

Civil Revision No. 226 of 2017 (O&M)

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

Civil Revision No. 226 of 2017 (O&M)

Date of decision: 17.1.2017

Bharpoor Singh and another

... Petitioners

Vs.

Lachhman Singh

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Hitesh Ghai, Advocate
for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant civil revision, at the hands of defendant, is directed against the impugned order dated 7.11.2016 (Annexure P-5) passed by learned trial court, dismissing the application of the petitioners-defendants under Order 7 Rule 11 of the Code of Civil Procedure ('CPC' for short), seeking rejection of plaint or in the alternative directing plaintiff to pay ad valorem court fee.

Heard learned counsel for the petitioners.

Placing reliance on the following judgments of this Court, learned counsel for the petitioner submits that learned trial court misdirected itself, while passing the impugned order, which has resulted in miscarriage of justice. He further submits that in the circumstances of the case, learned trial court ought to have rejected the plaint or in the alternative, plaintiff-

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respondent ought to have been directed to pay ad-valorem court fee. He prays for setting aside the impugned order, by allowing the present revision petition. Judgments relied upon are as under:-

M.S.Chemical Industries Ltd. Vs. Hindustan Commercial Bank Ltd. 1956 AIR (Punjab) 214.

Jatinder Nath Sharma and another VS. Vijay Gupta and another, 2006 (4) RCR (civil) 539.

Ranjit Kaur and others Vs. Punjab State Electricity Board and another, 2007 (1) RCR (civil) 686.

Manjeet Singh Vs. Beant Sharma, 2012 (44) RCR (civil) 118.

Jiwan Kumar Modi Vs. Nand Kishore Bhandari, 2014 (9) RCR (civil) 2197.

Dr. Bimal Anjuman VS. Aasra Foundation (Registered), Muktsar, 2014 (1) PLR 624.

Sunita Rani and another Vs. State of Punjab and others, 2015 (3) PLR 580.

Having heard learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the present revision petition, at the hands of the defendants, is without any merit, the same is liable to be dismissed. The impugned order passed by learned trial court has not been found suffering from any patent illegality or perversity. To say so, reasons are more than one, which are being recorded hereinafter.

In view of the law laid down by Hon'ble the Supreme Court in **Rathnavarmaraja V. Vimla, AIR 1961 SC 1299**, first question that falls for consideration of this Court, is as to whether the present revision petition, at the hands of defendant, would be maintainable or not.

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On merits, learned trial court has not been found misdirecting itself, as sought to be argued on behalf of the petitioner, while passing the impugned order and the same deserves to be upheld.

In fact, object of the Court Fee Act, 1970, was to collect revenue for the benefit of the State. Thus, question involving court fee would be between the plaintiff and the State and it would hardly grant any right to the contesting parties to challenge the alleged inadequacy of court fee either paid or to be paid by the plaintiff.

Exactly similar issue fell for consideration before this Court in **Jaspal Singh and another Vs. Gurbinder Singh, 2015 (3) PLR 97**. Following the law laid down by Hon'ble the Supreme Court in **Vimla's case** (supra) and also two Full Benches of this Court in **Krishan Kumar Grover Vs. Parameshri Devi, (1966) 68 PLR 54** and **Arjan Motors Vs. Girdhara Singh, 1978 AIR (Punjab) 25** as well as another judgment of the Hon'ble Supreme Court in **Shamsher Singh VS. Rajinder Prashad and others, 1973 (2) SCC 524**, this Court in para 4 and 5 of its judgment in Jaspal Singh's case (supra), held as under:-

*“The maintainability of the revision itself, firstly, comes under a cloud in view of the observations of the Apex Court in **Rathnavarmaraja Vs. Vimla AIR 1961 SC 1299** wherein it was noticed that entertaining petitions preferred before the High Court in exercise of revisional jurisdiction and stalling progress in the suits for trial could not be appreciated. The Court Fee Act, 1870 was primarily a question between the plaintiff and the State and not to give leverage to the contesting party to obstruct trial of the proceedings. Relevant observations read as under:*

“The Court-fees Act was enacted to collect

revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction against the order adjudging court-fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court fee on his plaint. Whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court-fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. Again, the jurisdiction in revision exercised by the High Court under section 115 of the Code of Civil Procedure is strictly conditioned by cls. (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the court does not possess or on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction. The defendant who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior court by appeal or in revision against the

order adjudging payment of court-fee payable on the plaint.”

*The said view was following by a Full Bench of this Court in **Krishan Kumar Grover Vs. Parameshri Devi (1966) 68 PLR 54**. The reference before the Full Bench was that whether the plaintiff could challenge the order whereby the Trial Court had directed the additional Court fees payable. It was, accordingly, held that a revision was maintainable at the instance of the plaintiff against an order directing payment of additional Court fees. The matter again came up before another Full Bench of this Court in **Arjan Motors Vs. Girdhara Singh & others 1978 AIR (Punjab) 25** as to whether the defendants had a right to file a revision. Placing reliance upon the judgment of the Apex Court in **Shamsher Singh Vs. Rajinder Prashad & others 1973 (2) SCC 524**, the Division Bench held that the question of Court fees could not be raised by the defendants under Section 115 CPC. In **Shamsher Singh's** case (*supra*) also, it has been held that unless the question of Court fee involves the jurisdiction of this Court, revision would not be maintainable.*

Again, the Hon'ble Supreme Court, in para 9 and 12 of its judgment in **M/s Commercial Aviation and Travel Company and others Vs. Vimla Pannalal, (1988) 3 SCC 423**, held 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

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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

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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.

Similarly, this Court in **Hemraj Vs. Harchet Singh, 1993 CivCC 48, Subhash Chander Goel Vs. Harvind Sagar, 2003 AIR (Punjab) 248 and State of Punjab Vs. Jagdip Singh Chowhan, 2005 (1) RCR (civil) 54**, held that whenever plaintiff files suit for damages, exact value of relief to be granted cannot be ascertained in the very nature of things. While reiterating the view taken by this Court in Hemraj's case (supra) and Subhash Chander's case (supra), this Court in para 12 of Jagdeep Singh Chowhan's case (supra), held as under:-

*“The plaintiff-respondent's suit as framed is similar to the suits for damages considered by this Court in **Hem Raj v. Harchet Singh and Ors., 1993 Civil Court Cases 48 (P&H)** and **Subhash Chander Goel v. Harvind Sagar, A.I.R. 2003 P&H 248**. In the former case the plaintiff had sued for damages on account of injuries suffered by him and valued his suit for purposes of jurisdiction at Rs. 1.00 lac while for the purpose of court-fees suit was valued at Rs. 500.00. In the later case also the plaintiff had sued for damages and compensation and affixed Rs. 50,00 as court-fees. In both cases tentative valuation of the suits for the purposes of court-fees was accepted. The opinion of this Court as expressed in the above two cases is that where the Court is unable to say what the correct valuation of the relief is,*

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it cannot require the plaintiff to correct the valuation and has been made by him. In such cases, Court had no other alternative than to accept the plaintiff's tentative valuation. In case of compensation, there is no objective standard available and indeed there never can be, which can help to determine the amount to which the plaintiff should value the relief claimed by him. It is the nature of things that valuation put by the plaintiff has to be tentative and cannot be disputed. Similarly, in the later case the view expressed in Hem Raj case (supra) was followed and petition's tentative valuation was accepted.”

The abovesaid view has also been reiterated by this Court in **Manpreet Singh Vs. Gurmail Singh and others, 2016 (3) PLR 751, Dr. B.L.Kapoor Memorial Hospital VS. Balbir Aggarwal, 2015 SCC OnLine P&H 1790 and S. Ajit Singh Kohar VS. Shahsi Kant (passed in CR No. 5638 of 2014 on 25.8.2014).**

Coming to the judgments relied upon by learned counsel for the petitioner, there is no dispute about the observations made therein. However, on a close perusal of the cited judgments, none has been found to be of any help to the petitioner, 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 **Padmausundara Rao and another 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**

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(2) SCC 533.

With a view to avoid repetition and also for the sake of brevity, observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in Ganeshi Lal's case (supra), reiterating its view taken in Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

11. "12....*Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for*

what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. **Ed.** See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define.

Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of

applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it
Ed. *See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."*

It is pertinent to note here that plaintiff has tentatively assessed the damages for the purpose of court fee and accordingly, affixed ₹11,000/- as the court fee on the plaint. Plaintiff had also undertaken to pay court fee on the awarded amount at the time of passing the final judgment and decree by learned trial court. Under these circumstances, it can be safely concluded that unless the trial is concluded, learned trial court would not be in a position to ascertain the exact amount to be granted to the plaintiff, because that would depend on the evidence to be led by the parties. In this view of the matter, it is unhesitatingly held that learned trial court has rightly dismissed the application of the defendant-plaintiff and the impugned order deserves to be upheld, for this reason as well.

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Further, during the course of hearing, when confronted with as to what kind of prejudice, whatsoever, has been caused to the defendants by passing the impugned order, which may warrant interference at the hands of this Court, while exercising its supervisory jurisdiction under Article 227 of the Constitution of India, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. Thus, following the law laid down by Hon'ble the Supreme Court in Vimla's case (supra), Shamsher Singh's case (supra) as well as by two Full Benches of this Court in Krishan Kumar Grover's case and Arjan Motor's case (supra), it is held that no revision petition before this Court would be maintainable at the hands of the defendants, unless the question of court fee involves the jurisdiction of court. It is so said, because the issue of court fee, including its alleged inadequacy, would be primarily between the plaintiff and the State.

Under such circumstances, defendant cannot be permitted for stalling the progress of the suit before the learned trial court, because he is not going to suffer any kind of prejudice due to alleged inadequacy of court fee paid by the plaintiff. Although it may not be an absolute rule in every given situation, yet this Court would normally insist asking the defendant to show his locus standi and right to file and maintain a revision petition before this Court, against an order passed by learned trial court, dismissing his application under Order 7 Rule 11 CPC for directing the plaintiff to pay ad valorem court fee, in the cases where the plaintiff is claiming unliquidated damages and the amount of court fee can always be fixed once the court quantifies the damages, asking the plaintiff to pay adequate court fee.

Reverting to the peculiar fact situation of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as

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well as this Court in the cases referred to hereinabove, this Court feels no hesitation to conclude that learned trial court neither exceeded its jurisdiction, nor committed any error of law, while passing the impugned order and the same deserves to be upheld, 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 the present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

17.1.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No