

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

CR-4152-2017 (O&M)

Date of decision : 27.4.2018

Simranjit Singh @ Simri and others

..... Petitioners

Versus

Karamjit Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. H.P.S. Ghuman, Advocate for the petitioners.

Mr. Sherry K. Singla, Advocate for respondent No.1.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 2.5.2017 passed by learned Civil Judge (Junior Division), Nabha, vide which in the suit for recovery of Rs. 80.00 lacs as damages on account of death/murder of Harpreet Singh son of Santokh Singh, learned Civil Judge (Junior Division), Nabha held that the plaintiffs will pay the Court fee in case they succeeds in the present case.

Heard.

Learned counsel for the petitioners has argued that plaintiffs had filed a suit for recovery of damages of Rs. 80.00 lacs on account of death/murder of Harpreet Singh. Initially, suit was filed in forma paupers and the same was dismissed and order was upheld in appeal vide order dated 20.8.2016, passed by learned Additional District Judge, Patiala. Therefore, the plaintiffs were required to pay the Court fee on the amount

claimed in the plaint.

It is further pointed out that suit was valued for the purpose of Court fee and jurisdiction for Rs. 80.00 lacs and it was stated that since plaintiffs are indigent persons and therefore, they are unable to pay the Court fee. It is further argued that permission to sue as an indigent person was declined, therefore, now advalorem Court fee is required to be paid as required under Section 7(i) of the Courts Fee Act 1870.

Learned counsel for the petitioners has placed reliance upon authorities delivered by this Court in **Manjeet Singh versus Beant Sharma, 2012 (44) RCR (Civil) 118; R.S.Malik versus Sh. Krishan Mohan, IAS and others 2010 (1) RCR (Civil) 76; Dr. Bimal Anjuman versus Aasra Foundation (Registered), Muktsar 2013 (15) RCR (Civil) 585.**

On the other hand, learned counsel for the respondents has argued that revision against the order of the learned trial Court is not maintainable. He has placed reliance upon judgment of Hon'ble Supreme Court delivered in **Sri Rathnavarmaraja versus Smt. Vimla 1961 AIR (SC) 1299**, wherein learned Apex Court held that the question of payment of Court fee is between the Court and the plaintiff. Relevant extract reads as under: -

2. “The Court-fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction against the order adjudging court-fee payable on the

plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court-fee on his plaint. Whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court-fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. Again, the jurisdiction in revision exercised by the High Court under Section 115 of the Code of Civil Procedure is strictly conditioned by clauses (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the court does not possess or on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction. The defendant who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior court by appeal or in revision against the order adjudging payment of court-fee payable on the plaint. But counsel for the defendant says that by Act 14 of 1955 enacted by the Madras Legislature which applied to the suit in question, the defendant has been invested with a right not only to contest in the trial court the issue whether adequate court-fee has been paid by the plaintiff, but also to move the High Court in revision if an order contrary to his submission is passed by the Court. Reliance in support of that contention is placed upon sub-section (2) of Section 12. That sub-section, in so far as it is material, provides :

"Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the court shall fix a date before which the plaint shall be amended in accordance with the court's decision and the deficit fee shall be paid....."

3. But this section only enables the defendant to raise a contention as to the proper court-fee payable on a plaint and to assist the court in arriving at a just decision on that question. Our attention has not been invited to any provision of the Madras Court-fees Act or any other statute which enables the defendant to move the High Court in revision against the decision of the court of first instance on the matter of court-fee payable on a plaint. [The Act](#), it is true by Section 19 provides that for the purpose of deciding whether the subject-matter of the suit or other proceedings has been properly valued or whether the fee paid is sufficient, the court may hold such enquiry as it considers proper and issue a commission to any other person directing him to make such local or other investigation as may be necessary and report thereon. The anxiety of the Legislature to collect court-fee due from the litigant is manifest from the detailed provisions made in Ch. III of the Act, but those provisions do not arm the defendant with a weapon of

technicality to obstruct the progress of the suit by approaching the High Court in revision, against an order determining the court-fee payable. In our view, the High Court grievously erred in entertaining revision applications on questions of court-fee at the instance of the defendant, when no question of jurisdiction was involved.”

Learned counsel for the respondents has further placed reliance upon an authority of the Full Bench of this Court delivered in **Arjan Motors versus Girdhara Singh and others, 1978 PLJ 36**, wherein a specific question was referred to the Full Bench as to whether a revision lies by the defendant on the question that proper Court fee has not been paid by the plaintiff. The Full Bench passed the following orders: -

“The learned counsel for the petitioner states that in view of the latest judgment of their Lordships of the Supreme Court in **Shamsher Singh versus Rajinder Prashad, 1973 PLJ 686**, the question of Court fee cannot be agitated by this clients in this petition under Section 115 of the Civil Procedure Code. The petition is accordingly dismissed without any order as to costs”.

This Court has been informed that the case is now fixed for arguments on 17.4.2018 and is likely to be decided and it is undertaken on behalf of the respondents that Court fee will be paid as per the amount decreed by the learned trial Court.

Keeping in view the authoritative pronouncement of the Hon'ble Supreme Court and the Full Bench of this Court, this Court is of the view that revision petition does not lie on the point whether the proper Court fee has been paid or not.

Therefore, no interference in the order dated 2.5.2017 passed by learned Civil Judge (Junior Division), Nabha is called for.

Dismissed.

Since the main case is dismissed, the miscellaneous application pending, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

27.4.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No