

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

CR No.958 of 2022 (O&M)
Date of decision : 9th September, 2022

M/s Calcutta Sales Corporation & others

... Petitioners

Versus

Sampati Devi

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Himanshu Puri, Advocate for the petitioners.

Mr. Manit Malhotra, Advocate for the respondent.

MANJARI NEHRU KAUL, J.

The instant revision petition has been preferred against the order dated 11.11.2021 passed by the Court of learned Civil Judge (Junior Division), Jalandhar, vide which an application moved by the petitioner/defendant under Order VII Rule 11 CPC was dismissed. Learned counsel contends that the impugned order is patently illegal and has been passed in total disregard to the settled law.

Learned counsel for the petitioners contends that the Trial Court, while passing the impugned order, failed to appreciate that the relevant documents placed on record by the petitioner clearly revealed that the petitioners were lawful tenants under the respondent and hence, the relationship inter-se between them was one of the landlord and tenant. Therefore, it was urged that the jurisdiction of Civil Court was barred and it was hit by section 41(h) of Specific Relief Act, as the

Rent Controller, Jalandhar alone would have had the jurisdiction to entertain any dispute arising out of tenancy. It was still further submitted that the respondent/plaintiff had also prayed for illegal occupation charges, damages @ ₹ 15,000/- per month with effect from July 2002 till date along with interest @ 18% p.a. Hence, in the light of the aforementioned prayer, the respondent/plaintiff was liable to pay ad-valorem Court fee as per the provisions of the Court Fee Act, 1870.

Per contra, learned counsel for the respondent, while opposing the prayer and submissions made by the counsel opposite, submitted that the application under Order VII Rule 11 CPC had been filed with an oblique motive to delay the proceedings of trial. He argued that as per the averments made in the plaint, the inter-ser relationship between the parties at best was one of licensor and licensee. Therefore, the jurisdiction of the Civil Court to entertain and try the suit in question was not barred. While controverting the submissions made by the counsel opposite qua the correct ad-valorem fee not having been affixed, it was submitted that the suit had been correctly valued in accordance with law and the respondent/plaintiff was not required to affix the ad-valorem court fee.

I have heard learned counsel for the parties and perused the relevant material on record.

It would be relevant to point out that as per the provisions of Order VII Rule 11 CPC, the plaint can be rejected only if the suit appears to be barred by law on the basis of statement made in the

plaint. It would also not be out of context to observe that a plaint cannot be rejected merely on a formal or partial perusal of its contents; rather a meaningful reading of the plaint in its entirety would be necessary to arrive at a conclusion as to whether or not the plaint deserved to be rejected.

Adverting to the case in hand, the respondent/plaintiff has essentially averred that late Kishori Lal Gupta (father of petitioner No.2) was given the shop, being run in the name of M/s Calcutta Sales Corporation, for carrying out his business in lieu of donations made by him for the upkeep and daily worship of the Mandir. Therefore, it cannot be said that there existed any relationship of landlord and tenant between late Kishori Lal Gupta and the predecessor in interest of the respondent/plaintiff. In the circumstances, this Court does not agree with the submissions made by the learned counsel for the petitioners that the jurisdiction of the Civil Court to entertain the instant suit would be barred by law.

This Court however, does find force in the submissions made by learned counsel for the petitioners that the respondent is liable to affix ad-valorem Court fee on the plaint. It would be apposite to reproduce the prayer of the respondent/plaintiff wherein recovery of damages has been prayed for:-

“Recovery of illegal occupation charges, damages along with mesne profits @ Rs.15000/- per month from the year July, 2002 till date along with interest @ 18% p.a. to the plaintiff.”

It would also be relevant to reproduce Section 7(i) of the Court Fees Act, 1870, which reads as under:-

“7(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.”

A perusal of the aforementioned provision leaves no manner of doubt that the Court fee payable on the suits falling under this class, would be as per the amount claimed therein.

The Hon'ble Supreme Court in '**State of Punjab and others Vs. Dev Brat Sharma**': 2022(2) RCR (Civil) 464 has categorically held as under:-

“20. The moot question for consideration is whether the suit in question as framed was a money suit for compensation/damages falling under Clause (i) of Section 7 or was a suit falling in any of the categories specified in clause (iv) of Section 7 of the Act. A reading of the relief clause would make it abundantly clear that this was a money suit for compensation/damages and not falling under any of the categories mentioned in clause (iv) of Section 7 of the Act. Therefore, there would be no question at all for the applicability of Section 7(iv) of the Act. It would be a simple case of applicability of Section 7(i) of the Act and ad valorem Court-fees would have to be paid as per Schedule 1 entry 1.

21. It is only with respect to the category of suits specified in clause (iv) of Section 7 of the Act that the plaintiff has the liberty of stating in the plaint the amount at which relief is valued and Court-fees would be payable on

the said amount. Liberty given under clause (iv) to the specific suits of six categories is not available to the suits falling under any other clause, be it (i), (ii), (iii) etc. Once the suit in question was a money suit for compensation and damages falling under clause (i) of Section 7 of the Act, ad valorem Court-fees would be payable on the amount claimed.”

Therefore, in the light of the prayer and other averments made in the plaint, it is amply clear that the suit in question falls under the class of cases governed by Section 7(i) of the Court Fees Act. Accordingly, the instant petition is disposed of with the directions to the respondent/plaintiff to revalue his suit according to the amount claimed as damages, and affix appropriate ad-valorem Court fee on the plaint within one month from the date of this order, failing which the plaint shall be deemed to be rejected.

(MANJARI NEHRU KAUL)
JUDGE

September 9, 2022

rps

Whether speaking/reasoned	Yes/No
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Whether reportable	Yes/No
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