

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

CR No.6488 of 2013(O&M)

Date of decision:18.5.2016

Raj Kumar

....Petitioner

VERSUS

Municipal Committee Faridkot and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

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

Ms. Jarnail Kaur Dhaliwal, Advocate for respondent No.1.

Mr. Surinder Garg, Advocate for respondent No.2.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 11.07.2013 (Annexure P-5) passed by the Additional Civil Judge (Senior Division) Faridkot, whereby application filed by the Municipal Committee, Faridkot (for brevity 'the Committee')- respondent No.1 for release of an amount of Rs.96,810/- out of indemnity bond of Rs.2,00,000/- furnished by the petitioner/plaintiff during pendency of the civil suit titled Raj Kumar vs. Municipal Committee and another, has been allowed.

Counsel for the petitioner has submitted that during the course of hearing of the suit, counsel for respondent No.1 before the trial Court had raised a categorical contention that the Committee can charge only

composition fee envisaged under Section 229 of the Punjab Municipal Act, 1911 (in short 'the Act') and penalty if any can be imposed by the Court and no penalty was imposed upon the plaintiff and the composition fee can only be recovered by consent of both the parties and thus, no question arises about charging of 21 times from the plaintiff. It is further submitted that in view of the stand taken by the Committee, suit filed by the petitioner/plaintiff was dismissed with liberty to the Committee to charge the octroi charges or any other charges by invoking the provisions of the Act with further liberty to the Committee to recover the amount from indemnity bond furnished by the plaintiff. It is further argued that as per his information, till date, the Committee has not passed an order under any of the provisions incorporated in the Act on the basis whereof, the Committee could raise a demand of Rs.96,810/- payable from the indemnity bond furnished by the petitioner/plaintiff. It is further argued that no proceedings for taking action against the petitioner under Section 78 of the Act have been filed before a Criminal Court.

Counsel for respondent No.1, on the contrary, has submitted that in view of the liberty granted by the trial Court while deciding the suit vide judgment and decree dated 29.04.2008, the Committee is competent to recover octroi charges or any other charges from the indemnity bond furnished by the petitioner/plaintiff. However, she has fairly informed the Court that as per instructions, neither the Committee nor a Court of law has passed an order with regard to effecting any recovery from the petitioner.

I have heard counsel for the parties, perused the paper-book particularly the order impugned.

Be that as it may, it is an undisputed position of the case that the Committee, till date, has not passed an order imposing any liability upon the petitioner by invoking the relevant provisions in the Act. As the respondent - Committee has not taken any decision to impose any liability upon the petitioner, demand made by the respondent by filing an application before the trial Court to recover Rs.96,810/- from the indemnity bond is neither justified nor can be allowed to sustain. As a consequence, the impugned order passed by the trial Court is untenable and liable to be set aside.

For the foregoing reasons, the petition is allowed and the impugned order is set aside. However, the Committee or the Court shall be at liberty to pass an appropriate order in regard to liability of the petitioner, in accordance with law.

MAY 18, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE