

CR No.5915 of 2016

{1}

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5915 of 2016

Date of decision:09.09.2016

Satish Kumar and another

... Petitioners

Vs.

Krishan Lal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajesh Bansal, Advocate, for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner-defendants are aggrieved of the dismissal of the application filed under Order 7 Rule 11 of Code of Civil Procedure (hereinafter referred to as "CPC") seeking rejection of the plaint on the premise that once the respondent-plaintiff had confined the damages to the tune of ₹5 lacs by making payment of Court fees of ₹25/-, the suit was not maintainable, in view of the provisions of Order 4 CPC.

Mr. Rajesh Bansal, learned counsel appearing on behalf of the petitioner-defendants submits that the Court below ought to have decided the application by taking into consideration the averments made in the plaint as for decision of the application under Order 7 Rule 11 CPC, only averments in the plaint is to be seen and not the proposed defence yet the Court below dismissed the application and thus, there is illegality and perversity in the impugned order.

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

No doubt, the respondent-plaintiff has sought damages to the tune of ₹5 lacs but has given undertaking to make up the deficiency good in the Court fees as and when the Court determines the actual loss.

For the sake of brevity, paragraph 10 of the suit reads thus:-

“10. That the value of the suit for the purpose of Court fee and jurisdiction is assessed Rs.200/- and a Court fee of Rs.25/- is affixed with the plaint, because the tentatively loss suffered by plaintiff is to be assessed by the Hon'ble Court and the plaintiff undertakes to make up the deficiency good as per actual loss assessed and determined by this Hon'ble Court.”

This Court after relying upon the judgment rendered by a Coordinate Bench of this Court in **CR No.2785 of 2001 titled as Subhash Chander Goel vs. Harvind Sagar**, had consistently held that in a suit for damages, the plaintiff cannot be called upon to pay the ad valorem Court fees on account of damages but yet the Court has called upon to pay the Court fee despite he has confined the damages to a particular amount.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by the trial Court. No ground is made out for interference in the impugned order.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

September 09, 2016
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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No