

CR-1758-2018 (O&M)

201

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

CR-1758-2018 (O&M)
Date of decision : 30.11.2018

State Bank of India and others

... Petitioners

Versus

Aruna Garg

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. IPS Doabia, Advocate
for the petitioners.

Mr. P.K.S Phoolka, Advocate
for the respondent.

AMIT RAWAL, J.

The present revision petition is directed against the impugned order dated 14.02.2018 declining the application of the petitioners-defendants under Order 7 Rule 11 of Code of Civil Procedure for rejection of the plaint.

The respondent-plaintiff filed a suit for damages to the tune of ₹50 Lacs on account of various grounds.

In response to the notice, the defendants have moved an application under Order 7 Rule 11 of CPC that the suit for damages and compensation would fall within the provisions of Section 7 (i) of the Court Fees Act, 1870 (in short 'the 1870 Act') and not under Section 7(iv) (f) of the 1870 Act, thus, the plaintiff was liable to pay court fees on the amount as claimed.

CR-1758-2018 (O&M)

Mr. IPS Doabia, learned counsel appearing on behalf of the petitioners-defendants has drawn the attention of this Court to the order of notice of motion dated 21.03.2018 to contend that as per the *ratio decidendi* culled out by the Division Bench of this Court in ***M.S. Chemical Industries Ltd. Vs. Hindustan Commercial Bank Ltd. 1956 AIR (Punjab) 214*** followed by single bench of this Court in ***Ranjit Kaur and others Vs. Punjab State Electricity Board and another 2007(1) RCR (Civil) 686***, the plaintiff is liable to pay the courts fee. In other words, he further submitted that decision rendered by this Court in ***Saleem V/s Usman Gani and another, 2015 (3) RCR (Civil) 650, Amandeep Sidhu V/s M/s Ultratech Cement Limited and others 2017 (1) PLR 786, Manpreet Singh V/s Gurmail Singh and others, 2017 (1) RCR (Civil) 230*** and ***Subhash Chander Goel V/s Harvind Sagar, 2003 AIR (Punjab) 248***, would not apply.

On the contrary, Mr. P.K.S. Phoolka, learned counsel appearing on behalf of the respondent-plaintiff submitted that the plaintiff has categorically undertaken in paragraph 43 of the plaint to pay the appropriate court fees at the time of final adjudication of the case, though the quantification would depend upon the evidence brought on record, therefore, no hard and fast formula would be applicable in paying the court fees on ₹50 Lacs. It would onerous condition, thus, the provisions of Section 7 (iv) (f) of the 1870 Act would apply. In support of his contentions, he relies upon unreported judgment rendered by Co-ordinate Bench of this Court in **CR No.6759 of 2018** titled as **“Kashmir Singh V/s Mandeep Kaur and others”** decided on 05.10.2018.

I have heard learned counsel for the parties, appraised the paper

CR-1758-2018 (O&M)

book and of the view that in a suit for damages and compensation, quantification can be determined by the Court only when the parties to the *lis* had led the evidence. In such circumstances, particularly when an undertaking has been given in paragraph 43 of the plaint, which is extracted hereinbelow, issue of determination of the court fees can be kept in abeyance.

"43. That the plaintiff is entitled for the damages of ₹50.0 Lakh on account of defamation, physical and mental harassment, agony and malicious prosecution as well as financial loss caused by defendants to the plaintiff and plaintiff is paying the tentative ad valorem court fee in the present suit i.e. ₹50/- and undertakes to pay the exact court fee at the time of final adjudication of the case on the amount so awarded by the Court."

In ***M/s Chemical Industries Ltd.'s case*** (supra), the Division Bench of this Court found that claim was on account of loss, but while determining the aforementioned controversy, specifically relied upon the provisions of Section 7(i) of the 1870 Act, which reads thus:-

"7. Computation of fees payable in certain suits

(i) for money *In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically) - according to the amount claimed."*

The legislature has specifically provided the computation of fee in a suit for damages or compensation or arrears of maintenance or annuities or other sum periodically payable, but that cannot be a complete blanket bar for the plaintiff particularly when an undertaking has been given to pay the court fees on the amount claimed in the first call. In all the judgments relied upon by Mr. Phoolka, attempted to be distinguished by Mr. Doabia, the

CR-1758-2018 (O&M)

plaintiff in such circumstances, had been an opportunity to make the deficiency of the court fees at a later stage.

Without commenting upon the applicability of the Division Bench's judgment keeping the question of court fees open and in view the peculiar facts and circumstances of the case, I am of the view that the impugned order, under challenge, is not sustainable and the same is hereby set aside with clarification that the issue of court fees be kept open and shall be determined at the final stage, when the parties had led the evidence.

With the aforesaid observations, the present revision petition stands disposed of.

30.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**