

2023:PHHC:134103

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

CR-1721-2021 (O&M)
Date of decision: 13.10.2023

Surjit Singh

....Petitioner

Versus

Bipin Kumar and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Kamaldip Singh Sidhu, Advocate for the petitioner
Mr. Vikas Singh and
Mr. A.S.Pannu, Advocate for respondent no.1
Mr. Vikas Arora, AAG, Punjab

ANIL KSHETARPAL, J (Oral)

1. An application filed by the defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908, to eject the plaintiff has been dismissed by the trial court. The correctness of the aforesaid order has been challenged in this revision petition. The ejectment of the plaintiff was sought on the following two grounds:-

i) The plaintiff did not pay the ad valorem court fee on the amount of Rs.26,81,390/- which was sought to be recovered as damages for the alleged defamation.

ii) The suit was filed beyond the prescribed time.

2. The trial court dismissed the application on both the counts. It was held that the plaintiff is not liable to pay the ad valorem court fee as the amount claimed is tentative.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. It is

not in dispute that the plaintiff, while filing the suit, has claimed the recovery of the specific amount of Rs.26,81,390/-. As per the recent judgment of the Supreme Court in '**State of Punjab and others vs. Dev Brat Sharma**' 2022 (2) Law Herald (SC) 1149, once the amount claimed has been specified, the ad valorem court fee on the aforesaid amount is payable.

4. As regards the second objection, it may be noticed that the issue of limitation is a mixed question of law and fact, which is based on the appreciation of evidence. Hence, it would not be appropriate to reject the plaint on this ground, without granting an opportunity to the parties to lead evidence.

5. Keeping in view the aforesaid facts, the revision petition is partly allowed. The plaintiff is directed to make good the deficiency in payment of the court fee, within one month, from today. The petitioner (defendant) shall take liberty to pray for framing of a distinct issue on the issue of limitation.

6. With these observations, the revision petition is disposed of.

7. All the pending miscellaneous applications, if any, are also disposed of.

13.10.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE