

In the High Court of Punjab and Haryana at Chandigarh

CR-8307-2017 (O&M)

Date of Decision: March 07, 2019

Nachattar Kaur

... *Petitioner*

Versus

Jarnail Kaur and others

... *Respondents*

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gagandeep Singh, Advocate,
for Mr. Amandeep Singh Manaise, Advocate,
for the petitioner.

Mr. Dharminder Singh Randhawa, Advocate,
for the respondents.

Amit Rawal, J. (Oral)

Present revision petition is directed against the impugned order dated 31.08.2017 (Annexure P/4) whereby petitioner-plaintiff in a suit for damages of Rs. 5,00,000/- has been called upon to pay the *ad valorem* court fee.

Mr. Gagandeep Singh, learned counsel, appearing on behalf of the petitioner, submitted that as per the averments made in para no.28 of the plaint, an undertaking has been given to pay the *ad valorem* court fee as and when required by the Court as it is too far fetched to affix the court fee. In support of the contention, he relies upon a decision rendered by this Court in ***Subhash Chander Goel vs. Harvind Sagar, 2003 AIR (Punjab) 248.***

Learned counsel for the respondents relied on the decisions rendered by this Court in ***M.S. Chemical Industries Ltd. vs. Hindustan***

Commercial Bank Ltd., reported in *1956 AIR (Punjab) 214*, *Ranjit Kaur and others vs. Punjab State Electricity Board and another*, reported in *2007(1) RCR (Civil) 686*, *Hem Raj vs. Harchet Singh*, *1993 Civil Court Cases 48*, *Manjeet Singh vs. Beant Sharma*, reported in *2012(44) RCR (Civil) 118*, *Jiwan Kumar Modi vs. Nand Kishore Bhandari*, reported in *2014(9) RCR (Civil) 2197*, *R.S. Malik vs. Sh. Krishan Mohan, IAS and others*, reported in *2010(1) RCR (Civil) 76* and *State Bank of India and others vs. Aruna Garg*, *CR No. 1758 of 2018, decided on 30.11.2018* to contend that provision of Order VII Rule 1 of CPC has to be strictly construed.

I have heard learned counsel for the parties and perused the paper-book.

Order VII Rule 1 CPC reads as under:-

“1. Particulars to be contained in plaint. - The plaint shall contain the following particulars:-

- (a) the name of the Court in which the suit is brought;*
- (b) the name, description and place of residence of the plaintiff;*
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;*
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;*
- (e) the facts constituting the cause of action and when it arose;*
- (f) the facts showing that the Court has jurisdiction;*
- (g) the relief which the plaintiff claims;*
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and*
- (i) a statement of the value of the subject-matter of the*

suit for the purposes of jurisdiction and of Court-fees, so far the case admits.”

Even if the petitioner has undertaken to pay the court fees at the time of final adjudication when the amount is determined, such undertaking cannot be permitted to be brought under the realm of exemption from not paying the court fees as per the provisions of Order IV CPC. Petitioner was also not aware the provisions of Order IV particularly of sub-rule (3) of Rule 1 the plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2). Sub-rule (2) of Rule 1 says that every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

Order IV Rule 1 CPC reads as under:-

*“1. **Suit to be commenced by plaint** – (1) Every suit shall be instituted by presenting a [plaint in duplicate to the Court] or such officer as it appoints in this behalf.*

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).”

Order VII Rule 1 CPC envisages the particulars to be contained in plaint including the subject matter of the suit for the purpose of court fees. Even Order VII Rule 2 says where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed. The aforementioned proposition of law also considered by this Court in **Ranjit Kaur's case (supra)** while relying upon a Division Bench judgment in paras. 13 to 15, which reads as under:-

“13. The observations in Hem Raj's case (supra) that

there is no distinction in a suit for rendition of accounts arid a suit for damages is contrary to the provisions of Section 7(i) contemplating ad valorem court fees in a suit for money and the amount at which the relief is sought in a suit for accounts in the terms of Section 7(iv) (f) of the Act. Since the statute itself deals with these suits differently, the basis of such judgment is, in fact, contrary to the statutory provisions.

14. In the present case, the plaintiffs have specifically claimed Rs. 20 lacs as damages. Though exact break up of the entire claim has not been mentioned, yet the basis of claim of such compensation is available in the plaint which is evident from reading para Nos. 5 to 9 thereof. Therefore, the plaintiffs have claimed specific amount. Whether the plaintiffs succeed in claiming such amount is not the question which can be done into at the time of deciding the question whether proper court fees has been affixed. The plaintiff may or may not succeed in getting the amount claimed but it is for him to establish his loss and affix court fees thereon. It is well settled that the court fees has to be determined on the basis of entire reading of the plaint. Therefore, in terms of Section 7(i) of the Act, the plaintiffs are liable to pay advalorem court fees on the amount of Rs. 20 lacs.

15. Therefore, in view of the principles discussed above and the binding precedents of the Hon'ble Supreme Court in Gopalkrishna Pillai's case (supra), of this Court in M.S. Chemical Industries Limited's case (supra) as well as from clear and unambiguous language of the statute, I am of the opinion that the order passed by the learned trial Court cannot be said to be suffering from any patent illegality or material irregularity which may warrant interference by this Court in exercise of its revisional jurisdiction under Article 227 of the Constitution of

India.”

In view of afore-mentioned, I am of the view that the order under challenge cannot be said to be illegal or perverse, however, since there was already a notice in the case as well as interim order, I deem it appropriate to grant one month's time to the petitioner to make the deficiency in court fee.

In the above observations, present revision petition stands disposed of.

March 07, 2019
vkd

(Amit Rawal)
Judge

Whether reasoned / speaking : Yes

Whether reportable : No