

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

328

CR-291-2017

Date of Decision:11.08.2017

Dev Brat Sharma

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Animesh Sharma, Advocate,
for the petitioner.

Ms.Anju Sharma Kaushik, AAG, Punjab.

RAMESHWAR SINGH MALIK, J.(Oral)

Feeling aggrieved against the order dated 10.11.2016 (Annexure P-1), whereby the learned trial court directed the plaintiff to pay the *advalorem* court fee, allowing the application of the defendants under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, plaintiff has approached this Court by way of instant revision petition, filed under Article 227 of the Constitution of India, for setting aside the impugned order.

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

Heard learned counsel for the parties.

Plaintiff-petitioner filed a suit for damages allegedly suffered by him on account of denying the status of freedom-fighter by defendant No.3, at the relevant point of time because of which the plaintiff suffered

loss of reputation and mental agony. Relevant averments taken by the plaintiff-petitioner in para 11 of his plaint at page 22 and 23 of the paper-book, which are necessary to be referred here, read as under:-

“That the value of the suit for the purpose of court fee and jurisdiction is fixed at more than ₹20,00,000/- (Rupees twenty lacs only) but in view of the latest law, laid down by the Hon'ble Punjab & Haryana High Court in case titled “Ajit Singh Kohar Vs. Shashi Kant (CR No.5638 of 2014, decided on August 25th, 2014) that the suit for defamation for maligning reputation, the affixation of court fee of ₹50/- is acceptable as exact value of the relief to be granted, cannot be ascertained at initial stage and accordingly, the Hon'ble High Court left the petitioner in that case to pay the court fee on the sum to be adjudicated as damages by the lower court in due course of time. The relevant portion of the order of the Hon'ble High Court is reproduced as under:-

“Sequelly, the impugned order is set aside leaving the petitioner to pay the court fee on the sum to be adjudicated as damages by the lower court in due course of time, but not at this initial stage, notwithstanding that the petitioner though, leaving the entire matter to the court for adjudication of the quantum of damages, he himself has given the quantum of damages to be ₹2.00 Crores.”

Thus, in view of the aforesaid decision of the Hon'ble Punjab & Haryana High Court, though the plaintiff himself has given the quantum of damages to be ₹20,00,000/- but at this initial stage, notwithstanding that the plaintiff though, leaving the entire matter to this Hon'ble Court for adjudication of the quantum of damages, is affixing the tentative court fee of ₹50/-. However, the plaintiff undertakes to pay the court fee on the sum to be adjudicated as damages by this Hon'ble Court in due course of time.”

Corresponding paragraph 11 of the written statement filed on behalf of defendant Nos.1 to 6-respondents herein, reads as under:-

“That in reply to para 11 of the plaint, it is submitted that the suit has not been properly stamped for the purpose of court fee. The suit is, therefore, liable to be dismissed.”

While filing his replication to the abovesaid written statement, plaintiff-petitioner reiterated his stand taken in the plaint and para 11 of the replication reads as under:-

“That para No.11 of the plaint is correct and the same is reiterated. It has been wrongly denied, Additional facts mentioned in this para of written statement are absolutely incorrect and wrong. It is absolutely incorrect that the plaint has not been properly stamped for the purposes of court fee. It is absolutely incorrect that the suit is liable to be dismissed. It is to be mentioned herein that the suit has been filed for damages tentatively and it is for the court to assess the actual damages which after assessment would lead to payment of court fee and as already mentioned in the plaint the plaintiff would pay the court fee accordingly.”

A combined reading of the abovesaid averments taken by the parties in their respective pleadings and the impugned order passed by the learned trial court will make it crystal clear that the learned court below exceeded its jurisdiction, directing the plaintiff-petitioner to pay the *ad valorem* court fee on the amount of ₹20 lacs because of which the impugned order cannot be sustained. It is so said because the actual and specified amount for which the plaintiff would be entitled is yet to be assessed and determined by the learned trial court.

Such a determination at the hands of learned trial court would be possible only after appreciation of evidence yet to be produced by both

the parties. As on date, nobody including the learned trial court is in a position to specify any fixed amount for which the plaintiff would be ultimately found entitled to recover from the defendants. All would depend upon the quality of evidence to be led by both the parties. Under these undisputed facts and circumstances, it can be safely concluded that the learned trial court committed a serious error of law, while passing the impugned order and the same cannot be sustained, for this reason also.

The view that has been taken by this Court also finds support from numerous judgments of the Hon'ble Supreme Court and different High Courts including this Court in M/s Commercial Aviation and Travel Company Versus Vimla Pannalal, (1988) 3 SC 423, Hem Raj Versus Harchet Singh, (1993) Civil Court Cases 48 (P&H), Subhash Chander Goel Versus Harvind Sagar, (2003) AIR (Punjab) 248, State of Punjab Versus Jagdip Singh Chowhan, 2005(1) RCR(Civil) 54, Manpreet Singh Versus Gurmail Singh, 2016(3) PLR 751, Dr.B.L.Kapoor Memorial Hospital Versus Balbir Aggarwal, (2015) SCC Online P&H 1790, S.Ajit Singh Kohar Versus Shashi Kant, CR No.5638 of 2014 decided on 25.08.2014 and Bharpoor Singh and another Versus Lachhman Singh, 2017(1) Law Herald 609.

During the course of hearing, learned counsel for the respondents could not raise any meaningful argument in support of the impugned order passed by the learned trial court. In fact, the learned trial court miserably failed to appreciate true facts of the case noticed here-in-above as well as the law laid down by the Hon'ble Supreme Court and this Court in the judgments referred here-in-above, because of which the impugned order cannot be sustained.

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 opinion that since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, impugned order dated 10.11.2016 (Annexure P-1) passed by the learned trial Court is hereby set aside. Application filed by the defendants under Order 7 Rule 11 CPC would stand dismissed. The learned trial Court is directed to proceed further with the suit to decide the same at an early date, in accordance with law.

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

August 11, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No