

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3644-2018 (O&M)
Date of Decision: February 09, 2024

Hardeep Singh
...Petitioner

Versus

Dhanwinder Kumar and another
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Lakshmit Kaur, Advocate for
Mr.Onkar Singh, Advocate
for the petitioner.

None for the respondents.

ARCHANA PURI, J.

Through the present revision petition filed under Article 227 of the Constitution of India, the petitioner has challenged the order dated 09.05.2018 passed by learned Court below, whereby, an application under Order 7 Rule 11 CPC, was disposed of with the direction to the plaintiffs to affix Court fee on Rs.20 lakh, as prayed for, in the headnote of the plaint.

The essential facts, to be noticed, are as follows:-

That, initially, present petitioner along with Malkiat Singh, co-plaintiff, who is proforma respondent, in the present petition, had filed a suit against Dhanwinder Singh-respondent for No.1, for seeking damages to the tune of Rs.20 lakh, together with interest, on account of breach of contract

CR-3644-2018

and financial loss. The plaintiffs, who are owners in possession of the house, as detailed in paragraph No.1 of the plaint, copy whereof is Annexure P-2, had engaged respondent No.1-Dhanwinder Singh, for raising one portion of the house in question. In the plaint, the detail of the work, which was required to be done, as per the contract, has also been stated. The total work was agreed to be done for an amount of Rs.11,50,000/-. Out of the settled amount, multiple times, various amounts were given, but however, the defendant-respondent No.1 had left the construction work of the contract incomplete on 31.05.2017. Despite the amount of Rs.10 lakh having been already paid, respondent No.1, failed to complete the work of the contract, within agreed period of six months. Thereupon, plaintiff No.2-Malkiat Singh, being attorney of plaintiff No.1-Hardeep Singh, engaged a Civil Engineer, who visited the spot and made report in detail along with the site plan and photographs and he further opined that the cost of construction of incomplete building is only Rs.6,93,000/- and he also opined that to set right the defects and to complete the construction of the building Rs.5.5 lakh are required.

Furthermore, it is averred that defendant caused much loss, after getting total amount of Rs.10 lakh from plaintiff No.1. Even, plaintiff No.1 suffered pain, agony and inconvenience and suffered financial loss due to frequent visits, on account of harassment by the defendant during the contract. As such, plaintiffs are entitled to compensation to the tune of Rs.20 lakh, with interest component.

Respondent No.1 (who was defendant before learned Court

CR-3644-2018

below) had filed application under Order 7 Rule 11 CPC, thereby, asserting that suit has been filed for recovery of Rs.20 lakh, for alleged damages, but however, the Court fee is affixed only of Rs.50/- and the plaintiffs have not affixed the Court fee, on the plaint for recovery of Rs.20 lakh. As such, the plaint is liable to be rejected.

Reply to the aforesaid application was filed and it was stated that only tentative Court fee is required to be affixed, which has already been affixed and the application, as such, is not maintainable and the same be dismissed.

After hearing both the parties, vide impugned order dated 09.05.2018, the application was disposed of and a direction was given to the plaintiffs, to affix the Court fee on Rs.20 lakh, as prayed for in the headnote of the plaint, subject to two effective opportunities, otherwise the Court shall have no option, except to proceed further.

Feeling aggrieved by the aforesaid order, plaintiff No.1- petitioner has filed the present revision petition.

In pursuance of the notice issued, contesting respondent did not make appearance.

Learned counsel for the petitioner heard.

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 any 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.

On plain reading of the plaint, it is apparent that it is a 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.

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, 2022(2) RCR (Civil) 464*, wherein it has been categorically observed that in a suit for recovery as damages, *ad valorem* Court fee, would be payable on the amount of damages claimed.

In the light of the aforesaid, the impugned order, calling upon the plaintiffs to file the requisite Court fee, as per claim, so sought by them, calls for no further interference. Hence, the revision petition sans merit and is hereby dismissed.

February 09, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No