

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5662 of 2014

Date of decision : April 1, 2016

Manpreet Singh

..... Petitioner

Versus

Gurmail Singh and others

..... Respondents

CR No. 7342 of 2014

Gurmail Singh and others

..... Petitioners

Versus

Manpreet Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:-

Mr. P. K. S. Phoolka, Advocate
for the petitioner in CR No. 5662 of 2014 and
for respondent No. 1 in CR No. 7342 of 2014.

Mr. G. S. Saini, Advocate for the petitioners in
CR No. 7342 of 2014 and
for respondent Nos. 1 to 8 in CR No. 5662 of 2014.

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).

This order of mine shall dispose of two Civil revisions bearing CR No. 5662 and 7342 of 2014.

C.R. No. 5662 is against the order dated 25.7.2014 (Annexure P-1) whereby the plaintiff-petitioner has been called upon to pay the court fee in respect of suit for damages to the tune of ₹50 lacs for defamation, causing physical-mental harassment, agony and malicious prosecution. C. R. No. 7342 of 2014 is against the order dated 25.7.2014 whereby the petitioners have been directed to furnish the surety bond equal to the amount of the suit i.e. ₹50 lacs on the apprehension that they were leaving India.

Learned counsel appearing on behalf of the petitioner in CR No. 5662 of 2014 submits that the civil suit Annexure P-2 claiming damages to tune of ₹50 lacs for defamation, causing physical-mental harassment, agony and malicious prosecution by the respondents was instituted based upon the averments that as per tentative value of the suit, accordingly, court fee of ₹250/- was fixed. However, the trial court on the application moved by the respondents under Order 7 Rule 11 CPC called upon the petitioner to pay the court fee over such amount. In support of his contentions, he has relied upon the judgment in **Subhash Chander Goel Vs. Harvind Sagar 2003 AIR (Punjab) 248** to contend that in such type of suit, tentative fee has to be accepted as the exact value can be ascertained at the final stage when the evidence has been lead, therefore, the impugned order is not sustainable.

Learned counsel appearing on behalf of the respondents submits that the ad valorem court fee on the amount so claimed is required to be paid as per Court fees Act, 1870, therefore there is no illegality and perversity in the impugned order.

Learned counsel appearing on behalf of the petitioner in CR No. 7342 of 2014 submits that there is no provision in law to impose onerous liability to deposit the surety to the tune of ₹50 lacs, furnishing of surety is not a remedy, and even, as per provisions of Article 21 of the Constitution of India, the defendants can not be restricted to go abroad, therefore, the impugned order is not sustainable.

He further submits that defendant No.2 had already left India and the apprehension of the respondents-plaintiffs that remaining defendants may not leave India, is misplaced and premature, much less lacking cause of action.

Mr. P.K.S.Phoolka, learned counsel appearing on behalf of respondent No.1 in CR No. 7342 of 2014 submits that the order is most innocuous for the reason that it tantamounts to exercise of jurisdiction under Order 38 Rule 5 CPC and urges this court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that the impugned order in C.R. No. 5662 of 2014 calling upon the plaintiff to pay the ad valorem court fee in a suit for damages is not sustainable in view of the ratio decidendi culled out by this Court in **Subhash Chander Goel's case (supra)** which has been rendered by taking into consideration the

judgments rendered by various courts including the Hon'ble Supreme Court. It is a settled law that the principles of evaluation of suit as in simple suits for recovery of liquidated claims will not apply for the purpose of court fee, in such a suit valuation put by the plaintiff has to be tentative and cannot be disputed where the court is unable to say what the correct valuation of the relief is, plaintiff cannot be called upon to pay entire court fee, which is yet to be ascertained. This view of mine is supported as per the judgment rendered in **State of Punjab and others Vs. Jagdip Singh Chowhan 2005 (1) RCR (Civil) 54**, accordingly, the impugned order is set aside. The revision petition No. 5662 of 2014 is allowed, with condition that the plaintiff shall be called upon to pay the exact court fee at the final adjudication of the case, in case the plaintiff is able to make out a case of damages to the extent of certain amount.

As regards C. R. No. 7342 of 2014, I am of the view that there is no illegality and perversity in the impugned order, for the reason, that the order directing the defendants i.e. defendant Nos. 1 and 8 to furnish a security to be operative till final decision of the suit is to protect the interest of the respondents. Assuming for an argument sake, in case the plaintiff is able to obtain the decree and on account of non-availability of the defendants, the decree would become in-executable, much less would be sheer waste of paper. In these circumstances, the court has deliberated upon the controversy and imposed surety upon the defendants.

In view of the aforementioned facts, there is no merit in the revision petition. I do not find any illegality and perversity

in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition No. 7342 of 2014 is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

April 1 , 2016
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