2023:PHHC:161978

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

212

CR-1784-2017
Date of decision : 16.12.2023

Harminder Singh …..Petitioner

Versus

Punjab and Sind Bank …..Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Rohit Gupta, Advocate for
Mr. Amar Vivek, Advocate for the petitioner.

Mr. I.P. Singh, Advocate for the respondent.

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NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the instant petition under Article 227 of the Constitution of India for setting aside the impugned order dated 11.01.2017 (Annexure P-5) passed by learned Civil Judge (Junior Division), Amritsar whereby an application under Order 7 Rule 11 filed by the respondent/defendant for rejection of plaint has been disposed of with a direction to the plaintiff to affix ad-valorem Court fee.

2. The brief facts of the case are that the petitioner is running a wholesale shop of dry fruit and kiryana business in the name and style of M/s H.S. Traders, Dall Mandi, Amritsar and he has another firm by the name of M/s H.N. Traders. The petitioner was approached by one unknown person from Ropar for the purchase of dry fruits in bulk and since the petitioner was apprehensive of receiving payments through cheques, he asked the said customer to make payment through cash only. On 06.05.1998, the said customer approached the petitioner with

two demand drafts favouring M/s H.S. Traders (petitioner's firm) amounting to Rs.2,70,000/- and 2,60,000/-, respectively dated 05.05.1998 issued by the respondent/Bank through its Mandi Kharar Branch (Ropar). On 07.05.1998 the petitioner approached Sh. Mandeep Singh, Branch Manager, Punjab and Sind Bank and offered to pay special commission to the bank for encashment of drafts on the same day. Thereafter, Sh. Mandeep Singh informed the petitioner that the payment has been cleared on which the petitioner through six cheques withdrew a sum of Rs.5,20,000/- from the bank on 07.05.1998 and handed over the goods to M/s Sujit Carriers Pvt. Ltd., Amritsar for onward dispatch to the concerned party. On 14.05.1998, Sh. Mandeep Singh, Branch Manager called the petitioner to inform him that the demand draft presented were in fact from a stolen draft book. According to him, the said drafts had not been issued by the concerned branch as the bank has already issued instructions about the loss of the said draft book. The said drafts has been encashed by the bank after due satisfaction and verification. Therefore, the fault, if any, lay with the bank officials and the same could not be attributed to the petitioner in any manner whatsoever. The petitioner also made a complaint dated 27.06.1998 to the Senior Superintendent of Police, Amritsar to this effect but of no avail. Thereafter, the respondent-Bank lodged an FIR against him and also filed a civil suit for recovery for an amount of Rs.5,30,000/- against the petitioner. The petitioner had faced criminal trial in which he was convicted by the learned Trial Court. The petitioner had prefer appeal against his conviction in which finally he was acquitted on 23.12.2011 i.e. after fighting the legal battle for the past 12 years. The recovery suit filed by the respondent-Bank was also decided in favour of the petitioner and the appeal was also decided in his favour on 28.01.2013, after a period of 14 years. Thereafter, the petitioner has filed a Civil Suit No.100141 of 2013 against the respondent-Bank for damages alleging that the petitioner and his family had suffered immense mental pain, hardship, inconvenience, agony, harassment and financial loss, loss of business and reputation at the hands of the respondent-Bank due to their malicious acts and hence, the petitioner is entitled to damages/compensation to the satisfaction of the Court as the petitioner cannot exactly quantify the amount of damages and compensation and the same was left to be assessed by the Court below. The respondent-Bank had filed written statement to the civil suit taking several preliminary objections. The respondent-bank also filed an application under Order 7 Rule 11 CPC for rejection of plaint on the ground that the petitioner had not affixed the requisite Court fees on the claimed amount of Rs.1 crore on the plaint. The said application has been allowed by learned Civil Judge (Junior Division), Amritsar vide impugned order dated 11.01.2017. Aggrieved against the said order, the petitioner has preferred the instant revision petition.

3. Learned counsel for the petitioner contends that in the plaint filed by the petitioner, it is clearly stated that the Court fee of Rs.2,000/- so affixed by the petitioner is only tentative as the petitioner is unable to exactly quantify the amount of damages to be recovered and it has further been undertaken that once the amount of damages would

be determined by the Court, the petitioner would duly affix the Court fee as per the said amount. He submits that since the amount of damages is yet to be determined by the Court, hence, the tentative valuation for the purpose of Court fee has to be accepted. Learned Civil Judge (Junior Division), Amritsar without appreciating this fact has wrongly passed the impugned order dated 11.01.2017 and has directed the petitioner to affix the ad-valorem court fee on the said amount of Rs.1 crore. Therefore, the present petition may be allowed and impugned order dated 11.01.2017 may be set aside. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgment passed by this Court in ***State of Punjab and others Vs. Jagdip Singh Chowhan : 2005 (1) RCR (Civil) 54***.

4. On the other hand, learned counsel for the respondent has vehemently opposed the present revision petition on the ground that once the petitioner himself has quantified the amount of damages as not less than one crore, he was required to affix ad valorem Court fee at least on the amount claimed. Therefore, there is no illegality in the impugned order dated 11.01.2017 and the instant revision petition may be dismissed.

5. I have heard learned counsel for the parties and perused the relevant documents.

6. The Court fee in a suit for damages is payable under Section 7(i) of the Court Fees Act, 1870, as per the amount claimed. Section 7(i) of the Court Fees Act, 1870 reads as under :-

> *"**7. Computation of fees payable in certain suits. -** The*

amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :-

for money - *(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;"*

7. Hon'ble Supreme Court in ***State of Punjab and others Vs. Dev Brat Sharma : 2022(2) RCR (Civil) 464*** while dealing with the similar issue has 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. Thereafter, 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."*

8. A perusal of plaint clearly shows that the petitioner/plaintiff has claimed damages from the defendant and in para 26 of the plaint, the petitioner/plaintiff prayed that the Court be pleased to assess and quantify his claim anything but not less than to the tune of Rupees One Crore. Once the amount of damages claimed has been specifically quantified in the plaint, court fee was required to be affixed on that specified amount. On the contrary, allowing any such affixation of court fee as claimed by the petitioner, would amount to a conscious departure from the mandate of Section 7(i) of the Act which clearly enjoins affixation of court fee according to the amount claimed.

9. So far as the judgment relied upon by learned counsel for the petitioner is concerned, the same has already been set aside by Hon'ble Supreme Court vide order dated 29.05.2012 passed in ***Civil Appeal No.3987 of 2006 titled as State of Punjab Vs. Jagdip Singh Chowhan***. While passing the said order, Hon'ble Supreme Court observed as under:-

> *"The present appeal is directed against the order dated 14.10.2004 passed by the learned Single Judge of the High Court of Punjab and Haryana in C.R.No.2933/2004 whereby the High Court has permitted the plaintiffs-(respondent herein) to pay the court fee on the tentative valuation of the suit for the purpose of court fees.*
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> *It is worth noting, for the said purpose the suit was valued at Rs.1,43,000/- though a decree was sought for Rs.two crores approximately. There can be no dispute that*

in a suit for malicious prosecution, ad valorem court fee is payable. Faced with this situation, the learned counsel for the respondent No.1 could only state that he will file an application for amendment before the trial Court either restricting his claim to the amount on which the court fee has been paid or may enhance the claim beyond the said amount and will pay the ad valorem court fee on the same. Recording such statement of respondent No.1, we set aside the order passed by the learned Single Judge and grant him liberty to file the requisite amendment to bring the plaint in order.

The appeal is accordingly disposed of with no order as to costs."

10. In view of above, there is no illegality or infirmity in the impugned order dated 11.01.2017 (Annexure P-5) passed by learned Civil Judge (Junior Division), Amritsar and the same needs no interference by this Court. Finding no merit in the instant revision petition, the same is consequently, dismissed.

16.12.2023 **(NAMIT KUMAR)**
Kothiyal **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No