

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1040 of 2020
Date of Decision:13.2.2020

Gurmit Singh

...Petitioner

Versus

Jaspal Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.D.V.Dhindsa, Advocate
for the petitioner

RAJIV NARAIN RAINA, J. (ORAL):

1. This revision petition has been brought under Article 227 of the Constitution assailing the order dated 6.1.2020 passed by the learned Civil Judge (Junior Division), Naraingarh, allowing the application of the defendant-contractor under Order 7 Rule 11 of the CPC for rejection of the plaint for want of affixation of requisite court fee. The prayer in the plaint reads as follows:

“It is therefore respectfully prayed that a decree for unliquidated damages caused to plaintiff by the defendant by his wrongful and illegal acts and conduct of installation of improper and defective tube well with his boring machine as is stated in the plaint and caused loss to the plaintiff may kindly be passed in favour of plaintiff and against the defendant.

Or

Any other relief which this ld. court may deem fit be also provided to the plaintiff in the interest of

justice, law and equity.”

2. Surprisingly, in a rather clumsy and innovative drafting strategy, the plaintiff has sought only unliquidated damages caused to him by the defendant contractor alleging wrongful and illegal acts of the defendant in commissioning an “improper and defective tube well” sunk by the defendant contractor with his boring machine as stated in the plaint and the prayer and this has caused loss to him as it throws up muddy water.

3. The plaint discloses in paragraph 6 that the plaintiff has suffered a total loss of Rs.10 lakhs, which includes 4 lakhs spent on account of boring and installation of tube well while the remaining Rs. 6 lakhs on account of loss of crops, mental agony and harassment. He has further had to spend Rs. 5 lakhs on the installation of a new tube well. Thereby the defendant is guilty of misconduct and defect in services provided by the contractor-defendant. Paragraph 6 of the plaint deserves to be quoted to fully understand the import of this order:-

“ That due to the above said unprofessional act and conduct of defects in services on the part of the defendant, the crops of plaintiff ruined and he suffered total loss of Rs.10.00 lakhs (4.00 lakhs on account of amount spent on the boring and installation of tube well and rest Rs.6.00 lakhs on account of loss of crops and mental agony ad harassment). The plaintiff has to further spend an amount of Rs.5.00 lakhs on the installation of a new tube well. The defendant has caused highly professional misconduct by defect in services.”

4. The plaintiff could have asked for liquidated damages but he has chosen not to, by restricting his claim to unliquidated damages which he expects the trial Court will grant him. The claim is such that unliquidated damages are not open to assessment by production of evidence in the absence of contract defining with reasonable precision the terms and conditions and the consequences of breach, which is not even referred to by any back-up material including bills etc. pleaded in the plaint and placed in the list of documents which accompany the plaint on its presentation as per the mandate of Order 7 Rule 14 of the CPC.

5. As I see this peculiar claim there are clearly two options for the plaintiff and for this Court. One is to dismiss this petition and uphold the order under Order 7 Rule 11 of the CPC, which will put an end to the suit unless ad valorem court fee is paid to maintain the suit. The plaintiff appears reluctant to affix the higher court fee and, therefore, cleverly couches his prayer in the plaint in such a way that he can avoid paying ad valorem court fee and yet expect a decree in terms of money quantifying unliquidated damages. He asks indirectly what he actually wants directly, that is liquidated damages in terms of money. If there is no prayer for liquidated damages, then I am afraid he could get none whatsoever towards unliquidated damages and, therefore, in my considered view, the better option would be that instead of keeping this defective plaint with an lopsided plaint and absurd prayer clause to a long drawn out litigation in the civil court. That would really be a fruitless exercise in wasting time and squandering the energy and the resources of the court, when the suit itself deserves to be dismissed. A casual reading of the plaint would inevitably suggest this to a man of law.

6. Besides this, even the day, month and year when the work was carried out is not pleaded in the plaint to measure relief and more crucially limitation. No material particulars are incorporated in the plaint to claim relief of unliquidated damages for alleged wrongful acts or for the court even to attempt computing unliquidated damages in tort without a scintilla of evidence referred to on which the court can depend on. The suit appears to be a shot in the dark or a game of dice. The plaint is in skeleton form bereft of full and complete facts required to be pleaded to obtain a decree.

7. Mr. Dhindsa appearing for the petitioning plaintiff is counsel in the trial court at Naraingarh where the suit was instituted and is a signatory and author of the plaint as an advocate and on the query of court admitted this position. The plaint is as defective as the frame of the suit. However, the court takes notice of the judgments of this Court relied upon by the learned counsel to avoid payment of ad valorem court fee of cases rendered in *CR-6759-2018, titled "Kashmir Singh vs. Mandeep Kaur and others"*, decided on 5.10.2018, *CR-1941-2013, titled "Dr.B.L.Kapoor Memorial Hospital vs. Balbir Aggarwal"*, decided on 21.1.2015 and the case of *"Jaspal Singh and another vs. Gurbinder Singh"*, 2015(3) PLR 97.

8. Learned counsel submits that trial judge has misread the law in these precedents. In none of these cases, has the Court dealt with the peculiar and ingenious prayer clause as exists in the present plaint which is perceptibly disjunctive in its prayer based request surprisingly giving up liquidated damages and opting instead for unliquidated damages, while on the one hand quantifying damages in paragraph 6 of the plaint but still asking for only unliquidated damages without laying down any firm foundation to claim any of them, even if they were claimed, which is not the

case in hand, leaving the trial court to do guesswork for an intangible relief and without any compass, direction or navigation in what will inevitably be a quest for treasure buried in the deep ocean in a boat with many holes.

9. One can imagine a specific claim for liquidated damages in a suit coupled with a further prayer for consequential unliquidated damages under the heads available in the law of torts, without specifying any amount, when this is missing the plaintiff still expects money from court.

10. In case the plaintiff makes good the deficient court fee and the suit is put to trial, nothing said in this order will influence the trial court to take an independent decision based on evidence, if it is produced, as no final opinion is expressed on the merits of the case in this order to cause any prejudice to the parties.

11. All said and done, the trial deserves to be closed and the suit dismissed by notionally bringing up the suit in exercise of powers under section 24 of the CPC for final disposal.

12. As far as the impugned order is concerned, this court holds that the trial court has not committed any legal error in passing the correct order dated 6.1.2020 accepting the defendant's application under Order 7 Rule 11 of the CPC for rejection of the plaint for want of affixing proper court fee.

13. In the light of the above discussion, the petition is dismissed. The impugned order is upheld.

14. Notwithstanding the above order which is made in two distinct parts, one upholding the impugned order as it does not suffer from any infirmity as it only lifts the veil from the plaint or see what it couches; the other, terminating the suit itself, the petitioner still is granted liberty to take steps as per legal advice, if he wants to go ahead with the trial, then he

should make good the court fee, in which case the observations made in this order will stand expunged and the trial court will not read them into the judgment it may finally pass depending on the materials likely to be produced on record. But this second option will work only if the cause of action is within limitation. The essential facts are not pleaded in the plaint to help count the period of limitation. This will be for the trial court to examine as is the duty enjoined on court by section 3 of the Limitation Act, 1963.

15. A strange beginning must have a stranger end. This order represents both the facets.

February 13, 2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes