

239/2
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 18.5.2018

(1) CR-7507-2016

Rantej Pal

..... Petitioner

Versus

Gurcharan Singh

..... Respondent

(2) CR-7508-2016

Rantej Pal

.....Petitioner

Versus

Kuldeep Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Ms. Supriya Garg, Advocate for the petitioner.

Mr. I.P.S Doabia, Advocate for the respondent.

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)

This order of mine shall dispose of above mentioned two civil revision petitions i.e. **CR-7507-2016** titled as ***Rantej Pal Versus Gurcharan Singh*** and **CR-7508-2016** titled as ***Rantej Pal Versus Kuldeep Singh***. For brevity, the facts are being taken from **CR-7507-2016**.

Impugned in the present revision petition is the order dated 24.10.2016 (Annexure P-10) passed by learned District Judge, Ambala, vide which an application qua ad valorem Court fee filed by respondent-defendant was partly allowed to the extent that appellant-plaintiff is required to pay ad valorem Court fee and the appellant-plaintiff was given time to pay the ad valorem Court fee as per subject matter upto 10.11.2016.

Heard.

The law point arising before this Court is as to when the plaint is rejected under Order VII Rule 11 of the Code of Civil Procedure 1908, it being deemed to be decreed under Section 2(2) of the Code of Civil Procedure, 1908 then as to *whether the ad valorem Court fee is payable or not* in an appeal filed against the said order?

The provisions under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 provides rejection of the plaint when the suit appears from the statement of the plaint to be barred by any law.

The short facts of the case are that a suit for specific performance was filed by the present petitioner. In the said suit, plaint was rejected on the ground that it is barred under the provisions of Order II Rule 2 of the Code of Civil Procedure, 1908. The matter was taken to this Court by way of filing the revision petitions. However, this Court has taken the specific view that the said order being a decree, only appeal lies. This is how the appeal was filed before the learned District Judge, Ambala, wherein the question was raised *as to whether the ad valorem Court fee is payable on appeal by the plaintiff or not?*

Learned counsel for the petitioner has relied upon a Full Bench judgment of Andhra Pradesh High Court delivered in **Sri Maharaj Kumarika Subarna Rekha Mani Devi and others versus Sri Ramakrishna Deo and others**, AIR 1968 Andhra Pradesh 239 (V 55 C 55), wherein the Court took the view that the appeal against rejection of plaint under Clause (a) and (d) under Order VII Rule 11 of the Code of Civil Procedure 1908 stands on a different footings. Regarding rejection of plaint under Clause

(b) and (c) under Order VII Rule 11 of the Code of Civil Procedure 1908, the Court observed as under: -

“(49) It follows from the above discussion that Art. 3 of Schedule II to the Act has no application to appeals against orders of rejection of plaints which are decrees within the meaning of Section 2 (2) C.P.C.. The said provision is intended only to orders and does not cover decrees within the meaning of the said section excepting such of these as have been included under orders by specific reference thereto in that provision. Even in cases of orders such of them as have been provided for specifically in any other provision in the Act are out of the purview of that Article. Thus all the appeals in question being appeal from the orders of rejection of plaints they are in no way for purposes of court fee governed by that Article.

50. There is no specific provision for appeals against orders of rejection of plaints as such so that all the appeals of that nature may be governed by that provision alone. The grounds of rejection of plaints may be many Or. VII, R 11 C.P.C. refers to such grounds in clause (a), (b), (c) and (d). These grounds are of different nature. They may not be exhaustive of cases of rejection of plaints. So then no single provision of universal application can possibly be made applicable to all such cases against orders of rejection of plaints.

(50-A) The question whether a memorandum of appeal for purposes of court fee is governed by one provision or the other must turn on the scope of the appeal and substance of the reliefs claimed there in. The general principle as laid down in Sec. 49 is that the fee

payable in appeal shall be the same as the fee that would be payable in the court of first instance on the subject matter of appeal. The subject matter of appeal may not necessarily cover the entire subject matter of the suit as it depends upon the way in which the suit is disposed of in the court of first instance. If the relief or reliefs prayed for are the same, no difficulty would arise. The court fee as paid in the court of first instance shall be the fee in appeal. If only some of the reliefs and not all are prayed for in appeal, the court fee will be paid according to the value of those reliefs in the suit. If the relief prayed for is different from that prayed for or refused in the court of first instance the fee payable shall be the fee that would have been payable in the court of first instance on the relief prayed for in the appeal. The fee payable may be ad valorem or fixed in view of these various qualifications each case must necessarily turn on its own facts and circumstances.

So far as appeals against orders of rejection of plaints on grounds mentioned in clauses (b) and (c) of Or. VII. R. 11. C.P.C. are concerned if the relief is limited to that matter and not to the merits of the suit itself the court fee payable on the memorandum of appeal, as a rule, is under Art. 1 (c) of Schedule I to Act and the subject matter in dispute would be the value representing the difference between the court fee demanded and that paid. The appeals from rejection of plaints under clauses (a) and (d) of Or. VII. R. 11 C.P.C. stand on the different footing and may not, however, fall under the said Act, if they are confined to the relief or setting aside the order of rejection of plaint alone and do not extend further. As already said, it must all turn on the particular facts and circumstances of each case. The scope of the appeal and the relief claimed would determine the issue and in the

cases before us so far as S.R. No. 37685/65 is concerned I am of opinion that as the trial court has not gone into the merits of the suit but simply rejected the plaint on the ground mentioned in clause (a) of Or. VII, R. 11 C.P.C and the appeal is confined to that relief alone and as the relief claimed is incapable of valuation and the court fee is not provide for otherwise then under section 47 read with S. 49 having regard to the value of the suit itself, i.e. Rs. 6000/- shown in the memorandum of appeal, the court fee required for the said appeal would be Rs. 200. The same cannot be said of A.A Os. 176 to 179 of 1965 for the appeals are not limited to the question of setting aside the orders of rejection of plaints. In them the reliefs claimed go beyond and contain a prayer that the suits should be decreed. The memorandum of appeals, therefore, cannot come under S. 47 as the reliefs prayed for are capable of valuation and the appeals are governed by Art. 1 (c) of Schedule I. The court fee has to be paid ad valorem and would be the same as in the suits themselves.”

Further reliance is placed upon the judgment of the Madras High Court delivered in **L.Rathanchand Sarma versus M/s Vinayaka Exports & Imports Rep. By its partners**, in which same view was reiterated. Further reliance is placed upon a judgment of Andhra Pradesh High Court delivered in **Nagabhairava Medhini Devi and others versus Perumalla Kasi Rao and another and Perumalla Kasi Raso and another versus Nagabhairave Medhini Devi and others.**

On the other hand, learned counsel for the respondent relies upon a Division Bench judgment of this Court in **Atma Singh and others versus Mohan Lal and others**, 1959 AIR (Punjab) 387, in which this Court while considering the question *as to what Court fee is payable on the*

appeal filed against the order of the Court rejecting the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 relied upon the decision of the Full Bench delivered in **Apparao Sheshrao versus Mt. Bhagubai, AIR 1949 Nagpur 1**. Relevant extract reads as under:-

“We have no doubt in our mind that under Schedule 1, Article 1 of the court fees act the Court fee must always be ad valorem on the subject-matter in dispute unless it is incapable of valuation. In other words, the court-fee has always to be ad valorem unless for the special' reasons given in Schedule 1, Article 17, the appeal can be brought on a fixed fee. In the present case, therefore, the question resolves itself into this:

'Has the ad valorem Court-fee to be paid on the full value of the claim or the difference between the court fee paid and the court-fee demanded? In our opinion the latter is the amount on which Court fee can be demanded. It is well known that the Court fees Act is a fiscal measure, and like all fiscal measures, must be strictly construed. Schedule 1, Article 1 itself requires that attention should be paid to the subject-matter of the dispute. In our opinion the subject-matter in dispute in so far as the appellant is concerned is the extra court-1 fee demanded of him by the Court.”

This Court took the view that the Court fee is payable on the value of the property in the suit in dispute.

Learned counsel for the respondent has further relied upon an authority of Madras High Court delivered in **M.G. Tipnis versus The Secretary, Ministry of Commerce, Union of India, New Delhi and other.**

I am of the view that at the first instance, this Court is bound by the view expressed by the Full Bench of this Court and if the contrary view of the another High Court is there, this Court is to follow the views of the Full Bench of this Court only. Further, the Court Fee Act does not make any distinction between Clause (a) to (d) of the Order VII Rule 11 of the Code of Civil Procedure, 1908. Since under the deemed provisions of Section 2(2) of the Code of Civil Procedure 1908, rejection of plaint is deemed to be decreed, therefore, the appeal is filed against the order as if it is a decree. Therefore, same Court fee is payable as is payable on the decree. Therefore, there is no illegality or infirmity in the view taken by learned trial Court that ad valorem Court fee is payable in the present cases on the subject matter of the suit.

Consequently, there is no force in the present revision petitions.

Dismissed.

Learned counsel for the petitioner seeks time to make up the deficiencies of the Court fee. Accordingly, three months' time from today is granted to make the deficiencies of the Court fee good.

Since the main petitions are dismissed, the miscellaneous application(s) pending, if any, also stands disposed of.

A photocopy of this order be placed on the connected file.

(KULDIP SINGH)
JUDGE

18.5.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No