC, filed by defendant/respondent No.1 was accepted and petitioner was directed to pay *ad valorem* court fee on the amount sought in the form of recovery on 2.2.2015 i.e. court fee on ₹ 13,63,113/-.

Learned counsel for the petitioner had filed a suit for mandatory injunction seeking direction to the defendants to replace the defective photocopier machine and give a new photocopier machine and payment of damages at the rate of ₹ 2,000/- per day be made in favour of plaintiff on account of damages, loss of business reputation and loss of business or in the alternative, refund to the amount of defective machine i.e. ₹ 3,63,113/- and ₹ 17,500/- (inadvertently typed as ₹ 1,750/-) on account of AMC along with interest at the rate of 24% per annum from the date of purchase till actual payment.

Learned counsel for the petitioner submitted that petitioner has already valued the claim on the basis of alternative relief of ₹ 3,63,113/- and a sum of ₹ 17,500/- on account of AMC and affixed the court fee and he is not liable to pay the court fee on sum of ₹ 2,000/- per day because the required court fee on the basis of alternative relief has already been affixed and the Court below has ignored this fact while passing the order.

Learned counsel for the respondent submitted that the Court below has already considered this aspect that the relief claimed by the petitioner was valued at ₹ 13,63,113/- and he is required to pay the court fee on the basis thereof and the Court below passed the order accordingly and present petition is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of considered view that undisputedly Court fee is to be affixed on the basis of valuation having

been made by the plaintiff on the basis of claim made in the main suit. In the present case, plaintiff raised two fold reliefs i.e. firstly for damages at the rate of ₹ 2,000/- per day on account of supply of defective photocopier machine and in the alternative for refund of the cost of photocopier machine which comes to ₹ 3,63,113/- and AMC to the tune of ₹ 17,500/- and affixed the court fee for which he is liable to make the payment. The Court below accepted the application under order 7 Rule 11 CPC, filed by respondent No.1, thereby directing the petitioner to make the payment of court fee for a sum of ₹ 13,63,113/- on account of damages. It is also settled law that plaintiff can certainly relinquish his part of the claim and may press for the balance amount of relief and plaintiff can also seek alternative relief and evaluate the alternative relief and make the payment of court fee on the basis of alternative relief. In the present case, plaintiff has already valued the suit on the basis of alternative relief and affixed the court fee and at this stage, plaintiff cannot be directed to make the payment of court fee on the basis of damages having been claimed at the rate of ₹ 2,000/- per day for supply of defective photocopier machine and as such the order dated 17.1.2015, passed by the Court below, is liable to be set aside.

In view of above, present petition is hereby accepted and impugned order dated 17.1.2015 is hereby set aside. However, it is made clear that if the Court below, after recording of evidence which is to be led by the parties, comes to the conclusion that plaintiff is entitled

to claim the relief of damages at the rate of ₹ 2,000/- per day for supply of defective photocopier machine and plaintiff does not give up his claim for the damages at the same rate, the suit of plaintiff can still be decreed, subject to the condition of deposit of required court fee. But at any rate, if at this stage, plaintiff has valued the suit on the basis of alternative relief, being claimed, he cannot be directed to pay the court fee on account of damages having been claimed which is only one of the two reliefs being claimed by the plaintiff.

**(Shekher Dhawan)
Judge**

April 25, 2016

"DK"