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

**Civil Revision No.5334 of 2018 (O&M)
Date of Decision: 30.10.2019**

SURJIT SINGH

.....Petitioner

Vs

JASMAIL SINGH THR HIS LEGAL HEIRS

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Damanjit Singh Sandhu, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has challenged the order dated 25.07.2018 passed by the Civil Judge (Junior Division) Ludhiana vide which the application filed by the defendant under Order 7 Rule 11 CPC was accepted and the petitioner was directed to affix *ad valorem* court fee for recovery of past *mesne* profits as claimed by him.

[2]. Notice of motion was issued on 18.08.2018 and operation of the impugned order was also stayed. As per office report dated 26.03.2019, respondents have been duly served. Composition of respondents is that respondent No.1 is widow of Jasmail Singh and she has been personally served along with

respondent No.3 i.e. son of Jasmail Singh. Respondent No.2 has been served through brother and respondent No.4 has been served through mother. Since all the respondents are family members, therefore, service is taken to be complete.

[3]. None appeared on behalf of the respondents on 01.08.2019 despite service, still the case was adjourned for today in the interest of justice. Today also, there is no representation on behalf of the respondents, therefore, this Court proceeded to consider the case on merits with the assistance of learned counsel for the petitioner.

[4]. Learned counsel for the petitioner submitted that in view of law laid down in **Shiv Kumar Sharma vs. Santosh Kumari, 2007(4) R.C.R. (Civil) 515** even in case where damages are required to be calculated, a fixed court fee is to be paid. Even in case of specific amount claimed by the plaintiff, determination would be made in respect of amount of the award at a subsequent stage on the basis of evidence to be led by the parties. It is correct that the damages cannot be granted without payment of court fee, but in case where damages are required to be calculated on the basis of variety of evidence to be led by the parties, a fixed court fee is required to be paid. On the quantum ultimately determined by the Court, the plaintiff would be obligated to make good the deficiency in court fee and the

Court can pass a contingent/conditional decree where payment of court fee would be a condition precedent for giving effect to the decree in question.

[5]. In **Hem Raj vs. Harchet Singh, 1993 CivCC 48**, this Court held that the issue of court fee cannot be treated to be a preliminary issue. In a suit for damages and compensation, the tentative valuation of the suit for the purpose of court fee cannot be disputed. In case of amount of compensation, there is no objective standard available in determining the amount for which the plaintiff has to value the relief claimed by him. In the very nature of things, the valuation put forward by the plaintiff is tentative and in view of settled position of law, the same cannot be disputed.

[6]. This Court while dealing with the similar controversy in **CR No.8098 of 2015** titled **'Sumita Sharma and others vs.Uttar Haryana Bijli Vitran Nigam Ltd. and others'** decided on 27.09.2017 has relied upon ratio of **Sunita Rani and another vs. State of Punjab and others, 2015(3) PLR 580;** **CR No.4713 of 2016** titled as **'Rajender Parsad and others vs. Vinod Kumar and others'** decided 26.07.2016 and **CR No.5893 of 2016** titled **'Amandeep Sidhu vs. M/s Ultratech Cement Limited and others'** decided on 15.09.2016. Against **Amandeep Sidhu's** case (supra), an **SLP(C) No.3500**

of 2017 was filed in the Hon'ble Apex Court and the same was dismissed, upholding the order passed by this Court in aforesaid case titled '**Amandeep Sidhu vs. M/s Ultratech Cement Limited and others**'.

[7]. In the light of aforesaid observations, it would be just and expedient to accept this revision petition by setting aside the impugned order dated 25.07.2018 passed by the Civil Judge (Junior Division) Ludhiana. Ordered accordingly.

[8]. The trial Court shall proceed with the suit without insisting upon payment of ad valorem court fee, however the trial Court would be at liberty to pass a contingent/conditional decree, in the event of finding that requisite court fee would be payable at a subsequent stage.

October 30, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No