

CR No.1337 of 2018

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

CR No.1337 of 2018
Date of decision: 16.04.2018

Sugan Singh

.....Petitioner

versus

The Emerson Information Technology Solutions and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Pushpinder Kaushal, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Article 227 of the Constitution of India, challenge has been laid to order dated 17.11.2017 (Annexure P-1) whereby application of the respondents-defendant under Order 7 Rule 11 CPC was accepted by the trial Court and order dated 16.02.2018 (Annexure P-4) whereby application for review of the aforesaid order (Annexure P-1) filed by the petitioner-plaintiff was dismissed.

Briefly stated, petitioner filed a suit for declaration to the effect that resignation dated 20.05.2016 was not voluntarily, rather was obtained by the respondents-defendant from him illegally and unlawfully by hatching a conspiracy. Therefore, the same was the result of fraud played upon him. Petitioner further sought declaration that he was entitled to ₹32,80,000/- towards service benefits equivalent to which were paid to other employees.

Upon notice, respondents-defendant appeared and moved an application under Order 7 Rule 11 CPC for rejection of the plaint taking

various pleas that suit was bad on account of non-joinder and mis-joinder of necessary parties; petitioner was liable to affix *ad valorem* court fee on the

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relief claimed by him; non-affixation of proper court fee and that suit was not maintainable as services of the petitioner were terminated after tendering resignation by him and acceptance of full and final dues.

The trial Court after hearing both the sides accepted the said application of the respondents-defendant vide impugned order dated 17.11.2017 (Annexure P-1) thereby directing the petitioner to make good the deficient court fee. Thereafter, petitioner moved another application for review/recall of the said order (Annexure P-1), which after reconsideration was dismissed vide detailed order dated 16.02.2018 (Annexure P-4).

Learned counsel for the petitioner relying upon the judgment of this Court in ***Bharpoor Singh and another v. Lachhman Singh, 2017(1) HLR 322***, contends that issue of affixation of court fee is in between the petitioner-plaintiff and the Court. Therefore, the respondents-defendant had no legal right to file any application under Order 7 Rule 11 CPC raising the issue of deficient court fee. The trial Court failed to appreciate that such application moved by respondents-defendant was not maintainable.

Having given considerable thought to the submission made by learned counsel for the petitioner, this Court finds the instant petition completely devoid of any merit for the reasons to follow.

No doubt issue qua affixation of proper court fee is in between the Court and the plaintiff. However, there is no provision in the entire Code of Civil Procedure, which debars the defendant to bring to the notice of the Court as to how much court fee was liable to be paid by the plaintiff.

For ready reference, Order 7 Rule 11 CPC is reproduced hereunder: -

- (a) where it does not disclose a cause of action;*
- (b) 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;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails comply with the provision of Rule 9. Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”*

Perusal of the above provision shows that if the relief claimed is undervalued, the plaint is liable to be rejected. Therefore, it cannot be said by any stretch of imagination that the defendants were not legally competent to bring to the notice of the Court about affixation of proper court fee by the petitioner-plaintiff. The trial Court by specifically observing that the plaintiff by giving the colour of declaration to the recovery of ₹32,80,000/- has directed the petitioner to make good the deficient court fee.

The facts and circumstances of the judgment referred by learned counsel for the petitioner are completely distinguishable from the facts of the present case, therefore, no benefit of the same can be given to

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the petitioner inasmuch as in that case application of the defendant under Order 7 Rule 11 CPC was rejected by the trial Court against which he filed a revision petition before this Court. In these circumstances, this Court observed that revision was not maintainable inasmuch as issue of court fee was in between the Court and the plaintiff. Whereas in the instant case, application of the respondents-plaintiff is being accepted by the trial Court.

I have gone through the impugned orders and find no illegality or perversity in the same. Hence, the revision is dismissed.

However, in view of the specific prayer made by learned counsel, petitioner is granted one month's time to make good the deficient court fee.

(Ramendra Jain)
Judge

April 16, 2018
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No