

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2709-2022 (O&M)
Date of decision: 25.07.2022

Satinderjit Singh

... Petitioner

Vs.

Amrinder Singh Dhiman

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Tribhawan Singla, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 21.05.2022 passed by the Civil Judge (Jr. Divn.), Nakodar, vide which, while allowing an application filed by the respondent-defendant under Order 7 Rule 11 CPC, the petitioner-plaintiff is directed to pay ad valorem Court fee of Rs.65.00 lacs in a suit for damages.

The operative of the impugned order dated 21.05.2022 reads as under: -

*“10. I have further perused the findings of Hon’ble Supreme Court given in a case of **State of Punjab and other Vs. Dev Brat Sharma Civil Appeal no 2064 of 2022 decided on 16.03.2022.** In the said matter the trial court passed order that respondent (plaintiff) was required to make good deficiency on court fee on amount of Rs.20*

Lakhs claimed by him as compensation. Hon'ble High court in a revision petition set aside the order of Trial Court and held that as the actual and specified amount of damages was still to be assessed and determined by trial court, as such direction of trial court to pay ad volerm court fee on amount of Rs. 20 Lakhs was not sustainable in law. Hon'ble Apex Court set aside the order of Hon'ble High Court dated 11.08.2017 and restored the order dated 10.11.2016 passed by the trial court and held that since the suit itself had been finally dismissed on 28.02.2020 but court fee was nevertheless payable by plaintiff, respondent on valuation i.e. Rs. 20 Lakhs. It has further been held that plaintiff respondent shall make payment of such court fee within four weeks.

11. After perusing the findings of Hon'ble Apex Court in the above mentioned case, it has become apparent that it is supporting the averments of applicant/defendant and not the contentions of respondent/plaintiff. Therefore, in view of the facts of the present case as mentioned above and in the light of the finding of Hon'ble Apex Court referred by ld counsel for plaintiff himself, discussed above it is held that the plaintiff has categorically specified the amount of damages/compensation in para no 9 of his plaint, however he has avoided to mention it in the head note of the plaint. As such, he is liable to affix the requisite court fee on the said amount claimed by him which is Rs. 65 Lakhs in total, on or before next date i.e 01.07.2022, failing which the court will

proceed as per order 7 rule 11 Civil Procedure Code. Now, case is adjourned to 01.07.2022 for the report of Reader of the Court pertaining to making Court fee good by the plaintiff.”

Learned counsel for the petitioner has referred to the plaint (Annexure P-1), to submit that suit has been filed only for recovery of damages and compensation to be determined by the Court, as per head note and prayer clause, therefore, at this stage, the petitioner-plaintiff cannot be directed to pay the ad valorem Court fee. In this regard, he relies upon judgment of the Hon’ble Supreme Court in **Shiv Kumar Sharma Vs. Santosh Kumari, 2007 (4) RCR (Civil) 515**, wherein it is held that in a case where damages are required to be calculated, a fixed court fee is to be paid but on the quantum determined by the court and the balance court fee is to be paid when a final decree is to be prepared.

There is no dispute with regard to proposition laid down by the Hon’ble Supreme Court, however, a perusal of the plaint shows that the plaintiff himself has quantified the damages in para No.9 of the plaint, which reads as under: -

“That during the trial, the plaintiff and their family members remained under depression and apprehension of the conviction and the plaintiff could not take meal and food properly which adversely affected the health and mind of the plaintiff. The defendant has spread a bad name of the plaintiff on the basis of false registration of above FIR and due to this, the business of the plaintiff has ruined and due to which the plaintiff suffered loss of business worth Rs.50,00,000/-. The plaintiff has spent a lot of amount on litigation, medical expenses, travelling expenses and other miscellaneous expenses which is about Rs.5,00,000/- and

has also suffer mental, physical discomfort due to malicious act of defendant, thus, the plaintiff claim compensation to the tune of Rs.10,00,000/- for that also. So, the plaintiff is entitled to a decree for recovery of compensation on account of malicious prosecution of the amount as assessed by the court itself as fully detailed in the head note of the plaint.”

Though the petitioner-plaintiff has given the details of the compensation to be recovered from the respondent-defendant, however, in a clever manner, prayer clause is drafted that suit of the plaintiff, as prayed for in the head note, be decreed in his favour. Prayer in the plaint is to be seen, after going through the entire plaint, as in para No.9, as noticed above, the petitioner-plaintiff himself has quantified the compensation of Rs.65.00 lacs, therefore, he is liable to pay the ad valorem Court fee.

After hearing learned counsel for the petitioner and going through the plaint and impugned order, I find no illegality or infirmity in the impugned order, as merely by non-mentioning the specified amount in the prayer clause, though it is specifically stated so, in the body of the plaint, the petitioner-plaintiff cannot say that the damages are yet to be assessed by the Court.

Accordingly, the present petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

25.07.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No