

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.817 of 2017

Date of Decision: February 28, 2018

Malook Singh

...Petitioner

Versus

Dilbagh Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.P.S.Khurana, Advocate,
for the petitioner.

Mr.Dilbagh Singh respondent in person.

AMIT RAWAL, J. (Oral)

The present revision is directed against the order dated 7.11.2016 (Annexure P-6), whereby the application moved under Order 7 Rule 11 of the Civil Procedure Code for rejection of the plaint claiming recovery of counsel fees agreed for filing the court cases in the matter of retirement/pensionary benefits along with interest @ 18% per annum from the date of filing, litigation charges and for causing loss to the plaintiff mentally and financially, has been dismissed.

Mr.P.S.Khurana, learned counsel representing the petitioner-defendant submits that the respondent-plaintiff instituted the suit on the premise that he had been practising as an Advocate and the defendant, being a Punjab Government employee, had retired on superannuation on 29.2.2008. After retirement, his pensionary benefits were not released by the department. In that context, he approached the plaintiff to pursue his case by filing a writ in the High Court and paid a sum of ₹5,000/- as part payment by saying that the balance payment of ₹25,000/- would be paid when the

payment is received from the department. The respondent-plaintiff filed CWP No.7504 of 2012, which was disposed of vide order dated 25.4.2012 with the direction to release all the pensionary benefits. Another writ petitions bearing No.11118 of 2013 and 5604 of 2013 and a contempt petition No.449 of 2013 were also filed. Even a Letter Patent Appeal No.523 of 2015 was filed, but the respondent did not pay the amount and in this background, relief has been sought.

The aforementioned suit was not maintainable for payment of court fees as the plaintiff had specifically alleged amount of fees agreed to be paid by the defendant and, therefore, the Court below ought to have allowed the application as the suit cannot proceed without payment of court fees.

Mr.Dilbagh Singh, respondent appearing in person, submits that the court fees in such cases has to be paid at the conclusion of the trial, i.e., on the preponderance of the evidence. In support of his contention, relied upon the ratio decidendi culled out by this Court in **M/s. Delhi-Assam Roadways Corpn. Ltd. Versus Sita Ram Aggarwal and others, 2008(2) R.C.R. (Civil) 458** and, thus, submits that the order is perfectly legal and justified.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Khurana, for, in the suit as indicated above, it is yet to be ascertained as to how much compensation or the amount the respondent-plaintiff shall be entitled to. The aforementioned view of mine is derived from the ratio decidendi culled out in the judgment cited supra. It would be open to the petitioner-defendant to raise the question of payment of court

fees at the final stage of the suit when the parties concludes their evidence,
but not in the manner and mode as indicated above.

For the reasons stated above, no ground for interference is
made out. Resultantly, the revision petition is dismissed.

February 28, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No