

CR No.8133 of 2015

201

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

CR No.8133 of 2015

Date of decision: 21.09.2022

Raj Kumar and another

..... Petitioners

versus

Tarsem Raj Goyal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Surinder Garg, Advocate
for the petitioners.

Mr. Parminder Singh, Advocate
for the respondents.

TRIBHUVAN DAHIYA J.

This revision petition has been filed under Article 227 of the Constitution of India for setting aside the order, dated 06.10.2015 (Annexure P-6), passed by the trial Court, vide which application filed by the petitioners-defendants (hereinafter referred to as 'the defendants') under Order 7 Rule 11 CPC for rejection of the plaint on account of failure to pay proper court fee, was dismissed.

2. The facts in brief are, the respondent No.1-plaintiff (hereinafter referred to as 'the plaintiff') filed a suit for damages for malicious prosecution, claiming damages amounting to Rs.7,09,50,000/-. An application was filed by the petitioners-defendants under Order 7 Rule 11 CPC seeking direction to respondent No.1-plaintiff to affix ad-valorem court fee on the claimed amount of damages, and on failing to do so,

dismiss the suit. The application was dismissed by the trial Court by observing that in a suit for damages for malicious prosecution, the principle of the evaluation of suit is to be on the basis of un-liquidated damages, and tentative court fee affixed by the plaintiff is sufficient, at this stage.

3. Learned counsel for the appellants has argued that the court fee on the suit for damages for malicious prosecution is to be affixed on the basis of the damages claimed, and not on the basis of tentative value of the suit. In support of this contention, he relied upon the judgment of the Supreme Court passed in *State of Punjab and others vs. Dev Brat Sharma*, 2022 (2) PLR 138.

4. Per contra, learned counsel for the respondents has argued that ad-valorem court fee is not to be affixed of the suit, since the amount of actual damages for malicious prosecution has not been ascertained as yet, and the same is a matter of evidence in trial. As and when the same is determined, he will affixed the requisite court fee.

5. The issue of affixation of court fee on a suit for damages for malicious prosecution is no longer *res integra*. It has been held by this Court time and again that in a suit for damages for malicious prosecution, only tentative valuation can be made and that should be accepted for un-liquidated damages. Since at the stage of filing of the suit, the amount of damages is uncertain, which would not require affixation of court fee on the principle of suit for recovery of liquidated claim. To cite a precedent, this Court in judgment of *Tarwinder Kumar Bedi vs. Jit Parksah*, 2015 (2) PLR 92, held as under:

In a suit for damages for malicious prosecution the principle of evaluation of suit as in simple suits for recovery of liquidated claim will not apply for the purposes of court fee. Only a tentative valuation can be made and that should be accepted for un-liquidated damages. In such a situation where the Court is unable to say what would be the correct valuation of the relief, it cannot require the plaintiff to correct the valuation which has been made by him. In such a situation, court had no other alternative except to admit the plaintiff's tentative valuation. Similar is the situation in the case of compensation where there is no objective standard available nor it can be possible to determine the amount to which the plaintiff should value the relief claimed by him. Therefore, the valuation put by the plaintiff has to be accepted being tentative in nature. In this context, the reference can be made to **2005(1) RCC (Civil) 54** titled *State of Punjab and others versus Jagdip Singh Chowhan*, the learned counsel for the appellant has also cited **2012(2) PLR 64** titled *Smt. Munni Devi versus Matroo Lal*. Perusal of the aforesaid judgment reveals that the facts are totally different and cannot help the plaintiff in any manner to advance his case. So far as the decision on Issue No.3 is concerned, the same is to be reversed in view of the observation made in Gurmukh Singh's (supra) case and *State of Punjab and others versus Jagdip Singh Chowhan* **2005(1) RCC (Civil) 54**. Since the plaintiff could not substantiate his case with reference to material evidence to prove Issues No.1 and 2, therefore, the fate of Issue No.3 would not make the plaintiff entitled to any damages from the defendant. No law point worth cognizable is involved in the present case. The appeal is accordingly dismissed.

6. In view of the law laid down by this Court, it cannot be said that the affixation of court fee on the suit for damages for malicious

CR No.8133 of 2015

prosecution filed by respondent No.1-plaintiff was not proper, or that he was required to affix ad-valorem court fee.

7. The judgment of the Supreme Court passed in ***Dev Brat Sharma's case (supra)*** relied upon by the petitioners-defendants has no application of the facts of the case, since the issue therein was computation of fee payable on a suit for recovery of Rs.20,00,000/- as damages. It was not a suit for malicious prosecution, where damages claimed were unliquidated, therefore, the law laid down in the judgment has no application of the facts of this case.

8. In view of the above, the order passed by the trial Court dismissing the application, calls for no interference.

9. Dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

21.09.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No