

In the High Court for the States of Punjab and Haryana at Chandigarh

C.R. No. 5718 of 2016 (O&M)
Date of Decision: March 13, 2019

Shamsher Singh

... Petitioner

Versus

Managing Director, HDFC Bank and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjiv Gupta, Advocate,
for the petitioner.

Mr. Sunil Narag, Advocate,
for respondents No. 1, 2, 4 and 5.

Amit Rawal, J. (Oral)

Present revision petition is directed against the impugned order dated 29.07.2016 (Annexure P/2) whereby petitioner-plaintiff has been directed to pay the court fee on the amount of Rs. 35,89,592/-.

Mr. Sanjiv Gupta, learned counsel, appearing on behalf of the petitioner, submitted that suit is not for recovery of the amount, but for declaration and mandatory injunction. It was mandatory obligation on the part of the respondents to make the payment and there is absolutely no justification to direct the petitioner to pay court fees. It was specifically pleaded that defendants obtained a sum of Rs. 24 lakhs from the plaintiff on account of sending the son of plaintiff to Australia but postponed the matter on one pretext or others. Plaintiff demanded the above said amount. Defendant returned Rs. 5,17,500/- to plaintiff and assured the plaintiff to return the remaining amount later on. After some time, defendant contacted

the plaintiff that his son may be sent to England and upon her assurances, plaintiff paid another sum of Rs. 4,04,457/- to her. Again she demanded Rs. 18 lakhs more for showing the FDR of Rs. 18 Lakhs. Plaintiff again paid Rs. 18 lakhs whereby the defendant prepared the FDR and obtained the amount in the name of Embassy. Even an application in this regard was submitted to the Superintendent of Police, Sirsa and during investigating, defendant contacted the plaintiff that he can withdraw the aforesaid amount from HDFC Bank, Rayyia but thereafter, plaintiff came to know that a huge amount had already been withdrawn from the account of the plaintiff by the defendants in collusion with each others. The details of the withdrawal has given in various paragraphs of the plaint. In such circumstances, court fee cannot be ordered to be paid.

Learned counsel, appearing on behalf of respondents no. 1,2,4 and 5, supported the impugned order, stated that the bald assertions given in the plaint is to be proved. The simpliciter suit is for recovery of amount and the person cannot be permitted to circumvent the provisions of Court Fees Act and urges for dismissal of the revision petition.

I have heard learned counsel for the parties and apprised the paper book and of the view that there is no force in the submissions of learned counsel for the petitioner.

For the sake of brevity, prayer of the suit reads as under:-

“Suit for declaration to the effect that the plaintiff is legally entitled to get a sum of Rs. 33,89,592/- (detailed as Rs. 31,09,716.85) as principal and Rs. 2,79,875/- as interest at the rate of 9% per annum w.e.f. 15.2.2015 to 14.2.2016 along with future interest at the rate of 18% per annum w.e.f. 15.2.2016 till its final realization and as

a consequential relief of mandatory injunction, directing the defendants to pay a sum of Rs. 33,89,592/- along with interest thereon at the rate of 18% per annum w.e.f. 15.2.2016 till its final realization; on the basis of evidence of every description-oral as well as documentary.”

On perusal of the above, it is clear that plaintiff under the garb of declaration and mandatory injunction seeks the recovery/refund of the amount by avoiding to pay the court fee. Even if contents of the plaint stated to be true, the person cannot be prevented to pay the court fee under the provisions of Court Fees Act. The finding given by the trial Court in ordering to pay court fee is not illegal and infirm. No ground for interference is made out.

Resultantly, revision petition stands dismissed. Two months' time is granted to pay the court fee.

March 13, 2019

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(Amit Rawal)
Judge

Whether reasoned / speaking : Yes

Whether reportable : No