

115.

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

Civil Revision-622-2018 (O&M)
Date of decision:01.02.2018

M/S METICULOUS PHARMACEUTICALS

... Petitioner

versus

PAWAN KUMAR

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

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

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition under Article 227 of the Constitution of India for setting aside the impugned order dated 23.01.2018 (Annexure P-3) passed by learned Civil Judge (Junior Division), Ambala, whereby the application filed by the petitioner-defendant under Order 7 Rule 11 CPC was dismissed.

Briefly stated, respondent-plaintiff has filed a suit for mandatory injunction directing the defendant-petitioner to return the stock of medicines of value of ₹7.56 lakhs which belongs to the plaintiff. In the plaint, it has been alleged that the plaintiff is a proprietor of Grampus Pharmaceuticals carrying on his business of veterinary medicines under the name and style of M/s Grampus Pharmaceuticals at Ambala City. Plaintiff appointed the present petitioner/defendant as its consignee agent for the supply of government approved veterinary medicines in the State of Uttar Pradesh, for which, a necessary agreement dated 18.01.2007 was entered

between the parties. As per the conditions of the agreement, the petitioner-

defendant was required to keep the stock of all the medicines transported by the plaintiff at Saharanpur and was also required to look after the business activities of the plaintiff including delivery of goods as per the government orders and maintaining stock status. Thus, the petitioner was a consignee agent of the plaintiff and the plaintiff was required to pay commission on net sales @ 2% and all the expenses for transportation and delivery charges to the petitioner-defendant. But the petitioner-defendant did not adhere to the terms and conditions of the agreement and did not make supply to the respective CVOs and rather started unnecessarily withholding the stock, which not only creating problem for the plaintiff but also bringing the reputation of the plaintiff into disrepute. It has been pleaded in the suit that the plaintiff has transferred a huge stock of medicines to the petitioner-defendant on 10.08.2009, as detailed in para 10 of the plaint, but the petitioner withheld the stock and did not dispatch the same as per the instructions. In this manner, the petitioner has withhold a substantial stock of the aforesaid amount, as indicated in the plaint.

While the suit was pending and written statement was filed by the petitioner-defendant, an application under Order 7 Rule 11 CPC was filed by the petitioner-defendant on the ground that the suit for mandatory injunction directing the defendant to return the stock of medicines of value of ₹7.56 lakhs, is for recovery of money, but the plaintiff has not affixed proper court fee and, therefore, the plaint should be returned.

Learned counsel for the petitioner has argued that since a specified/liquified amount has been claimed in the suit, therefore, the plaintiff is required to affix court fee, but this fact has been ignored as there is a specific prayer in the plaint for return of stock of medicines of value of

₹7.56 lakhs. Virtually, it is a suit for recovery and, therefore, ad valorem court fee is required to be affixed in the suit. He has referred to two judgments of this Court rendered in **Chhaju @ Chhaju Ram Versus Naresh and others-2009 (51) R.C.R. (Civil) 206** and **Man Singh and another Versus Sumer Singh and others-2009(1) R.C.R. (Civil) 125.**

I have heard learned counsel for the petitioner and perused the judgments.

A bare perusal of the suit so filed by the plaintiff indicates that the suit is for return of stock of medicines of value of ₹7.56 lakhs which admittedly belongs to the plaintiff and, therefore, it is only on the basis of assessment of stock of medicines so delivered to the defendant, the value of amount has been assessed. The judgments so referred by the counsel have no application to the facts and circumstances of present case. Even otherwise while filing the suit, the plaintiff has made a specific averment that after rendition of accounts whatever amount is found due from the defendant, the plaintiff shall pay court fee accordingly. Therefore, at this stage, the court is required to see as to whether the plaintiff is entitled for issuance of mandatory injunction and it is only thereafter, court fee is to be assessed and fixed in the case.

In view of above, this Court finds that there is no illegality in the order passed by the court below and accordingly, the revision petition is dismissed.

(HARI PAL VERMA)
JUDGE

01.02.2018
sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.