

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

**CR No.5893 of 2016 (O&M)
Date of Decision-15.09.2016**

Amandeep Sidhu ... Petitioner
Versus
M/s Ultratech Cement Limited and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Siddharth Gupta, Advocate for the petitioner.

Mr. J.K. Singla, Advocate for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 02.09.2016 passed by Additional Civil Judge (Senior Division), Phul, District Bathinda whereby application under Order 7 Rule 11 CPC for rejection of plaint was allowed on account of non-payment of ad valorem court fee.

[2]. Petitioner filed a suit for recovery of Rs.1,00,00,000/- along with interest @ 18 % per annum on account of injuries suffered by him due to negligence on the part of defendant No.1. The compensation was sought under various heads like pain and suffering, medical expenses, loss of future prospects etc. and it was claimed that the defendants were jointly and severally liable for the damages.

[3]. Defendant No.3 filed an application under Order 7 Rule 11 read with Section 151 CPC for rejection of plaint on the ground that Civil Court has no jurisdiction to try the suit and in view of

Section 74 of ESIC, the trial Court is not a notified Court, therefore, the Court is not competent to try the suit.

[4]. The said application was contested by the plaintiff.

[5]. Plaintiff was an employee of defendant-Firm and suffered injuries when he was returning from his duty. The accident occurred in the area which fell within the jurisdiction of the Court. The question of jurisdiction was held to be a mixed question of law and fact could have been decided at the final stage of the trial. On this ground, the application was dismissed by Additional Civil Judge (Senior Division), Phul, District Bathinda on 13.08.2015.

[6]. Thereafter, defendant No.1 filed an application under Order 7 Rule 11 CPC on 05.07.2016 on the ground that plaintiff had claimed fixed sum of compensation and was required to pay ad valorem court fee.

[7]. The said application was contested by the plaintiff on the ground that he had already given undertaking at the time of filing of the suit that he would pay the court fee upon final determination of compensation by the Court and suit was filed with a tentative court fee. The compensation was to be determined by the Court finally and therefore, the application was opposed.

[8]. Additional Civil Judge (Senior Division), Phul vide order dated 02.09.2016 allowed the application granting a period of 10 days to the plaintiff to make good the deficiency in court fee, failing

which the plaint shall be rejected. The trial Court recorded that in para No.20 of the plaint, the plaintiff has specifically assessed the value for the purpose of court fee and an amount of Rs.1 crore has been claimed, therefore, he is required to deposit the ad valorem court fee.

[9]. I have heard learned counsel for the parties.

[10]. Learned counsel for the petitioner submitted that quantification of amount in a suit for recovery towards damages on account of injuries would be done by the Court on the basis of evidence. Even if, fixed amount of compensation has been prayed, still the Court would decide the quantum of compensation on the basis of evidence to be led before it. Learned counsel for the petitioner also submitted that the petitioner in para No.20 of the plaint has specifically submitted that the value for the purpose of court fee and jurisdiction is Rs.1 crore, but as per precedent of the Hon'ble Apex Court, the plaintiff has paid an initial court fee of Rs.100/- and also undertook to pay the required court fee on the amount of compensation that may be awarded by the Court in the suit. Apparently, in pith and substance, the plaintiff has submitted he would ever remain ready and willing to pay the court fee on assessment of final amount of compensation.

[11]. Learned counsel for the petitioner relied upon **Saleem Vs. Usman Gani and another, 2015(3) RCR (Civil) 650** to contend that in a suit for damages on account of malicious

prosecution, the amount claimed was only tentative on which fixed court fee was to be assessed with an undertaking to pay the remaining court fee as and when directed by the Court. Such an undertaking is a valid undertaking and the plaint cannot be rejected on account of deficiency in court fee. In **Shiv Kumar Sharma Vs. Santosh Kumari, 2007(4) RCR (Civil) 515**, the Hon'ble Apex Court has held that even in case of specific amount claimed, the determination would be at a subsequent stage on the basis of evidence though the damages cannot be granted without payment of court fee. In case damages are required to be calculated, a fixed court fee is to be paid, but on the quantum determined by the Court and the balance court fee is to be paid when a final decree is to be prepared.

[12]. In **Hem Raj Vs. Harchet Singh, 1993 CivCC 48**, this Court held that issue of court fee cannot be treated to be a preliminary issue. In a suit for damages and compensation, the tentative valuation of the suit for the purpose of court fee cannot be disputed. In the said case, recovery of damages on account of injuries suffered by the plaintiff was claimed and the plaintiff valued the suit for the purposes of jurisdiction at Rs.1 lac and paid a fixed court fee of Rs.500/-. He also filed the suit claiming fixed amount of compensation to the tune of Rs.5 lac on account of damages caused to his crops. For the purposes of jurisdiction, he valued the suit at Rs.2.50 lac, but paid fixed amount of court fee. This Court came to the conclusion that it is a settled principle of law that if the

Court is itself unable to say what the correct valuation of relief is involved, it cannot require the plaintiff to correct the valuation that has been made by him. The Court has no alternative, then to accept valuation done by the plaintiff. In such type of circumstances, a liberty has been given to the plaintiff to value his claim for the purposes of the court fee and in reality, it is very difficult to value the claim within any precision or in definite manner. In case of amount of compensation, there is no objective standard available in determining the amount for which plaintiff has to value the relief claimed by him. In the nature of things, the valuation put by the plaintiff is tentative and in view of settled position of law, the same cannot be disputed.

[13]. On the other hand, learned counsel for the respondents relied upon **Sunita Rani and another Vs. State of Punjab and others, 2015(3) PLR 580** and **CR No.4713 of 2016** titled as **Rajender Parsad and others Vs. Vinod Kumar and others** decided on 26.07.2016 by this Court. Perusal of the facts involved in **Rajender Parsad's case (supra)** shows that the facts were entirely different than the one involved herein. In **Sunita Rani's case (supra)**, there was no such undertaking given by the plaintiff as given in the present case in para No.20 of the plaint.

[14]. Apparently, there is no such enabling provision in so far as suit for recovery of compensation/damages falling under Section 7(1) of the Court Fees Act is concerned, though in a suit

relating to rendition of account, the statute itself expressly gave power to the plaintiff to value the relief which he claims. In both the eventualities, there is a distinction without, a difference. In a case of amount of compensation, there is no objective standard available which can help in determining the amount. The compensation is subject to variance based on the quality of evidence to be led before the Court. In such nature of things, the valuation put by the plaintiff is always tentative in nature. The facts were duly supplemented by the plaintiff himself by giving undertaking before the Court in para No.20 of the plaint that he would make good the deficiency in court fee as and when required by the Court. The relief was contingent in nature and was dependent upon the final determination of the compensation by the Court. Even if specific amount was claimed in the nature of suit, the same cannot be termed to be a definite claim as the same is always liable to vary as per assessment of evidence by the Court.

[15]. In view of aforesaid, the facts in **Sunita Rani's case (supra)** are somewhat different and have no application in view of the fact that the plaintiff has already given an undertaking before the trial Court that in the event of determination by the Court, he would pay the requisite court fee as and when called upon to do so.

[16]. In view of aforesaid, I am of the considered view that revision petition is deserves to be accepted. Therefore, the

impugned order dated 02.09.2016 passed by Additional Civil Judge (Senior Division), Phul, District Bathinda is hereby set aside. Revision petition is allowed dismissing the application under Order 7 Rule 11 CPC. However, trial Court would be obligated to ask the plaintiff to make good the deficiency in court fee on determination of the *lis*.

15.09.2016
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No