

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-386 of 2016

Date of Decision : January 22nd, 2016

State Bank of India and others

.... Petitioners

Versus

Amit Gupta and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

1. Whether Reporters of 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. K.S.Boparai, Advocate,
for the petitioners.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 23.12.2015 [Annexure P/10] whereby application under Order VII Rule 11 CPC filed by the applicants-defendants on the ground of affixing of required Court fee, was dismissed.

2. Relevant facts of the case for the purpose of decision of the present petition; that the plaintiffs had filed suit for recovery of unliquidated damages on the ground that the lease was executed for a specific period and the plaintiffs are entitled to the damages for unexpired period of lease.

3. Defendants took the plea in the application that the claimed amount had purposely not been calculated by the plaintiffs so as to avoid

...

the payment of court fee and court fee of Rs.25/- only has been affixed and the plaint be rejected.

4. The plaintiffs contested the application taking the plea that the same has been filed just to delay the proceedings of the case. The main suit was filed for unliquidated damages. The claim of the plaintiffs is tentative and as such, the court fee cannot be assessed at this stage, rather, the same is to be assessed by the Court when it quantifies the actual claim of the plaintiffs and the application be dismissed.

5. On these facts, the Court below passed the order dated 23.12.2015 [Annexure P/10] and dismissed the application of the defendants. Hence, this revision petition.

6. Learned counsel for the petitioners-Bank submitted that most of the facts are not disputed that respondents No.1 to 5 are owners of property/building at Karnal. The same was given on lease to the petitioners at different times and lastly on the basis of registered lease deeds dated 28.7.2010 and 23.11.2012. The lease period on the basis of lease deed dated 28.7.2010 was with effect from 16.7.2009 to 15.7.2018 for lease money of Rs.5,18,040/- per month with 15% increase after every three years. The lease period in other lease deed dated 23.11.2012 was with effect from 1.11.2011 to 31.10.2020 for lease money of Rs.1,33,480/- per month with 15% increase after every three years. The lease was initially for a period of three years with option to renew for two terms of three years each. The respondents were not interested in getting the building vacated as they were being paid hefty amounts by the bank. However, the petitioners constructed their own Training Centre at Panchkula and because of that, the training centre at Karnal which was

...

being run in the leased premises had to be closed. Petitioner No.1 served upon the lesser/respondents a notice dated 4.9.2015 terminating the lease dated 28.7.2010. Another notice dated 4.9.2015 was served upon the lesser terminating the lease deed dated 23.11.2012 and it was intimated in both the notices that the premises were to be vacated on 3.12.2015.

7. The plaintiffs-respondents filed Civil Writ Petition No. 20368 of 2015 before this Court and the same was disposed of with the direction to the Petitioners-State Bank of India to take decision on the representation dated 8.5.2015. The petitioners-bank, after considering the said representation passed speaking order dated 28.10.2015 [Annexure P/4] and the same was conveyed to the plaintiffs. Thereafter, the plaintiffs-respondents filed the civil suit on 10.11.2015 for seeking recovery of damages for the unexpired lease period and for injunction directing the defendants not to vacate the premises.

8. That way, the claim of the plaintiffs is specific and certain and they are seeking damages in terms of money for loss of rent/lease money for the unexpired period of lease. The plaintiffs were required to determine the said damages which is certainly ascertainable, but just to avoid the court-fee, the plaintiffs did not calculate the damages as per law and did not affix the court-fee. As per the petitioners, the plaintiffs have claimed the damages for the unexpired period of lease which comes to Rs.1,55,41,200/- for the lease deed dated 28.7.2010 and Rs.77,41,840/- for the lease deed dated 28.11.2012.

9. This Court is of the view that the plaintiffs were not justified in taking the plea that damages could not be quantified till the decision by the Court below. Rather, the same are ascertainable at Rs.2,32,83,040/-.

...

Needless to mention that the plaintiffs were well within their legal right to claim the entire amount of damages or to relinquish certain part of the the damages. But they were required to affix the court fee for the amount of damages which were being claimed in the litigation. Merely affixing court fee of Rs.25/- was just to avoid the liability of payment of court fee and to cause a financial loss to the State exchequer which is not permissible under law. Identical view was taken by the Co-ordinate Bench of this Court in **Sunita Rani and anotehr Vs. State of Punjab and others 2015 (3) PLR 580** and **Jatinder Nath Sharma and another Vs. Vijay Gupta and another, 2006 (4) R.C.R. (Civil) 539**. However, the Court below has not considered these facts while passing the order under challenge.

10. In view of the above, the present petition is accepted and the order dated 23.12.2015 [Annexure P/10] is set-aside. The plaintiffs are required to ascertain the damages for which they have raised claim and affix the court fee on the ascertained damages in the present litigation.

(SHEKHER DHAWAN)
JUDGE

January 22nd, 2016
som