

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

**CR No.4500 of 2018 (O&M)
Date of Decision :02.11.2018**

Vimlesh Devi and another

....Petitioners

VERSUS

Sub Divisional Officer & others

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Tushar Gautam, Advocate for the petitioners.

Mr. S.K.Mahajan, Advocate for the respondents.

B.S. WALIA, JUDGE

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging order dated 12.04.2018 passed by the learned Civil Judge (Jr. Division), Hodal (Annexure P-1) vide which application under Order 7 Rule 11 CPC moved by the respondent-defendants for directing the petitioner-plaintiffs to pay ad valorem court fee of ₹1,00,000/- was allowed.

2. Brief facts of the case leading to the filing of the instant revision petition are that the petitioner-plaintiffs had filed a suit for damages on account of death of their husband/father respectively seeking compensation to the tune of ₹1 crore by affixing court fee of ₹3675/- by considering the value of the suit as ₹75,000/-. An application was moved under Order 7 Rule 11 CPC by the respondent-defendants for rejection of the plaint by stating that the suit had been filed by the petitioner-plaintiffs seeking damages to the tune of ₹1 crore on account of death of Subhash Chand, therefore, they were required to pay ad

valorem court fee on ₹1 crore but they had wrongly assessed the valuation as ₹75,000/- and paid an amount of ₹3675/- whereas they should have paid court fee on ₹1 crore. Learned Civil Judge (Jr. Division), Hodal vide order dated 12.4.2018 allowed the application by holding that the petitioner-plaintiffs had claimed liquidated damages i.e certain amount of ₹1 crore from the defendants therefore, court fee should be affixed on the claimed amount of ₹1 crore and merely by stating that the plaintiffs would pay ad valorem court fee after the decree was passed was untenable because a party to the suit could not seek a conditional decree, besides no undertaking had been filed at the time of filing of the suit.

3. Learned counsel for the petitioner by relying upon the decision of this Court in **Manpreet Singh versus Gurmail Singh and others and Gurmail Singh and others versus Manpreet Singh and others 2016(3) PLR 751** as also **Subhash Chander Goel vs. Harvind Sagar 2003 AIR (Punjab) 248** contends that in a suit claiming damages, the plaintiff cannot be asked to pay ad valorem court fee as the claim is tentative and the plaintiff is to be allowed to affix court fee on the final adjudication of the case.

4. Per contra, learned counsel for the respondent-defendants has supported the impugned order and reiterated the reasoning given therein.

5. I have considered the submissions of learned counsel for the parties.

6. It is settled law that the principles of evaluation of suit as in simple suit for recovery of liquidated claims is not applicable for the purpose of court fee. In such a suit, valuation putforth by the plaintiff has to be tentative and cannot be disputed and where the court is unable to say what the correct valuation of the relief is, the plaintiff cannot be called upon to pay the entire court fee which is yet to be ascertained. Relevant extract of the decision in **Manpreet Singh's** case

“I have heard learned counsel for the parties and appraised the paper book and of the view that the impugned order in C.R. No. 5662 of 2014 calling upon the plaintiff to pay the ad valorem court fee in a suit for damages is not sustainable in view of the ratio decidendi culled out by this Court in Subhash Chander Goel's case (supra) which has been rendered by taking into consideration the judgments rendered by various courts including the Hon'ble Supreme Court. It is a settled law that the principles of evaluation of suit as in simple suits for recovery of liquidated claims will not apply for the purpose of court fee, in such a suit valuation put by the plaintiff has to be tentative and cannot be disputed where the court is unable to say what the correct valuation of the relief is, plaintiff cannot be called upon to pay entire court fee, which is yet to be ascertained. This view of mine is supported as per the judgment rendered in State of Punjab and others Vs. Jagdip Singh Chowhan 2005 (1) RCR (Civil) 54, accordingly, the impugned order is set aside. The revision petition No. 5662 of 2014 is allowed, with condition that the plaintiff shall be called upon to pay the exact court fee at the final adjudication of the case, in case the plaintiff is able to make out a case of damages to the extent of certain amount.”

7. The aforementioned decision is based on the decision of this Court in **State of Punjab and others versus Jagdip Singh Chowhan 2005(2) CCC 37** which in turn is based on the decision of this Court in **Hem Raj versus Harchet Singh 1993 CCC 48 (P&H)** and **Subhash Chander Goel's case (supra)**. Relevant extract of the decision in **Jagdip Singh Chowhan's case (supra)** is reproduced as under:

“12. The plaintiff-respondent's suit as framed is similar to the suits for damages considered by this Court in Hem Raj v. Harchet Singh and Ors., 1993 Civil Court Cases 48 (P&H) and Subhash Chander Goel v. Harvind Sagar, A.I.R. 2003 P&H

248. In the former case the plaintiff had sued for damages on account of injuries suffered by him and valued his suit for purposes of jurisdiction at Rs. 1.00 lac while for the purpose of court-fees suit was valued at Rs. 500.00. In the later case also the plaintiff had sued for damages and compensation and affixed Rs.50,00 as court-fees. In both cases tentative valuation of the suits for the purposes of court-fees was accepted. The opinion of this Court as expressed in the above two cases is that where the Court is unable to say what the correct valuation of the relief is, it cannot require the plaintiff to correct the valuation as has been made by him. In such cases, Court had no other alternative than to accept the plaintiff's tentative valuation. In case of compensation, there is no objective standard available and indeed there never can be, which can help to determine the amount to which the plaintiff should value the relief claimed by him. It is the nature of things that valuation put by the plaintiff has to be tentative and cannot be disputed. Similarly, in the later case the view expressed in Hem Raj case (supra) was followed and petition's tentative valuation was accepted.”

8. In **Shiv Kumar Sharma versus Santosh Kumari 2007(8) SCC 600**,

it was held that even otherwise the case where damages are required to be calculated, a fixed court fee is to be paid but on the quantum determined by the Court, balance court fee is to be paid when the final decree is to be prepared.

Relevant extract of the aforementioned decision is reproduced as under:

“16. In terms of Order II, Rule 2 of the Code, all the reliefs which could be claimed in the suit should be prayed for. Order II, Rule 3 provides for joinder of causes of action. Order II, Rule 4 is an exception thereto. For joining causes of action in respect of matters covered by Clauses (a), (b) and (c) of Order II, Rule 4, no leave of the court is required to be taken. Even without taking leave of the court, a prayer in that behalf can be made. A suit for recovery of possession on declaration of one's title and/ or injunction and a suit for mesne profit or damages may involve different cause of action. For a suit for possession, there may be one cause of action; and for claiming a decree for mesne profit, there may be another. In terms of Order II, Rule

4 of the Code, however, such causes of action can be joined and therefor no leave of the court is required to be taken. If no leave has been taken, a separate suit may or may not be maintainable but even a suit wherefor a prayer for grant of damages by way of mesne profit or otherwise is claimed, must be instituted within the prescribed period of limitation. Damages cannot be granted without payment of court fee. In a case where damages are required to be calculated, a fixed court fee is to be paid but on the quantum determined by the court and the balance court fee is to be paid when a final decree is to be prepared.”

9. Accordingly, in the light of the decisions as noted above, I am of the view that the impugned order is legally unsustainable since it is settled law that if the Court itself is unable to say as to what the correct valuation of the relief is, it cannot require the plaintiff to correct the valuation that has been made by him. This view finds support from the decision of a Coordinate Bench of this Court in **Hem Raj's** case (supra). Relevant extract of the same is reproduced as under:

*“Coming to the third point, the law is fairly well settled that if the Court is it self unable to say what the correct valuation of the relief is it cannot require the plaintiff to correct the valuation that has been made by him. In such a case the Court has no other alternative than to accept the plaintiff's valuation tentatively. In **M/S Commercial Aviation and Travel Company and others v. Mrs. Vimla Pannalal**, AIR 1988 Supreme Court 1636 their Lordships referred to a Five Judge Bench decision in **S. Rm.Ar.S.Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar**, 1958 SC 245 at pp. 251-52 and extracted the relevant observations, part of which are as under:-*

"If the scheme laid down for the computation of fees payable in suite covered by the several Sub-sections of Section 7 is considered it would be clear that in respect of suits falling under Sub-section (iv), a departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of court-fees. The

theoretical basic of this provision appears to be that in cases in which the plaintiff is given the option to value his claim, it is really difficult to value the claim within any precision or definiteness....."

The same view has been reiterated in various decisions of the apex Court up to the recent decision in Sujir Keshav Nayak's case (supra). Mr. J.C. Nagpal, learned counsel for the respondents, submitted that the various authorities cited by Mr. Chopra related to cases of rendition of accounts. He submitted that in suits relating to rendition of accounts the statute itself expressly gave power to the plaintiff to value the relief which he claims, He further pointed out that there was no such enabling provision in so far as suit for the recovery of compensation/damages falling in Section 7(1) of the Court Fees Act was concerned. In my view, this is a distinction without, a difference. In the case of the amount of compensation, there is no objective standard available which can help determine the amount for which the plaintiff has to value the relief claimed by him. In the nature of things, the valuation put by the plaintiff is tentative and in view of the settled position of law, the same cannot be disputed."

10. Accordingly, in the light of the position as noted above, the revision petition is allowed and the impugned order is set aside. Valuation given by the petitioner-plaintiffs shall be accepted tentatively and the exact amount of court fee payable shall be determined and paid at the time of passing of the decree.

11. Revision petition allowed in the aforementioned terms.

November 02, 2018

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**(B.S. WALIA)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No