

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

284

CR No.7905 of 2019

Reserved on : 15.03.2023

Date of Decision: 11.04.2023

Bajrang Dass @ Kalu Ram

....Petitioner

VERSUS

Kiran

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Satbir Singh Gill, Advocate for the petitioner.

Mr. Rajinder Goel, Advocate for the respondent.

ALKA SARIN, J.

The present revision petition has been filed for setting aside the order dated 30.09.2019 vide which the plaintiff-petitioner has been directed to pay *ad valorem* court fees on Rs.5,00,000/-, the amount sought as damages/compensation.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for declaration to the effect that he is entitled to damages/compensation to the tune of atleast Rs.5,00,000/- from the defendant-respondent for causing physical and mental harassment to the plaintiff-petitioner for involving him in a false and baseless litigation. The prayer clause of the suit reads as under :

“14. It is, therefore, prayed that a decree for declaration to the effect that the plaintiff is entitled to the compensation/damages to the tune of at least Rs. five lacs from the defendant, for causing physical and mental harassment to these plaintiff by involving him into false and baseless litigation, in a petition bearing CNR

No.HRSIB10000962014, in Crl Petition No.83-2 of 2014 filed by the defendant against the plaintiff and others titled as Kiran Vs Sushil Kumar etc. under the provisions of Protection of Women from Domestic Violence Act, 2005, decided by Shri Sunil, Judicial Magistrate Ist Class, Ellenabad, District Sirsa, vide order dated 05.02.2018 by which the petition filed by the present defendant has been dismissed by the court, and for mandatory injunction directing/ordering the defendant to pay the above said amount to the plaintiff as compensation/damages or to pay any other amount which the Hon'ble Court deems just and proper in the circumstances of the case in hand, may kindly be passed in favour of the plaintiff and against the defendant with costs of the suit. Any other relief to which the plaintiff may be found entitled to, be also kindly granted to the plaintiff, in view of the facts and the submissions made in the aforesaid paras of the plaint, in the interest of justice."

During the pendency of the civil suit, an application was filed by the defendant-respondent under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the plaint on the ground that proper court fees had not been affixed. A reply was filed to the said application and vide the impugned order dated 30.09.2019 the application under Order VII Rule 11 CPC was allowed and the plaintiff-petitioner was directed to pay *ad*

valorem court fees on Rs.5,00,000/- i.e. the amount sought as damages/compensation.

Learned counsel for the plaintiff-petitioner would contend that the damages have not been quantified and both in the heading of the plaint as well as in the prayer clause it has been prayed that the damages/compensation to the tune of at least Rs.5,00,000/- be paid. It is further the contention that since the damages have not been quantified, hence the question of payment of *ad valorem* court fees did not arise in the present case. Learned counsel for the plaintiff-petitioner has relied upon a judgment of this Court in the case of **Manpreet Singh vs. Gurmail Singh & Ors.** [2017 (1) RCR (Civil) 230] to contend that the damages mentioned in the plaint are only tentative and hence no *ad valorem* court fees would be payable.

Per contra learned counsel for the defendant-respondent has contended that the amount for damages has been quantified as Rs.5,00,000/- and hence *ad valorem* court fees ought to have been affixed on the said amount.

I have heard learned counsel for the parties.

In the present case there is no assessment of the damages which has been given by the plaintiff-petitioner in the plaint. In the heading of the plaint as well as in the prayer clause, only a tentative amount has been mentioned. It is trite that the payment of *ad valorem* court fees is a matter between the plaintiff and the Court and the plaintiff-petitioner can be directed to pay the court fees as assessed after the relief is granted. In the plaint it has only been mentioned that the damages to the tune of at least

Rs.5,00,000/- be awarded. The same being a totally vague statement cannot be treated as a quantification of the damages.

In the case of **Subhash Chander Goel vs. Harvind Sagar** [AIR 2003 Pb&Hy 248] it has been held as under :

“4. I have thoughtfully considered the submissions made by the learned counsel for the parties and am of the view that the present revision petition is liable to be dismissed because under Section 7(1) to (iii) of the 1870 Act only those cases are covered where it is possible to reach the correct valuation of the relevant suit. In cases where even the Court is unable to evaluate the relief sought, the valuation put by the plaintiff shall be considered tentative. There is no bar on the Court to direct the plaintiff under Section 149 of the Code to pay the Court-fee in order to enjoy the relief granted. It is also true that the Court-fee is a matter between the plaintiff and the State. These principles have been amply supported by the judgment of this Court in Hem Raj’s case (1993 Civil Court Cas 48) (supra) where judgments of the Supreme Court in Vimla Pannalal’s Case (AIR 1988 SC 1636) and S. Km. Ar. S. Sp. Sathappa Chettiar’s case (AIR 1958 SC 245) (supra) have been considered and relied upon. Even the Full Bench of this Court has taken the view that the plaintiff can be directed later on to pay the Court-fee as the Court may assess after granting the relief.

5. The facts of the present case as revealed in the instant petition are that the plaintiff-respondent has filed a suit for damages and compensation against the defendant-petitioner alleging that when he was posted as Assistant Store Keeper in the Medical Store of the Super Bazar in P.G.I. Chandigarh certain serious complaints were made against the plaintiff-respondent and the plaintiff-respondent was transferred from the medicine shop. He challenged his transfer order in which it was found that the complaint filed by the defendant-petitioner alleging that he used water in bottles which use to be sold as medicine. The complaint filed by the defendant-petitioner has been found to be false. Basing his claim on the aforementioned conclusion the plaintiff-respondent filed a suit claiming damages for maligning his reputation by the defendant-petitioner and he affixed the Court-fee of Rs. 50/-. It is, therefore, evident that no valuation at this stage would be possible in sure and certain terms. Therefore, in such like cases, this Court in Hem Raj's case (supra) has held that the valuation offered by the plaintiff has to be accepted because even the Court would not be able to assess the value and issue directions to the plaintiff to do the needful. It was in these circumstances that in Hem Raj's case (1993 Civil Court Cas 48) (supra), this Court has held as under :

“Coming to the third point, the law is fairly well settled that if the Court is itself unable to say what the correct valuation of the relief is, it cannot require the plaintiff to correct the valuation that has been made by him. In such a case the Court has no other alternative than to accept the plaintiffs valuation tentatively. In M/s Commercial Aviation and Travel Company v. Mrs. Vimla Pannalal, AIR 1988 Supreme Court 1636 their Lordships referred to a Five Judge Bench decision in S. Rrn. Ar. S. Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar, AIR 1958 SC 245 at Pp. 251-52 and extracted the relevant observations, part of which are as under :

“If the scheme laid down for the computation of fees payable in suits covered by the several sub-sections of Section 7 is considered it would be clear that in respect of suits falling under Sub-section (iv) a departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of Court-fees. The theoretical basis of this provision appears to be that in cases in which the plaintiff is given the option to allow his claim, it is really difficult to value the claim within any precision or definiteness.”

The same view has been reiterated in various decisions of the Apex Court up to the recent decision in Sujir Keshav Nayak's case (AIR 1992 Supreme Court 1526) (supra), Mr. J.C. Nagpal learned counsel for the respondents, submitted that the various authorities cited by Mr. Chopra related to cases of rendition of accounts. He submitted that in suits relation to rendition of accounts the statute itself expressly gave power to the plaintiff to value the relief which he claims. He further pointed out that there was no such enabling provision insofar as suit for the recovery of compensation/damages falling in Section 7(1)(b) of the Court-fees Act was concerned. In my view, this is a distinction without a difference. In the case of the amount of compensation, there is no objective standard available which can help determine the amount for which the plaintiff has to value the relief claimed by him. In the nature of things, the valuation put by the plaintiff is tentative and in view of the settled position of law, the same cannot be disputed. It will be further seen that the decision of the Supreme Court in Smt. Tara Devi v. Sri Thakur Radha Krishna Maharaj, AIR 1987 Supreme Court 2085 related to the question of Court-fee payable under Section 7(iv)(c) of the Court-fees Act and in

Gopala Krishna Pillai v. Meenakshi Ayal, AIR 1967 Supreme Court 155 the question related to recovery of mesne profits and in both these instances the suits related to suits other than one for rendition of accounts.”

In view of the above, the impugned order dated 30.09.2019 is set aside. The tentative court fees affixed by the plaintiff-petitioner shall be accepted by the Court and the Court shall proceed further with the suit in accordance with the law. The exact amount of court fee payable shall be determined and paid at the time of passing of the decree.

Disposed off in the above terms. Pending applications, if any, also stand disposed off. Nothing mentioned in this order shall be construed to having any bearing on the merits of the suit.

11.04.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO