

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

Sr. No.131

CR-2666-2022

Date of Decision: August 08, 2022

SURENDER KUMAR @ SALENDER KUMAR

...Petitioner

VERSUS

ABID KHAN AND OTHERS

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Nitin Kumar Sharma, Advocate,
for the petitioner.

ARCHANA PURI, J.

Through the present Civil Revision petition filed under Article 227 of the Constitution of India, the petitioner has challenged the order dated 13.05.2022 (Annexure P-4), passed by learned Civil Judge (Junior Division), whereby the petitioner has been directed to pay ad valorem Court fee, within a period of two months from the date of passing of the order.

For convenience of discussion, the parties are being referred as they have made appearance before learned trial Court.

The material facts to be taken into consideration are as follows:-

Plaintiff filed a suit for declaration with mandatory injunction against the defendants and as per pleaded version of the plaintiff, he had a plot measuring 56 ft. x 48 ft. i.e. 2688 sq. feet, situated at Village Khanpur Jattan, Tehsil Shahabad Markanda, District Kurukshetra, within abadi deh (lal dora) of village Khanpur Jattan.

Defendant No.1, Abid Khan, was engaged for construction of the said house in the year 2017 on contract basis, at the rate of Rs.110/- per

sq. feet, for all kind of construction. The plaintiff, who is petitioner herein purchased the cement for use in the above said construction of the house from defendant No.2, who is an authorized dealer of defendants No.3 and 4. Defendant No.2 had assured the plaintiff that the cement supplied by him is of good quality. Even, defendant No.1 had assured the plaintiff about engagement of good masons and labourers for the construction of the house of the plaintiff.

Defendant No.1 started the construction work and put lintel on the house of the plaintiff. However, when the lintel was opened, it was cracked at many places and water was leaking from many places. The building was got inspected by the plaintiff from the building expert, who had observed that the work assigned was not done, in a proper manner by defendant No.1. Even, defendants No.2 to 4 had also supplied inferior quality of cement to the plaintiff. The plaintiff had to reconstruct the lintel and other constructions by purchasing cement and other building material and engaging other masons and labourers and thus, suffered a loss of Rs.12,00,000/-. In this way, the defendants are liable to pay damages/losses suffered by the plaintiff, which are Rs.3,00,000/- on account of loss of lintel and Rs.12,00,000/- on account of loss of other construction work, total amounting to Rs.15,00,000/- to the plaintiff.

In paragraph No.4 of the suit, it is pleaded as hereingiven:-

“4. That the plaintiff requested the defendants for paying the above said amount to the plaintiff, on which the defendant No.1 and 2 became furious and started abusing the plaintiff in filthy language and threatened to murder the plaintiff and to involve him in many false criminal cases and did not listen the plaintiff regarding the payment of damages/losses. The plaintiff served legal notice dated 03.12.2018 to the defendants whereby

the defendants were called upon and advised to send the demand draft of Rs.15,00,000/- as mentioned above plus 18% per annum interest till payment to the plaintiff within a period of fifteen days from the receipt of this notice, failing which action will be taken against the defendants in court of law at their risk costs and expenses, but the defendants are adamant in not admitting the lawful and genuine claim of the plaintiff and refused to admit the claim of the plaintiff yesterday. Hence this suit.”

The prayer clause of the suit reads as hereingiven:-

“It is therefore, respectfully and most humbly prayed that a decree for declaration to the effect that the plaintiff is entitled to receive the amount of Rs.15,00,000/- as mentioned in the plaint above plus 18% per annum interest till payment with consequential relief of mandatory injunction directing the defendants to pay the said amount of Rs.15,00,000 plus 18% per annum interest till payment to the plaintiff may kindly be passed in favour of the plaintiff and against the defendants with costs, in the interest of justice.”

Defendant No.2 filed an application under Order VII Rule 11 CPC, thereby making a prayer to direct the plaintiff to affix ad valorem court fee on the claimed amount and on his failure, the plaint of the present suit to be rejected on the ground of affixation of ad valorem court fee.

Heard learned counsel for the petitioner/plaintiff at length and with his able assistance have perused the paperbook.

Learned counsel for the petitioner/plaintiff submits that the plaintiff had filed a suit for declaration and mandatory injunction and therefore, learned trial Court has erred in directing him to pay the ad valorem court fee, vide the impugned order. To so substantiate his claim, learned counsel places reliance upon the judgments passed in the matters of

Amandeep Sidhu Vs. Ultratech Cement Limited and others), (2017) 1 PLR 786, Shiv Kumar Sharma Vs. Santosh Kumari, (2007) 8 SCC 600 and CR-6904-2016 (O&M) titled as 'Darshan Singh Vs. Falwinder Singh and others' decided on 22.02.2018.

At the very outset, it is pertinent to mention that the amount of Court fee is regulated by the Court Fees Act, 1870. Section 7 of the ibid Act prescribes the procedure to compute the amount of fee payable in a suit. Where the suit is for money including suits for damages or compensation or arrears of maintenance, of annuities, or of other sums payable periodically, Section 7(i) lays down, as to how the amount of Court fee payable is required to be calculated. Section 7(i) is reproduced as hereingiven:-

“(i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)-according to the amount claimed;-(i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)-according to the amount claimed;" for maintenance and annuities.”

Thus, from the aforesaid, it is evident that whenever the suit is for money, the Court fee is payable according to the amount claimed. Under Order VII Rule 11 CPC, the Court is entitled to carefully examine the contents of the plaint to arrive at a conclusion.

It is pertinent to mention that in the case in hand, even though, suit for declaration and mandatory injunction, as such, has been filed, but however, careful reading of the plaint itself makes it clear that the petitioner/plaintiff had specified the amount of damages as Rs.15,00,000/- (Rs.12,00,000/-on account of purchase of cement, other building material

and engaging other masons and labourers employed by him and besides the same, Rs.3,00,000/- on account of loss of lintel).

As already reproduced aforesaid, the petitioner/plaintiff had himself stated about having made a request to the defendants for payment of the aforesaid amount and they were not inclined to make the payment. Petitioner/plaintiff has also clearly asserted about serving legal notice dated 03.12.2018 to the defendants, whereby the defendants were called upon and advised to send the demand draft of Rs.15,00,000/-, as mentioned above, plus 18% per annum interest, till the payment to the plaintiff, within a period of fifteen days thereafter. In the prayer clause, the petitioner/plaintiff had categorically prayed for a decree for declaration to the effect that the plaintiff is entitled to receive the amount of Rs.15,00,000/- along with interest at the rate of 18% per annum, till the payment and consequential relief of mandatory injunction directing the defendants to pay the said amount of Rs.15,00,000/- together with interest as sought for.

As such, it is evident that it is the specified amount of Rs.15,00,000/-, which is sought for by the petitioner/plaintiff. It is apparent that the petitioner/plaintiff is seeking recovery of the amount of Rs.15,00,000/-. However, it is only on account of clever drafting, he had filed a suit for declaration and mandatory injunction, but under this garb, it is in fact, a suit for recovery. Thus, from the reading of the contents of the plaint, it stands established that the suit is for recovery of Rs.15,00,000/-, although cleverly projected as declaratory suit with consequential relief of mandatory injunction.

Even though, learned counsel for the petitioner has placed reliance upon various judgments to assert that he is not liable to pay ad valorem court fee at this stage, but however, the aforesaid authorities are distinguishable. In Amandeep Sidhu's case (supra), the petitioner/plaintiff had filed a suit for Rs.1,00,000/-for injuries suffered by him due to negligence of his employer. In such circumstances, it was held that the amount of Court fee shall be contingent upon the final determination of the amount of compensation. However, such is not the position in the present case, as the amount has been specified by the petitioner himself.

In Shiv Kumar Sharma's case (supra), the Hon'ble Apex Court, after finding that both the parties have entered into an agreement to sell with respect to respective properties owned by them by way of cross agreements, but no sale deed was executed, although the agreement had been partially acted upon, came to a conclusion that since no damages for mesne profits were sought, therefore, no ad valorem court fee was payable. It was also observed by Hon'ble Apex Court that if the damages for mesne profits would have been sought, the Court fee would have been payable, but however, it was nowhere observed that when the Court reaches the conclusion that recovery of a definite amount has been sought, still the ad valorem court fee cannot be ordered.

Likewise, in Darshan Singh's case (supra), it has been held by Coordinate Bench of this Court that in the suit for recovery of amount, as damages and compensation from malicious prosecution, the plaintiff had to affix the tentative Court fee, but however, the facts as such, have not been dilated upon and neither the authorities as observed aforesaid, have been taken into consideration.

Now, it is important to make reference to the latest judgment dated 16.03.2022 passed by Hon'ble Apex Court in the matter of '*State of Punjab and others Vs. Dev Brat Sharma*', wherein it has been categorically observed that in a suit for recovery as damages, ad valorem court fee would be payable on amount of damages claimed and dismissal of application for rejection of plaint on the ground of deficient Court fee was set aside.

Adverting to the case in hand, it is pertinent to mention that on the plain reading of the plaint, it is apparent that under the garb of suit for declaration with mandatory injunction, the petitioner/plaintiff is seeking recovery of specified amount of Rs.15,00,000/-, as damages. Therefore, it is apparent that the suit is for the money and therefore, as per Section 7(i) of the ibid Act, the ad valorem court fee is payable, according to the amount claimed.

Keeping in view the aforesaid facts, no ground is made out to interfere in the order passed by learned trial Court, in exercise of the jurisdiction under Article 227 of the Constitution of India.

Hence, the present revision petition is hereby dismissed.

August 08, 2022
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes