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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2559-2017 (O&M)

Date of decision : 27.11.2018

Shiv Paras Enterprises

... Petitioner

Versus

U.H.B.V.N and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikram Punia, Advocate
for the petitioner.

Mr. P.K. Longia, Advocate
for the respondents.

AMIT RAWAL, J.

The petitioner-plaintiff is aggrieved of the impugned order, whereby in a suit for declaration with consequential relief of mandatory injunction, on an application filed by the defendant, the petitioner has been called upon to pay ad valorem court fee.

Learned counsel appearing on behalf of the petitioner-plaintiff submitted that the plaintiff being a proprietor of Shiv Paras Enterprises sought the aforementioned relief on the premise that he had electric connection with the defendant/Department and consumption charges were regularly paid. However, owing to the faulty supply of electricity, the matter was reported to the field staff and even the proper complaint was also recorded in the Register. The petitioner-plaintiff received a intimation of visit of the Inspection Team on 04.09.2015. The charges of the theft of the electricity were assessed to the tune of ₹23,85,722/-, which were never

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consumed, but the defendants went ahead in lodging an FIR bearing No.532 dated 11.09.2015 under Section 135 of the Electricity Act. The defendants filed the joint written statement, however, moved an application under Order 7 Rule 11 of CPC directing the plaintiff to make the deficiency of Court fee by paying ad valorem Court fee on the amount to be recovered. In fact, the prayer in the suit was not solely for recovery of the amount, but adjustment in future bills, therefore, the question of Court fee could have been kept open to be decided at final stage after the parties had led the evidence.

Learned counsel appearing on behalf of the respondents supported the impugned order by saying that in a recovery suit, ad valorem court fee on the amount sought to be recovered is required to be paid. In support of his contentions, he relied upon the *ratio decidendi* culled out by this Court in **“Nazir Singh V/s Life Insurance Co. Ltd. and another” 2012 (34) RCR (Civil) 765** and **“Ram Chander V/s Rattan Lal” 2002 (2) RCR (Civil) 157.**

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to extract the relief sought in the suit, which reads as under:-

“It is, therefore, respectfully prayed that a decree for declaration to the effect that Checking report dated 4.9.15 and the Memos No.467, 468 dated 10.9.15 and 16/TC-Vol-III dated 30.11.15 are illegal, void and not binding on the rights of the plaintiff and the same are prepared at the back of the plaintiff illegally, be passed in favour of the plaintiff and against the defendants.

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It is further prayed that a decree for mandatory injunction directing the defendants to refund the amount of ₹20,54,678/- to the plaintiff along with interest or the amount be adjusted in future bills be also passed in favour of the plaintiff and against the defendants with costs of the suit.

Any other relief which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case be also granted to the plaintiff."

On plain and simple reading of the prayer, it is not a simpliciter suit for recovery of amount of ₹20,54,678/-, but adjustment in future bills. It is yet to be seen whether the plaintiff is entitled to recovery or adjustment. The trial Court if finds fit case for recovery, can always call upon the plaintiff to pay ad valorem court fee, but not at this stage.

There is no dispute to the *ratio decidendi* culled out in the judgments cited, but the facts and circumstances of each case including the prayer of the suit has to be seen.

As an upshot of my observations, the impugned order is hereby modified and the question of payment of ad valorem court fee is kept in abeyance to be decided at final stage i.e. when the suit arrives at for arguments.

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

27.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No