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

**CR-5162-2015 (O&M)
Date of decision : 04.02.2016**

M/s Batliboi Ltd.

...Petitioner

Versus

Arun Jain

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Shiv Kumar, Advocate
for the petitioner.

None for the respondent.

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?

AMIT RAWAL, J. (ORAL)

CM-17168-CII-2015

Prayer in this application is to place on record the complete copy of the plaint.

For the reasons stated in the application, the application is allowed subject to all just exceptions and the complete copy of the plaint is taken on record.

CM stands disposed of.

CR-5162-2015

The petitioner is aggrieved of the order dated 10.12.2014, whereby, application filed under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter called 'CPC') has been dismissed.

Mr. Shiv Kumar, learned counsel appearing on behalf of petitioner submits that on going through the contents of the plaint, the essential claim is for the recovery of the amount but the nomenclature of the claim has been given as Rendition of Accounts. The maintainability of the suit seriously objected in the written statement, in this regard, the trial Court has framed following issues:-

- i) Whether the plaintiff is entitled for a decree for rendition of account as prayed for? OPP
- ii) Whether plaintiff has no cause of action to maintain or sustain the suit in the present form? OPD
- iii) Whether the plaintiff has hoodwinked the Court by converting the suit for recovery into a suit for rendition of account so as to avoid the payment of Court fee? OPD
- iv) Whether the suit of the plaintiff has not been verified and not supported by appropriate affidavit, as prayed for? OPD
- v) Relief

There is no representation on behalf of the respondent despite having been served. He has put in appearance on 14.10.2015 and thereafter, no one appeared on 26.11.2015 &

05.01.2016. Accordingly, I proceed to decide the petition on merits.

I have heard the learned counsel for the petitioner and appraised the paper book.

It would be apt to reproduce the paragraph Nos.4, 5, 7 and 11 of the plaint which read thus:-

"4. That the defendant is in arrears of rent from 01.11.2010 to 15.11.2010 amounting to ₹ 55,000/- from 16.11.2010 to 31.11.2010 amounting to ₹ 55,000/- from 01.12.2010 to 31.12.2010 amounting to ₹ 2,50,000/- from 01.01.2011 to 31.01.2011 amounting to ₹ 2,50,000/- and dated 01.02.2011 to 07.02.2011 ₹ 58,333/- hence total amounting to ₹ 6,68,333/-. Further, an amount of ₹ 50,000/- is due from the defendant on account of floor tiles and glass damage and at the inception of second lease deed as above stated on dated 01.12.2010 an amount of ₹ 1,08,000/- was given shortly by the defendant towards the security amount out of the security amount of ₹ 2,25,000/-. Thus, the defendant owes to the plaintiffs a sum of ₹ 6,01,333/- as per the account given above.

5. Thus, the defendant placed work order on the plaint for renovation to the tune of ₹ 13,50,011/- plus taxes, out of this work order the plaintiff completed the work to the tune of ₹ 13,93,615/- vide Bill No.035 to 044 dated 28.02.2011. In the said work order, the plaintiff

conducted some addition work to the tune of ₹ 3,80,834/- vide bill No.45 dated 28.02.2011 with total work becoming to the tune of ₹ 17,74,449/- out of which the plaintiff had obtained advance amount of ₹ 3,80,000/-. The balance amount of ₹ 13,94,440/- is due from the defendant. The interest on the said amount as agreed between the parties comes to ₹ 2,23,110/- from the date 01.03.2012 to 30.06.2013. Thus, the defendant on this account owes to the plaintiff a sum of ₹ 16,17,550/-

7. That further a sum of ₹ 8,58,624/- is due from the defendant to the plaintiff on account of New Office Furnishing and rent from 01.07.2013 to 11.07.2013 at the rate of ₹ 83,520/- per month for eleven days amounting to ₹ 30,624/-.

11. That as per the account held by the plaintiff a sum of ₹ 38,48,000/- remains due from the defendant to the plaintiff as detailed in the proceeding paras. The defendant on demand of the disputed amount said that they would settle the account jointly and whatever amount emerged due to the plaintiff shall be paid accordingly, by the defendant."

On perusal of the aforementioned paragraphs, it is evident that the suit actually tantamounts in seeking recovery has been initially filed for recovery of the amount, but relief in the suit was converted into for rendition of accounts, in

essence, the respondent-plaintiff has filed the suit in order to avoid the payment of court fees. I am of the *prima facie* view that the suit cannot be succeeded until and unless court fees viz-a-viz the amount of claim is not filed. Since, suit has reached at the stage of the evidence of the respondent, particularly the issue of payment of court fees the trial Court is also directed to treat the aforementioned issues as preliminary by calling upon the parties to lead the evidence before proceeding the suit on the other issues.

With the aforementioned observations, the revision petition is disposed of.

04.02.2016
yogesh

(AMIT RAWAL)
JUDGE