

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5552-2017 (O&M)
Date of Decision: May 25, 2023

Kailash Chand and another
...Petitioners

Versus

Gian Chand
...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sanjay Verma, Advocate
for the petitioners.

Mr.Ashok Khubbar and Mr.Nagar Singh, Advocates
for the respondent.

ARCHANA PURI, J.

Through the present revision petition filed under Article 227 of the Constitution of India, the petitioners have challenged the order dated 27.07.2017 (Annexure P-7) passed by learned Civil Judge (Jr. Divn.), whereby, an application under Order 7 Rule 11 CPC, filed by the petitioners-defendants, for rejection of plaint, was dismissed.

In pursuance to the notice issued, the respondent had made appearance through counsel.

Learned counsel for the parties heard.

For the convenience of the discussion, the parties are referred to as plaintiff and defendants, as making appearance before learned lower Court.

The essential facts to be taken into consideration for the disposal of the present case are as herein, given:-

That, initially, respondent-plaintiff had filed a suit against the petitioners-defendants for recovery of damages, to the tune of Rs.10 lakh, while asserting himself to be an indigent person. However, after adducing the evidence, the application under Order 33 Rule 1 CPC was dismissed vide order dated 30.03.2015 and thereafter, the case was further adjourned for affixation of the Court fee by the respondent-plaintiff.

Furthermore, the respondent-plaintiff challenged the aforesaid order of denial of indigence status, but however, the said appeal was dismissed as withdrawn, vide order dated 07.09.2015, copy whereof is Annexure P-4. Considering the same, the petitioners-defendants filed an application under Order 7 Rule 11 CPC for seeking rejection of the plaint, as *ad valorem* Court fee had not been deposited, upon the amount, for which the suit had been filed.

Reply to the said application was filed. After hearing the parties, vide impugned order dated 27.07.2017, learned lower Court dismissed the application.

Feeling aggrieved, the present revision petition has been filed by the petitioners-defendants.

At the very outset, learned counsel for the petitioners-defendants has submitted that respondent-plaintiff had filed a suit for recovery of damages to the tune of Rs.10 lakh. Even though, the suit was

filed under Order 33 Rule 1 CPC, being an indigent person, but however, the application under Order 33 Rule 1 CPC was dismissed by learned lower Court vide order dated 30.03.2015 and thereupon, date was further given for affixation of Court fee by the respondent-plaintiff. Though, an appeal, at first instance, was filed, but the same was dismissed as withdrawn. In the given circumstances, it is submitted that the Court fee was required to be deposited by the respondent-plaintiff.

On the other hand, learned counsel for the respondent-plaintiff has submitted that since it is case of recovery of damages for malicious prosecution, therefore, there was no necessity of affixation of Court fee, as now alleged.

The payment of the extent 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, then Section 7(i) lays down, as to how the amount of Court fee payable, is required to be calculated. Thus, it is evident that whenever the suit is for money, the Court fee is payable according to the amount claimed.

It is pertinent to mention that even though, the suit was filed, thereby, asserting the indigence status, but however, after leading evidence, the application under Order 33 Rule 1 CPC was dismissed, vide order dated 30.03.2015. To challenge the aforesaid order, an appeal was filed by the

respondent-plaintiff, but however, the same was also dismissed as withdrawn vide order dated 07.09.2015. In the given circumstances, the status of being indigent person was denied to the respondent-plaintiff.

It is submitted by learned counsel for the respondent-plaintiff that since it was only a case for seeking damages, which could not be ascertained, therefore, the Court fee was not required to be affixed. However, the aforesaid submission is bereft of merits

Perusal of the plaint, copy whereof is Annexure P-1 reveals that specified amount is intended to be recovered as damages. Perusal of paragraph No.8 of the plaint categorically reveals that above case amounts to malicious prosecution of the plaintiff and thus, the plaintiff is entitled to Rs.10 lakh as compensation and damages, from the defendants for their illegal and false acts. Not only that, in paragraph No.10 of the plaint, it has been specifically stated that plaintiff had made repeated requests to the defendants to pay the damages of Rs.10 lakh for malicious prosecution.

Even further, the respondent-plaintiff has not given separate valuation for the relief sought and rightly so, as it had no liberty and right to give different valuation, then what was being actually claimed. As a matter of fact, in paragraph No.13 of the plaint, it is specifically stated that valuation is same i.e. to the extent of Rs.10 lakh, but however, Court fee of Rs.10/- is affixed, as the suit is being filed as an indigent person.

On the plain reading of the plaint, it is apparent that suit had been filed for seeking specified amount of Rs.10 lakh as damages.

Therefore, it is apparent that it is the suit for seeking damages of specified amount and therefore, as per Section 7(i) of the *ibid* Act, the *ad valorem* Court fee is payable, according to the amount claimed.

Since, the status of indigent person has been denied to the respondent-plaintiff, in the given circumstances, considering the specified amount of damages, sought by the respondent-plaintiff, it is required to make the payment of *ad valorem* Court fee, as ordered.

In this regard reference is made to the decision rendered by the Hon'ble Apex Court in '*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.

Hence, learned lower Court has erroneously dismissed the application under Order 7 Rule 11 CPC. Accordingly, the present revision petition is hereby allowed and the impugned order dated 27.07.2017 is set aside, with the direction to the respondent-plaintiff, to pay the requisite *ad valorem* Court fee.

May 25, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No