

229

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

CR No. 3657 of 2017

Date of Decision: 27.09.2018

Parveen Kumar Puri

-Petitioner

Vs

Ajay Rastogi and another

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Parminder Singh, Advocate,
for the petitioner.

Mr. D.R. Bansal, Advocate,
for the respondents.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed the order dated 26.04.2017 passed by Civil Judge (Junior Division), Karnal vide which the petitioner was directed to pay *ad valorem* Court fee on liquidated amount of Rs.10 lacs as per valuation of the suit.

Plaintiff filed a suit for recovery of unliquidated damages, though in the legal notice dated 09.09.2014, liquidated damages to the tune of Rs.10 lacs from each of the defendants were sought to be recovered but in the prayer clause of the suit, a decree of unliquidated damages was sought to be granted.

For ready reference, para no.13 of the plaint and the

prayer clause are reproduced as under:

“13. That the plaintiff also got issued legal notices dated 09.09.2014 to both the defendants calling upon them to pay Rs.10,00,000/- each as compensation to the plaintiff within 15 days from the date of receipt of the notice, failing which the plaintiff shall be constrained to file complaint under Section 500/501 of IPC as well as suit for recovery of the un-liquidated damages against the defendants in the competent Court of law and in such eventuality, the defendants will be held liable for all the costs and expenses thus incurred by the plaintiff in those proceeding including the costs and expenses of this legal notice. The legal notice was duly acknowledged by the defendants. It is relevant to mention here that the defendants has submitted the reply to the legal notice through their counsel Sh. D.R. Bansal Advocate, Chandigarh vide reply dated 09.10.2014. It has specifically been mentioned in reply to para No.7 of the notice that “by getting such notice served upon the witness, your client is trying to intimidate and overawe the witnesses, which is a misconduct under the Service Rules applicable to your client for which my client is referring this matter to the employer for initiating necessary disciplinary action against your client.” In this regard it is submitted that no one has a right to depose falsely against another and by giving such type of

threatening by the defendants through their counsel in reply to the legal notice made the intention of the defendants and under the compelling circumstances the plaintiff is filing the present suit. It is well settled law that if any one tried to restrain any one from taking legal action, the same amounts to defamation, as has been done by the defendants in their reply to the legal notice. But the defendants did not come forward to accede to the genuine request of the plaintiff. For the kind perusal of this Hon'ble Court copy of legal notice, postal receipt and acknowledgment receipt are attached with the present suit."

"It is therefore, respectfully prayed that a decree for un-liquidated damages may kindly be passed in favour of the plaintiff against the defendant along with costs of the suit."

The point for consideration is whether principle of valuation of suit as in simple suit of recovery of liquidated claim will not apply for the purpose of Court fee? Whether plaintiff can be asked to pay *ad valorem* Court fee in a suit for unliquidated damages?

In **Shiv Kumar Sharma Vs. Santosh Kumari, 2007**

(4) Civil Court Cases 333 (SC), the Hon'ble Apex Court has held that even in case of specific amount claimed by the plaintiff, the determination would be made by the trial Court in respect of the amount to be awarded at a subsequent stage on

the basis of evidence to be led by the parties. It is true that damages cannot be granted without payment of court fee but at the same time, 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 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 CCC 48**, this Court has 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 the suit for damages, there is no objective standard available for determining the amount for which plaintiff has to value the suit in respect of relief claimed by him. In the nature of things, the valuation put by the plaintiff is tentative and in view of precedents, the same cannot be disputed.

On the aforesaid subject, the proposition laid down in **Sunita Rani and another Vs. State of Punjab and others, 2015(3) PLR 580** and Civil Revision No.5893 of 2016 titled 'Amandeep Sidhu Versus M/s Ultratech Cement Limited and others' can be relied. The order passed in aforesaid **Amandeep**

Sidhu's case (supra) has been upheld by the Hon'ble Apex Court in SLP (C) No.3500 of 2017.

In the light of aforesaid facts, the impugned order passed by the trial Court is not legally sustainable.

This revision petition is disposed of with a clarification that if the amount of compensation is ultimately assessed higher than the amount qua which suit has been valued, contingent decree thereby asking the plaintiff to make good the deficiency in Court fee can be passed by the trial Court.

The trial Court is directed to decide the suit at the earliest.

Copy of this order be sent to the trial Court.

27.09.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No