

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1368 of 2018

Date of Decision: 28.02.2018

Bikramjit Singh

... Petitioner

Versus

Mohinderjit Singh & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. V.K. Kaushal, Advocate, for
Mr. Prashant Vashisth, Advocate,
for the petitioner.

RAMENDRA JAIN, J.(Oral)

Through this petition under Article 227 of the Constitution of India, prayer has been made for setting aside order dated 28.08.2017 (Annexure P-1) of the trial Court, whereby upon application of respondent No.1-defendant under order 7 Rule 11 CPC, petitioner-plaintiff has been directed to pay ad valorem Court fee on the relief claimed by him on his plaint.

In nutshell, a civil suit filed by respondent No.1-defendant against the petitioner-plaintiff was dismissed by the Civil Court vide judgment and decree dated 28.02.2013. The appeal against the same filed by respondent No.2 also resulted into dismissal.

Thereafter, the petitioner-plaintiff filed a suit for recovery of ₹9,00,000/- against respondent No.1-defendant claiming damages and compensation towards loss of his reputation, malicious prosecution and harassment etc. at the hands of respondent No.1-defendant.

In this suit, which is pending adjudication, respondent No.1-defendant filed application under Order 7 Rule 11 CPC for rejection of plaint of the petitioner being under valued.

The trial Court after hearing both the sides, accepted the aforesaid application of respondent No.1-defendant and directed the petitioner-plaintiff to pay ad valorem Court fee on his claim of ₹9,00,000/-.

Learned counsel for the petitioner relying upon Sunita Rani and another Vs. State of Punjab and others, 2015(3) PLR 580, Amandeep Sidhu Vs. M/s Ultratech Cement Limited and others, 2017(1) PLR 786, Tarwinder Kumar Bedi Vs. Jit Parkash, 2015(2) PLR 92, Manpreet Singh and others Vs. Gurmail Singh and others, 2016(3) PLR 751 and Saleem Vs. Usman Gani and another, 2015(2) PLR 39, contends that in para No.15 of his plaint, the petitioner-plaintiff has specifically undertaken to pay Court fee on the amount, which the trial Court would deem fit or decree after due trial. Therefore, the application of respondent No.1-defendant under Order 7 Rule 11 CPC was liable to be dismissed.

Having given thoughtful consideration to the submission made by learned counsel for the petitioner and going through the above referred citations, this Court is of the considered view that when there is an undertaking of the plaintiff to pay Court fee, as directed by the Court, the plaintiff may not be asked to affix ad valorem Court fee on his claim, inasmuch as there is no objective standard available, which can help in determining the amount of compensation or damages claimed by the plaintiff. The same would be subject to variance based on the quality of evidence to be led before the Court.

In the instant case, the petitioner-plaintiff would be liable to pay Court fee on the final relief, which would be granted to him on the conclusion of trial.

Therefore, this Court is of the considered view that the impugned

order dated 28.08.2017 of the trial Court being erroneous is liable to be set aside. Accordingly, the same is set aside. Resultantly, the application of respondent No.1-defendant under Order 7 rule 11 CPC is rejected. The trial Court is directed to proceed with the trial in accordance with law.

This petition is disposed of without issuing notice to the respondents with a view to impart justice to the parties and to save the huge expenses which may be incurred by the respondents and also to avoid unnecessary delay in the adjudication of the matter. Still, if dissatisfied, the respondents may move this Court for recalling this order within six weeks from today.

28.02.2018
monika

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No