

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

CR No.8098 of 2015(O&M)
Date of Decision: 27.09.2017

Sumita Sharma and others ...Petitioners

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others
... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.S. Mor, Advocate
for the petitioners.

Mr. Prateek Gupta, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioners have filed this revision petition against the order dated 02.11.2015 passed by Civil Judge (Junior Division), Ambala, whereby the application filed by the respondents under Order 7 Rule 11(b) CPC was disposed of by directing the petitioner to make good the deficiency in the Court fee within a specified period.

[2]. Plaintiffs/petitioners filed a suit for mandatory injunction, directing the defendants to remove all the electricity wires installed in front of the shop of property No.90, Kalka Chowk, Ambala City and to pay compensation to plaintiffs on account of

death of one Manoj Sharma due to wrongful and negligent act of the defendants and further directing the defendants to give employment to one of the plaintiffs on account of death of Manoj Sharma.

[3]. An application under Order 7 Rule 11(b) CPC was filed by the defendants for rejection of plaint for want of affixation of proper Court fee. Defendants asserted that since a quantified amount of Rs.15,00,000/- was claimed on account of death of Manoj Sharma and only an amount of Rs.55/- was affixed towards Court fee, therefore, the value of the suit for the purpose of Court fee was not properly assessed. The suit was under valued for which the plaintiffs were required to make good the deficiency in the Court fee and even otherwise, the suit was to be rejected.

[4]. Plaintiffs contested the application on the ground that the real damages cannot be quantified at this juncture. Where the damages were required to be ascertained by the Court, only affixed Court fee was to be paid. Even the contingent decree can be passed by the trial Court subject to payment of adequate Court fee at a later stage.

[5]. I have considered the controversy.

[6]. Trial Court has only considered the ratio laid down in

Shiv Kumar Sharma Vs. Santosh Kumari, 2007(4) CCC 333

(SC), wherein the Hon'ble Apex Court held that even in case of specific amount claimed by the plaintiff, the determination would be made in respect of the amount awarded at a subsequent stage on the basis of evidence to be led by the parties. It is true that the damages cannot be granted without payment of Court fee, but in case where damages are required to be calculated on the basis of variety of evidence to be led by the parties, a fixed Court fee is required to be paid. On the quantum determined by the Court, the plaintiff can be asked to make good the deficiency in Court fee and the Court can pass a contingent/conditional decree. In **Hem Raj Vs. Harchet Singh, 1993 CivCC 48**, this Court held that the issue of Court fee cannot be treated to be a preliminary issue. In a suit for damages and compensation, the tentative valuation of the suit for the purpose of Court fee cannot be disputed. In case of amount of compensation, there is no objective standard available in determining the amount for which the plaintiff has to value the relief claimed by him. In the nature of things, the valuation put by the plaintiff is tentative and in view of settled position of law, the same cannot be disputed.

[7]. This Court while taking into consideration the aforesaid judgments as well as the ratio laid down in **Sunita Rani and another Vs. State of Punjab and others, 2015(3) PLR 580** and

Civil Revision No.4713 of 2016 titled as **Rajender Parsad and others Vs. Vinod Kumar and others,** decided **Civil Revision No.5893 of 2016** titled **Amandeep Sidhu Vs. M/s Ultratech Cement Limited and others** on 15.09.2016. **SLP(C) No.3500 of 2017** was filed against the aforesaid order dated 15.09.2016 and the same was dismissed, upholding the order passed by this Court in aforesaid case titled **Amandeep Sidhu Vs. M/s Ultratech Cement Limited and others.**

[8]. In the light of observations made hereinabove, I deem it appropriate to accept this revision petition by setting aside the impugned order dated 02.11.2015 passed by Civil Judge (Junior Division), Ambala. Trial Court shall proceed with the suit without insisting upon payment of Court fee. However, a contingent decree can be passed by the trial Court in the event of finding that the requisite Court fee would be payable at a subsequent stage.

27.09.2017

prince

Whether Reasoned/Speaking

Whether Reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No