

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.1732 of 2016
Date of decision:31.7.2017**

Ashok Kumar Mittal

...Petitioner

Versus

Sat Kamal Pathak and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.A.K.Jain, Advocate for the petitioner.
Mr.Abhilaksh Grover, Advocate.
Mr. Manoj Kumar Sangwan, DAG, Haryana.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant civil revision petition, filed under Article 227 of the Constitution of India, at the hands of plaintiff, is directed against the order dated 5.2.2016 passed by the learned trial court, whereby an application moved by defendants No.1 and 2 under Order 7 Rule 11 of the Code of Civil Procedure, for rejection of the plaint for want of affixing sufficient court fee, was allowed, directing the plaintiff to make good the deficiency of court fee.

Notice of motion was issued and operation of the impugned order was stayed.

Heard learned counsel for the parties.

It is a matter of record that plaintiff-petitioner filed a suit for recovery of damages. Prayer clause of the plaint (Annexure P-1) at page 24 of the paper-book, reads as under:-

“It is, therefore, prayed that a decree may kindly be passed in favour of the plaintiff and against the defendants with costs for recovery of damages to the tune of Rs.50,00,000/- for malicious prosecution, wrongful confinement, cruelty physical and mental, loss of business and health of self and family members, loss of reputation and defamation.”

Defendants No.1 and 2 filed their contesting written statement (Annexure P-2) raising more than one preliminary objections. Along with written statement, defendants No.1 and 2 also filed an application under Order 7 Rule 11 CPC, vide Annexure P-3, to which reply was filed by the plaintiff, vide Annexure P-4. It was this application moved on behalf of defendants No.1 and 2, wherein the learned trial court directed the plaintiff to make good the deficiency of the court fee.

Owing to the nature of relief claimed by the plaintiff-petitioner, it would be possible by the learned trial court to arrive at a judicious conclusion, only after appreciation of the evidence to be produced by both the parties, as to for how much amount the plaintiff would be entitled on account of damages caused to him, at the hands of defendants, for malicious prosecution, wrongful confinement, physical and mental cruelty, loss of business and health of plaintiff as well as his family members and loss of reputation and defamation.

At this point of time, it cannot be said by any stretch of imagination that the petitioner would be entitled for the above-said amount claimed by him on account of damages. It is so said because the plaintiff will have to prove his pleaded case, by leading cogent and convincing evidence so as to enable the learned trial court to arrive at a just conclusion.

Having said that, this Court feels no hesitation to conclude that the learned trial court misdirected itself, while passing the impugned order and the same cannot be sustained.

It goes without saying that at the time of deciding the suit, in case the learned trial court comes to a conclusion that the plaintiff is entitled for a particular amount, the learned trial court would do well by directing the plaintiff to pay the remaining court fee to the extent it would be found deficient and the plaintiff shall be bound to pay the court fee accordingly. Unless the matter is adjudicated upon by the learned trial court after proper appreciation of the evidence to be brought on record by both the parties, plaintiff-petitioner cannot be directed to pay ad valorem court fee on the total amount claimed by him on account of damages. It is so said because the principle of evaluation of suit, applied in the simple suit for recovery of liquidated claim, cannot be made applicable to a suit for damages for malicious prosecution, for the purpose of payment of court fee. At this stage, only a tentative valuation can be made and such tentative valuation should be accepted by the learned court.

No doubt, there cannot be an exhaustive list of peculiar fact situations, because it would depend on different peculiar fact situations arising from case to case. There cannot be any straight jacket formula in this regard. Each case is to be decided as per its own facts and circumstances. However, so far as the case in hand is concerned, a bare reading of the impugned order would show that the learned trial court acted without jurisdiction, while directing the petitioner-plaintiff to pay ad valorem court fee, which was not warranted at this stage. Any such

appropriate direction could have been issued by the learned trial court only at the time of deciding the suit. Under these circumstances noticed hereinabove, the impugned order has been found suffering from patent illegality and cannot be sustained, for this reason also.

The view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court in **M/s Commercial Aviation and Travel Company Vs. Vimla Pannalal, (1988) 3 SCC 423, Subhash Chander Goel Vs. Harvinder Sagar, 2003 AIR (Punjab) 248, State of Punjab and others Vs. Jagdip Singh Chowan, 2005(1) RCR (Civil) 54, Saleem Vs. Usman Gani and another, 2015 (2) PLR 39, Tarwinder Kumar Bedi Vs. Jit Parkash, 2015 (2) PLR 92, S.Ajit Singh Kohar Vs. Shashi Kant, 2015 (1) Law Herald 767, Jaspal singh and another Vs. Gurbinder Singh, 2015 (3) PLR 97 and Bharpoor Singh and another Vs. Lachman Singh, 2017 (1) Law Herald 609.**

So far as the judgments of the Hon'ble Supreme Court as well as this Court, relied upon by the learned counsel for the respondents in **Shiv Kumar Sharma Vs. Santosh Kumari, 2007(4) RCR (Civil) 515 (SC), Hem Raj Vs. Harchet Singh, 1993 CivCC 48, and Jatinder Nath Sharma and another Vs. Vijay Gupta and another, 2006(4) RCR (Civil) 539,** are concerned, there is no dispute about the observations made therein. However, on close perusal of the cited judgments, none of them has been found to be of any help to the respondents, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or

judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533, **Union of India Vs. Amrit Lal Manchanda and others**, 2004 (3) SCC 75, **State of Orissa Vs. Md. Illiyas**, 2006 (1) SCC 275 and **State of Rajasthan VS. Ganeshi Lal**, 2008 (2) SCC 533.

Identical issue also fell for consideration before the Hon'ble Supreme Court in **Vimla Pannalal's** case (supra). The relevant observations made by the Hon'ble Supreme Court in paras 9 and 12 of its judgment in **Vimla Pannalal's** case (supra), which can be gainfully followed in the present case, read as under:-

“In this connection, we may refer to the provision of order VII, Rule II(b) of the Code of Civil Procedure, which provides, inter alia, that the plaint shall be rejected where the relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so. It is manifestly clear from the provision of order VII, Rule II(b) that a Court has to come to a finding that the relief claimed has been undervalued, which necessarily means that the Court is able to decide and specify proper and correct valuation of the relief and, after determination of the correct value of the relief, requires the plaintiff to correct his valuation within a time to be fixed by the Court. If the plaintiff does not correct the valuation within the time allowed, the plaint is liable to be rejected. The question is whether in a suit for accounts simpliciter, the Court can come to a finding as to the proper and correct value of the relief until the final determination is made. In our opinion, ordinarily it is not possible for the Court at a preliminary stage to determining the value of the relief in a suit for accounts

implicit. If the Court is itself unable to say what the correct valuation of the relief is, it cannot require the plaintiff to correct the valuation that has been made by him. Indeed, in a suit for accounts it is also difficult for the Court to come to a finding even as to the approximate correct valuation of the relief. In such a case, the Court has no other alternative than to accept plaintiff's valuation tentatively.

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In the above decision, this Court took the view that the conversion of the plaintiff's undivided share in the joint family property into his separate share cannot be easily valued in terms of rupees with any precision or definiteness. It is true that the Court did not consider whether the plaintiff had been given an absolute right or option to place any valuation whatever on his relief under the provision of section 7(iv) of the Court Fees Act, but the difficulty that would be felt by the Court in exercising its power under order VII, Rule 11(b) of the Code of Civil Procedure is that if it is unable to determine the correct value of the relief, it cannot direct the plaintiff to correct the valuation. Order VII, Rule 11(b) contemplates correct valuation and not approximate correct valuation and such correct valuation of the relief has to be determined by the Court. If the Court cannot determine the correct valuation of the relief claimed, it cannot require the plaintiff to correct the valuation and, consequently, order VII, Rule 11(b) will not be applicable.”

The view taken in the above-said judgments has been reiterated time and again by this Court in the later judgments including in **Manpreet Singh Vs. Gurmail Singh and others, 2016 (3) PLR 751** and **Dr.B.L.Kapoor Memorial Singh V. Balbir Aggarwal, 2015 SCC Online P&H 1790.**

Coming to the facts of the case in hand and respectfully

following the law laid down by the Hon'ble Supreme Court as well as by this Court in the cases referred to hereinabove, it is unhesitatingly held that the learned trial court fell in serious error of law, while passing the impugned order and the same cannot be sustained. As on date, even the learned trial court was not able to decide and specify proper and correct valuation for the relief claimed by the plaintiff.

Unless the learned court was able to determine the correct valuation of relief claimed by the plaintiff, there was no scope for the learned trial court to direct the plaintiff to pay the ad valorem court fee. It would have been possible only after the learned trial court would have recorded appropriate findings after appreciation of the evidence and accordingly arrive at a final determination as to for what specified amount the plaintiff would be entitled. Only thereafter plaintiff could have been directed to pay the deficient court fee accordingly. In this view of the matter, the impugned order, being an order without jurisdiction, cannot be sustained.

During the course of hearing, learned counsel for respondents could not raise any meaningful arguments in support of the impugned order and rightly so, it being a matter of record, because no such argument was available to them. In fact, the impugned order has been found suffering from a patent illegality, as the same is running counter to the undisputed facts of the case because of which the impugned order is liable to be set aside, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 5.2.2016 is hereby set aside.

Resultantly, with the above-said observations made, the civil revision petition stands allowed, however, with no order as to costs.

31.7.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No