

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3381 of 2019 (O&M)
Date of decision:12.09.2022

M/sJ.C.Engineers Pvt. Ltd.

..Petitioner

Versus

M/s Kay Bouvet Engineering Pvt. Ltd. and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Kumar Khubbar, Advocate
for the petitioner

Mr. Vinod Bhardwaj, Advocate
for respondent no.1 and 2.

ANIL KSHETARPAL, J(Oral)

After hearing the learned counsels representing the parties at length, this Court is of the view that the Courts have failed to comprehend the consequences of payment of insufficient Court fee on the plaint.

The plaintiff (petitioner herein) has filed a suit for recovery of Rs.7,93, 496/- wherein, the principal amount is Rs.3,45,218/- and the remaining amount is the amount of interest. He deposited a Court fee of Rs.18.170/-.

On an application filed by the defendants under Order VII Rule 11 CPC, the Court rejected the plaint in entirety. This was the first fundamental mistake committed by the trial Court as the plaintiff had already deposited the ad valorem court fee on the principal amount. The Court should have restricted the claim of the plaintiff to the principal amount. However, as already noticed, the plaint was rejected. The plaintiff filed the first appeal. It also filed an application under Section 151 CPC for

recall of the order. Subsequently, the first appeal was withdrawn by the learned counsel representing the plaintiff while making a statement that an application under Section 151 CPC was pending. The order passed by the First Appellate Court on 20.05.2011, is extracted as under:-

“Learned counsel for the appellant has made statement that an application under Section 151 CPC has been moved before the learned lower court and thus does not want to proceed further with the present appeal and withdraw the same. Keeping in view the statement the present appeal is hereby dismissed as withdrawn. Lower court record be remitted. After due compliance, appeal file be consigned records.”

Subsequently, the application filed for recall of the order dated 24.09.2010 was dismissed. The plaintiff filed Civil Revision No.651 of 2012 which was dismissed by the Court while granting liberty to the petitioner to pray for revival of his first appeal. The operative part of the order dated 20.05.2014, reads as under:-

*“Keeping in view the totality of the circumstances, the bona fide course of action adopted by the plaintiff, it is held that although the present revision petition is not maintainable, however, the petitioner is free to seek revival of his earlier appeal filed in accordance with law which shall be considered sympathetically by the Court.
Disposed of in the above terms.”*

An application filed by the plaintiff for revival of the appeal has been dismissed on the ground that the plaintiff has already unconditionally abandoned his right to continue with the appeal.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

On the one hand, the learned counsel representing the plaintiff contends that the First Appellate Court has erred in dismissing the application for revival of the appeal, whereas on the other hand, the learned

counsel representing the respondents supports the reasons recorded in the impugned order.

As already noticed, the plaint filed by the plaintiff should not have been rejected in entirety at the first instance only on the ground that there is deficiency in the payment of the court fee. The proper course for the Court was to restrict the claim of the plaintiff to the amount on which the court fee has been paid. In fact, all these years, the courts have proceeded without comprehending the true effect of insufficient court fee on the maintainability of the suit.

Hence, the order dated 24.09.2010 is modified and the claim of the plaintiff in a suit for recovery is restricted to the amount on which the court fee has already been paid. In fact, an application with similar prayer has already been filed before the trial Court. The suit filed by the plaintiff shall stand revived.

Let the suit be decided on merits.

The parties through their counsels are directed to appear before the trial Court, on 12.10.2022.

Disposed of accordingly.

All the pending miscellaneous applications, if any, are also disposed of.

September 12, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*