

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 236

CR-8571-2016

Date of decision : 24.07.2018

M/s Ganpati Polymers

..... Petitioner

VERSUS

M/s Sai Polyfabs

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. D. K. Singal, Advocate, for the petitioner.

Mr. Aakash Singla, Advocate, for the respondent.

DEEPAK SIBAL, J. (ORAL)

An application under Order 7 Rule 11 CPC had been preferred by the petitioner before the Trial Court seeking rejection of the plaint filed by the respondent/plaintiff on the following grounds: -

“a) That the plaintiff has filed the suit for rendition of account against the defendant, inspite of fact that the defendant is not the partner of the plaintiff and the same can be evident from the bare perusal of the contents of the plaint itself. Whereas, as per the settled law, the suit for rendition of account is only permissible against the partner. Thus, the suit of the plaintiff with regard to rendition of account is not maintainable against the defendant.

b) That as per the contents of para no. 8 of the plaint, it is alleged that the principal amount of Rs.12,24,000/-, Rs.3,14,500/- is payable by the plaintiff to the defendant and the plaintiff is entitled to receive the remaining amount. Although the plaintiff has not specifically mentioned the amount. But, when the said amount of Rs.3,14,500/- will be deducted from 12,24,000/- it will come out Rs.9,09,500/-. Thus, the plaintiff is liable to affix the court fee on the said amount of Rs.9,09,500/-. However, inspite of this, the plaintiff has not affixed the advolerm court fee on the said plaint. Rather, the plaintiff has arbitrarily made valuation of the court fee for the purpose of jurisdiction. Accordingly, the plaint of the plaintiff is liable to be rejected.”

Learned counsel for the petitioner submits that though the aforesaid two grounds had been specifically taken by the petitioner, the Trial Court has rendered its opinion only on ground (b).

A perusal of the impugned order does not show whether the petitioner had at all even pressed ground (a) before the Trial Court. However, learned counsel for the petitioner insists that such ground was raised and pressed before the Trial Court. It is only that Court which can opine whether the afore-quoted ground (a) was or was not pressed before it by the petitioner.

In view of the above, learned counsel for the petitioner seeks to withdraw the present petition with liberty to the petitioner to file a review application before the same Court which passed the impugned order.

Permitted to do so.

Dismissed as withdrawn with liberty as prayed for.

24.07.2018
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No