

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1506-2020 (O&M)
Date of Decision: April 25, 2023

Rattan Lal Joshi
...Petitioner

Versus

Mahesh Kumar Tiwari and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.B.S.Mittal, Advocate
for the petitioner.

Mr.P.S.Jammu, Advocate
for respondent No.1.

ARCHANA PURI, J.

Through the present revision petition filed under Article 227 of Constitution of India, the petitioner has challenged the order dated 31.10.2019 (Annexure P-3) passed by learned Civil Judge (Jr. Divn.), whereby, application filed by the petitioner-defendant No.1 under Order 7 Rule 11 CPC, has been dismissed.

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

Plaintiff-respondent Mahesh Kumar Tiwari had filed a suit against defendant-petitioner Rattan Lal Joshi and others, thereby, seeking

declaration to the effect that the plaintiff is entitled for recovery of Rs.60 lakh, on account of compensation for defamation, from the defendants and they are legally bound to pay the same to the plaintiff, on the basis of oral as well as documentary evidence.

It is asserted in the plaint that plaintiff knew defendant No.1, being member of Sharma community and society and defendant No.1 facilitated the performance of marriage of son of the plaintiff with defendant No.3-Nikhila, who is daughter of defendant No.2 and stated her date of birth to be 31.01.1990. Furthermore, he had also asserted about Nikhila to be graduate in commerce and further also projected defendant No.2, to be having reputed service in bank and having own permanent residence in front of Bhadu Petrol Pump, Gaushala Road, Abohar. Defendants No.1 and 2 also stated that their daughter has a good ideology maintaining the household establishment as well as family relationship with all members and relatives. Further, it is averred that defendants No.2 to 7 and their family members started misbehaving and interfering in daily routine work of the plaintiff and his family members. They started extending threats to the plaintiff. Thereafter, while narrating the cruelty, further, it has also been averred that date of birth of Nikhila had been wrongly projected by defendant No.1 as 31.01.1990, whereas, as per educational certificate, aadhaar card, primary certificate and FIR No.11/2018, the date of birth is stated to be 31.01.1990, 03.04.1990, 13.01.1992 and 1996 respectively. Thus, the act done by defendant No.1, as well as other defendants, is an act of fraud and cheating with false statement made by defendants to cheat and humiliate the plaintiff.

Furthermore, it is also averred in the plaint that defendant No.2 was not having a permanent employment in reputed bank and also not having own residential house in front of Bhadu Petrol Pump, Gaudhala road, Abohar, as projected by defendant No.1, on the first proposal of the marriage, put forth before the plaintiff. This shows that false and frivolous facts were put forth with malafide intention by defendant No.1 and made the proposal of marriage of defendant No.3 to the plaintiff's son. Also, it has been averred that false statement/wording for the proposal of marriage having made by defendant No.1 as well as other defendants, has caused unnecessary harassment and humiliation to the plaintiff and also has shattered/harmed the personal image of the plaintiff as well as his family.

In paragraph 8 of the plaint, it is averred, as herein given:-

“8. That in this way defendant no. 1 as well as other defendants have made false statements/wording for proposal of marriage to the plaintiff as well as his family members, have not only caused unnecessarily harassment, humiliation to the plaintiff but also have shattered/harm the personal image and reputation of the plaintiff as well as his family. Besides the defamation of plaintiff amongst the public and societies at large the plaintiff and his family members humiliation undergone unnecessarily harassment, humiliation and mental tension, agony due malicious/false wording for proposal of marriage made by defendant no. 1 and 2 to the plaintiff and his family members in the shape of marriage between defendant no.3 and plaintiff's son Janardhan, as such the whole, personal/business affairs of plaintiff to and his family members have also suffered and this wrong doing by defendant no.1 and other defendants part caused pecuniary and non-pecuniary loss to the plaintiff as well as his family. Thus this suit of defamation filed against the defendant no. 1 and other defendants by the plaintiff and plaintiff is entitled to compensation of Rs.60 Lakh on account of malicious prosecution/frivolous proposal of marriage made by defendant no. 1 and other defendants.

Furthermore, paragraph 11 of the plaint, is reproduced as

herein given:-

'11. That the fixed court fee is affixed with the plaint by the plaintiff and if the Hon'ble court directed the plaintiff to affixed the another court fee then the plaintiff will affixed the same with the plaint.'

The prayer clause of the suit, reads as under:-

'12. It is therefore prayed that a decree for declaration to the effect that the plaintiff is entitled for recovery of. Rs. 60 Lakh on account of compensation for defamation from defendants and they are legally bound to pay the same to the plaintiff, may kindly be passed in favour of plaintiff and against the defendants with costs. Any other relief which the Hon'ble court deems fit may kindly be awarded in favour of the plaintiff against the defendants, in the interest of justice.'

In pursuance of the notice issued by the Court, defendant No.1 made appearance and filed an application under Order 7 Rule 11 CPC.

After hearing the parties, learned lower Court had dismissed the application for rejection of the plaint, vide impugned order dated 31.10.2019.

Learned counsel for the petitioner-defendant No.1 has submitted that even though, the suit had been drafted as a suit for seeking declaration for his entitlement for recovery Rs.60 lakh, but however, under the garb of declaration, the plaintiff had sought recovery of Rs.60 lakh for defamation from the defendant and therefore, *ad valorem* Court fee, ought to have been filed.

On the other hand, learned counsel for respondent No.1-plaintiff submits that in fact, it was only a suit for declaration of the entitlement, which was filed and considering the same, the value of the suit, was only tentatively fixed and therefore, there is no reason made for *ad valorem* Court fee and thus, the impugned order requires no

interference.

At the very outset, it is pertinent to mention that 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 herein given:-

“(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 7 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 even though, in the case in hand, suit for declaration, vis-a-vis, entitlement for recovery of Rs.60 lakh, on account of compensation for defamation from the defendants, has been filed, but however, careful reading of the plaint itself makes it clear that the plaintiff had specified the amount of damages as Rs.60 lakh. In paragraph No.8, which has been reproduced in the earlier portion of the judgment, it is evident that the plaintiff has himself specified the amount as Rs.60 lakh,

to which he is entitled as compensation, on account of malicious prosecution/frivolous proposal of marriage, made by defendant No.1 and other defendants.

It is apparent that the plaintiff is seeking recovery of the amount of Rs.60 lakh. Even, it is so specifically mentioned in the prayer clause. However, it is only on account of clever drafting, he had filed a suit for declaration, 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.60 lakh, although cleverly projected as declaratory suit.

Even though, in the impugned order, learned lower Court has placed reliance upon various judgments, to assert that plaintiff is not liable to pay *ad valorem* Court fee, at this stage, but however, the aforesaid judgments are distinguishable. In ***Amandeep Sidhu vs. M/s Ultratech Cement Limited and others, 2017(1) PLR 786***, so relied upon, 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. Likewise, reliance has also been placed upon ***Manpreet Singh vs. Gurmail Singh and others, 2016(3) PLR 751***, where, compensation of Rs.50 lakh was sought by the plaintiff and it was held that it is a tentative amount. In this case, reliance had also been placed upon ***State of Punjab and others vs. Jagdip Singh Chowhan, 2005(1) RCR***

(Civil) 54. However, it is pertinent to mention aforesaid judgment of Jagdip Singh's case (supra), which was relating to a case of damages, was further challenged by State before the Hon'ble Supreme Court and therein, it was observed by the Hon'ble Supreme Court that there can be no dispute that in a suit for malicious prosecution, *ad valorem* Court fee, is payable. The Court proceeded to grant liberty to the counsel for the plaintiff to take appropriate steps for amendment of the plaint or to make good the Court-fees. The order, so passed, is reproduced as herein given:-

“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.

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.”

The observations of the order, so passed in Jagdip Singh's case (supra), had so been detailed by the Hon'ble Supreme Court in the matter of ***State of Punjab and others vs. Dev Brat Sharma, 2022(2) RCR (Civil) 464***, wherein, it has been categorically observed that in a suit for recovery as damages, *ad valorem* Court-fees would be payable, on amount of the

damages claimed and dismissal of the application, for rejection of plaint, on the ground of deficient Court fee was set aside.

In this backdrop, advertng 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, the plaintiff is seeking recovery of specified amount of Rs.60 lakh, 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.

In view of the aforesaid conclusion, the present revision petition is hereby allowed and the impugned order, vis-a-vis, dismissal of the application under Order 7 Rule 11 CPC is set aside and the requisite application is hereby allowed and the plaintiff is liable to pay *ad valorem* Court fee.

April 25, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No