

CR-2637-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2637-2023 (O&M)

Date of decision: May 01, 2023

Suresh and another

....Petitioners

versus

Mewa Devi and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Rahul Jaswal, Advocate for petitioners.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 28.03.2023(Annexure P-6) passed by learned Additional District Judge, Panipat, whereby application under Order VII Rule 11 of Code of Civil Procedure, 1908 (for short 'CPC') filed by plaintiff-respondents for rejection of appeal of petitioner-defendants was allowed directing petitioner-defendants to pay *ad valorem* Court fee on the value of memorandum of appeal.

2. The revision petition is premised on the averments that respondents filed suit for recovery of compensation of Rs.23,68,000/- for alleged murder of their son along with application under Order XXXIII of CPC for permission to file suit as indigent person by stating that plaintiffs are leading life below poverty line prescribed by the Haryana Government. Suit was decreed vide judgment/ decree dated 08.10.2021 (Annexure P-2) directing petitioner/defendants to pay decretal amount along with interest @ 12% p.a. from the date of filing of suit till date of realization of actual amount. Aggrieved, petitioner/defendants filed an appeal against aforesaid order along with application under Order XLI Rule 5 and Section 151 of CPC of Limitation Act. Respondent-plaintiffs filed application (Annexure P-4) under Order VII Rule 11 of CPC for rejection of appeal on account of non-payment of Court fees.

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2.1. Vide impugned order dated 28.03.2023 (Annexure P-6), aforesaid application was allowed directing petitioners-defendants to pay *ad valorem* Court fee on the value of memorandum of appeal.

2.2. In the Civil Suit filed by plaintiffs, petitioner-defendants had moved an application under Order VII Rule 11 of CPC refuting plaintiffs to be indigent persons, having immovable property in the name of respondent No.1, but said application was dismissed vide order dated 27.07.2021 (Annexure P-9). Petitioner-defendants preferred CR-1542-2021 against aforesaid order, which was disposed of as having been rendered infructuous vide order dated 28.10.2021 (Annexure P-10).

3. I have heard learned counsel for petitioners and gone through the record.

4. Order VII Rule 11 of CPC reads thus:-

“11. Rejection of plaint. – *The plaint shall be rejected in the following cases: -*

- (a) *where it does not disclose a cause of action;*
- (b) *where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) *where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) *where the suit appears from the statement in the plaint to be barred by any law;*
- (e) *where it is not filed in duplicate;*
- (f) *where the plaintiff fails to comply with the provisions of rule 9:*

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

5. Impugned order dated 28.03.2023 (Annexure P-6) passed by learned

Additional District Judge, Panipat, is premised, *inter alia*, on the following reasoning:

“5. *In the present case the most vehemence of the counsel for the appellants/respondents is that there is no provision under order 7 rule 11 CPC that the court fee has to be affixed with the memorandum of appeal, so the appellants/respondents are not liable to pay the court fee on the value of memorandum of appeal. This contention of learned counsel for the appellants/respondents is devoid of merits and same is*

not forceful. This court want to mention here that the suit of the plaintiff was decree of recovery of damages and compensation of Rs. 26,60,000/- alongwith interest @ 12% per annum from the date of filing of suit till the date of realization of decreetal amount was passed by the Trial Court vide judgment and decree dated 08.10.2021. The defendants/appellants have challenged the judgment and decree dated 08.10.2021 by filing the present appeal. It is worthwhile to mention here that the suit for recovery of damages and compensation of Rs. 26,60,000/- alongwith interest has been filed by the plaintiff/applicant being indigent person. The report of indigency received from Collector in the Trial court on 19.07.2017. The application under order 7 rule 11 CPC for affixing the ad valorem court fee on the value of suit was filed by the appellants/defendants which was dismissed by the Trial court vide 27.07.2021. Aggrieved with the order dated 27.07.2021, the appellants/defendants has filed the Civil revision No. 1542 of 2021 (O&M) titled as “Suresh and Ors Versus Mewa Devi and Ors” which was decided by the Hon’ble Mr. Justice Mahabir Singh Sindhu, vide order dated 28.10.2021, wherein the Hon’ble High Court has observed that the petition is rendered infructuous. If the word “appellant” is not mentioned in the order 7 rule 11 CPC, then it does not mean that appeal has been deprived of for not making the payment of the court fee on the value of memorandum of appeal. Rather, the duty has been casted/imposed upon the appellants/respondents to pay the ad valorem court fee on the value of memorandum of appeal at the time of filing of appeal because the appellants/respondents have challenged the decree for recovery of Rs. 26,68,000/- alongwith interest @12% per annum. As such in view of my above-said discussion, the application is hereby allowed to the effect that the appellants/respondents are hereby directed to pay the ad valorem court fee on the value of memorandum of appeal on or before 29.04.2023.”

6. Section 141 of CPC provides that *the procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.*

6.1. Having heard the arguments of learned counsel for petitioner-defendants and gone through impugned order, I am of the view that learned Appellate Court rightly observed that absence of word “appellant” in the Order VII Rule 11 CPC is not to be construed to mean that appellants cannot be required to pay Court fee on the value of memorandum of appeal. Defendants are rightly asked to pay *ad valorem* court fee on the value of memorandum of appeal since they challenge decree for recovery of Rs.26,68,000/- along with interest @ 12% per annum.

7. There is no room for interference in the aforesaid valid reasons recorded by learned Appellate Court.

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- 8. No material irregularity in law or procedure has been committed by learned Appellate Court, so as to exercise extraordinary revisional jurisdiction herein.
- 9. Dismissed.
- 10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 01, 2023
mahavir

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