

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

**265**

**CR No.4511 of 2018**

**Date of Decision : 12.05.2022**

Sachin Sharma

....Petitioner

**VERSUS**

Indu Sharma and Others

....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Brijender Kaushik, Advocate for the petitioner.

None for the respondents.

**ALKA SARIN, J. (Oral)**

The present revision petition has been filed under Article 227 of the Constitution of India impugning the order dated 06.04.2018 (Annexure P-4) passed by the Civil Judge (Junior Division), Ambala vide which the plaintiff-petitioner has been directed to affix *ad valorem* court fee on an amount of Rs.20 lakhs.

Notice of motion was issued on 18.07.2018. However, none has put in appearance on behalf of the respondents despite service.

Brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for decree of mandatory injunction for directing the defendant-respondents to pay damages/compensation to the plaintiff-petitioner on account of loss of reputation and malicious prosecution of the plaintiff-petitioner, his brother, Ram, and mother, Smt. Rami Devi.

During the pendency of the civil suit an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 was filed for rejection of the plaint for want of appropriate and requisite court fee. The case set up by the defendant-respondents was that by cleverly drafting the plaint, the suit

has been given the shape of a suit for mandatory injunction. However, the suit was for damages which had been quantified as Rs.20 lakhs. The application was contested by the plaintiff-petitioner on the ground that the exact value of the relief was not ascertainable at the stage of filing of the plaint and the damages were not quantified and hence, the court fee was affixed as Rs.50/- and a specific assertion was made that as and when the damages would be assessed by the Court the deficient court fee would be paid by the plaintiff-petitioner.

Learned counsel for the plaintiff-petitioner has pointed out to the plaint, which has been annexed as Annexure P-1, wherein neither in the heading of the plaint nor in the prayer clause the damages have been quantified. In fact para 15 of the plaint reads as under :

*“15. That the quantum of damages is more than Rs.20 lacs but since exact value of the relief to be granted could not be ascertained and the quantification of damages is yet to be determined by this Hon’ble Court Hence tentative court fee of Rs.50/- has been affixed on the plaint by leaving final adjudication to be made by the trial court & the plaintiff is ready to pay the court fee as per the order of this Hon’ble Court.”*

Learned counsel for the petitioner would contend that since the damages have not been quantified hence the question of paying the *ad valorem* court fee did not arise in the present case. Learned counsel for the petitioner has relied upon judgment of this Court in **Manpreet Singh vs.**

**Gurmail Singh & Ors. [2017(1) RCR (Civil) 230]** to contend that the damages, which have been mentioned in paras 9 and 15, are only tentative and in fact it has been specifically stated that the damages are not ascertainable and, hence, the plaintiff-petitioner could not have been asked to pay the exact court fee at this stage.

I have heard learned counsel for the petitioner.

In the present case, firstly there is no assessment of damages, which has been given by the plaintiff-petitioner in the plaint. The valuation given is only tentative and that too there is no prayer whatsoever wherein the damages have been quantified. It is trite that the payment of the court fee is a matter between the plaintiff and the Court and the plaintiff can be directed to pay the court fee as assessed after the relief is granted. Perusal of the plaint reveals that the damages are not being quantified, however, a vague statement has been made that the damages have been suffered by the plaintiff-petitioner of over Rs.20 lakhs. However, in para 15 it has clearly been stated that the exact value of the relief cannot be ascertained and the quantification of the damages would be determined by the Court, hence, a tentative court fee of Rs.50/- has been affixed with the plaint. At the initial stage, in a suit for malicious prosecution, there cannot be any valuation in sure and certain terms and, hence, the Court is left with no other option at this stage but to accept the valuation offered by the plaintiff-petitioner because at the initial stage even the Court would not be able to assess the value and issue directions to the plaintiff-petitioner to affix the court fee on quantified damages.

In case of **Subhash Chander Goel vs. Harvind Sagar [AIR 2003 Pb&Hy 248]** it has been held as under :

*“4. I have thoughtfully considered the submissions made by the learned counsel for the parties and am of the view that the present revision petition is liable to be dismissed because under Section 7(1) to (iii) of the 1870 Act only those cases are covered where it is possible to reach the correct valuation of the relevant suit. In cases where even the Court is unable to evaluate the relief sought, the valuation put by the plaintiff shall be considered tentative. There is no bar on the Court to direct the plaintiff under Section 149 of the Code to pay the Court-fee in order to enjoy the relief granted. It is also true that the Court-fee is a matter between the plaintiff and the State. These principles have been amply supported by the judgment of this Court in Hem Raj’s case (1993 Civil Court Cas 48) (supra) where judgments of the Supreme Court in Vimla Pannalal’s Case (AIR 1988 SC 1636) and S. Km. Ar. S. Sp. Sathappa Chettiar’s case (AIR 1958 SC 245) (supra) have been considered and relied upon. Even the Full Bench of this Court has taken the view that the plaintiff can be directed later on to pay the Court-fee as the Court may assess after granting the relief.*

5. The facts of the present case as revealed in the instant petition are that the plaintiff-respondent has filed a suit for damages and compensation against the defendant-petitioner alleging that when he was posted as Assistant Store Keeper in the Medical Store of the Super Bazar in P.G.I. Chandigarh certain serious complaints were made against the plaintiff-respondent and the plaintiff-respondent was transferred from the medicine shop. He challenged his transfer order in which it was found that the complaint filed by the defendant-petitioner alleging that he used water in bottles which use to be sold as medicine. The complaint filed by the defendant-petitioner has been found to be false. Basing his claim on the aforementioned conclusion the plaintiff-respondent filed a suit claiming damages for maligning his reputation by the defendant-petitioner and he affixed the Court-fee of Rs. 50/-. It is, therefore, evident that no valuation at this stage would be possible in sure and certain terms. Therefore, in such like cases, this Court in Hem Raj's case (supra) has held that the valuation offered by the plaintiff has to be accepted because even the Court would not be able to assess the value and issue directions to the plaintiff to do the needful. It was in these circumstances that in

*Hem Raj's case (1993 Civil Court Cas 48) (supra), this Court has held as under :*

*“Coming to the third point, the law is fairly well settled that if the Court is itself unable to say what the correct valuation of the relief is, it cannot require the plaintiff to correct the valuation that has been made by him. In such a case the Court has no other alternative than to accept the plaintiffs valuation tentatively. In M/s Commercial Aviation and Travel Company v. Mrs. Vimla Pannalal, AIR 1988 Supreme Court 1636 their Lordships referred to a Five Judge Bench decision in S. Rrn. Ar. S. Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar, AIR 1958 SC 245 at Pp. 251-52 and extracted the relevant observations, part of which are as under :*

*“If the scheme laid down for the computation of fees payable in suits covered by the several sub-sections of Section 7 is considered it would be clear that in respect of suits falling under Sub-section (iv) a departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of Court-fees. The theoretical basis of this provision appears to be that in cases in which*

*the plaintiff is given the option to allow his claim, it is really difficult to value the claim within any precision or definiteness. ....”*

*The same view has been reiterated in various decisions of the Apex Court up to the recent decision in Sujir Keshav Nayak’s case (AIR 1992 Supreme Court 1526) (supra), Mr. J.C. Nagpal learned counsel for the respondents, submitted that the various authorities cited by Mr. Chopra related to cases of rendition of accounts. He submitted that in suits relation to rendition of accounts the statute itself expressly gave power to the plaintiff to value the relief which he claims. He further pointed out that there was no such enabling provision insofar as suit for the recovery of compensation/damages falling in Section 7(1)(b) of the Court-fees Act was concerned. In my view, this is a distinction without a difference. In the case of the amount of compensation, there is no objective standard available which can help determine the amount for which the plaintiff has to value the relief claimed by him. In the nature of things, the valuation put by the plaintiff is tentative and in view of the settled position of law, the same cannot be disputed. It will be further seen that the decision of the Supreme*

*Court in Smt. Tara Devi v. Sri Thakur Radha Krishna Maharaj, AIR 1987 Supreme Court 2085 related to the question of Court-fee payable under Section 7(iv)(c) of the Court-fees Act and in Gopala Krishna Pillai v. Meenakshi Ayal, AIR 1967 Supreme Court 155 the question related to recovery of mesne profits and in both these instances the suits related to suits other than one for rendition of accounts.”*

In view of the above, the impugned order dated 06.04.2018 (Annexure P-4) is set aside. The tentative court fee affixed by the plaintiff-petitioner shall be accepted by the Court and the Court shall proceed further with the suit in accordance with the law. Pending applications, if any, also stand disposed off.

**12<sup>th</sup> May, 2022**  
**jk**

**( ALKA SARIN )**  
**JUDGE**

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO