

2024:PHHC:096755



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

CR-1099-2020(O&M)

Date of Decision: July 30, 2024

Resham Singh and another

...Petitioners

Versus

Sukhjinder Kaur

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Bhavesh Aggarwal, Advocate
for the petitioners.

Mr.A.S.Manaise, Advocate
for the respondent.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 02.12.2019 (Annexure P-7) passed by learned Addl. District Judge, whereby, appeal in the form of pauperis, filed by the respondent-plaintiff against the order dated 18.07.2019 (Annexure P-5) was allowed.

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

That, initially, respondent-plaintiff had field a suit against the petitioners-defendants, thereby seeking damages to the tune of Rs.20 lakh, for her malicious prosecution. Along with the suit, the respondent-plaintiff had also filed an application under Order 33 Rule 1 CPC, seeking permission to sue as an indigent person. In the application, it was asserted that she had filed a suit for recovery of Rs.20 lakh, on account of damages

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for malicious prosecution by the defendants. She is not possessing sufficient means to enable her to pay the Court fee, prescribed for the plaint. It was further asserted that she has not even disposed of any property fraudulently or otherwise, in order to be eligible for permission to file a suit as an indigent person.

However, in reply, the petitioners-defendants had taken preliminary objections, thereby disputing maintainability of the application in the present form and also challenged the locus standi and asserted about the application to be false. On merits, it was asserted that a false and frivolous suit has been filed. Also, it was denied that the respondent-plaintiff is not possessing sufficient means to enable her to pay the Court fee. Rather, it was asserted that the respondent-plaintiff is having high structure residential house with luxury, constructed over an area of more than 1 Kanal at village Manepur, District Gurdaspur. She has given two portions of her house on rent to two different tenants and receiving rent of more than Rs.20,000/- per month. She is also running a boutique and beauty parlour and earning Rs.30,000/- per month from this business. In total, she is earning more than Rs.50,000/- per month. As such, a prayer was made for dismissal of the application.

After hearing learned counsel for the parties, an application under Order 33 Rule 1 CPC was dismissed by learned Addl. Civil Judge (Sr. Divn.), vide order dated 18.07.2019 and thereupon, the respondent-plaintiff was directed to place on record the requisite Court fee, as per rules.

Being aggrieved by the order aforesaid, respondent-plaintiff



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Sukhjinder Kaur had filed an appeal.

After hearing learned counsel for the parties, so far as, issue with regard pauperism of the respondent-plaintiff was concerned, it was concluded that she was no longer a pauper. On the basis of the aforesaid conclusion, with regard to the payment of the Court fee, it was concluded by learned Appellate Court, which is reproduced, as herein given:-

“15. Further, in totality also, the suit is for malicious prosecution and averments of false allegations are alleged. It would be certainly difficult to ascertain the damages to the exact amount as alleged by the plaintiff. As such, the trial court cannot direct the plaintiff to pay entire amount as court fee on Rs. 20 Lacs. Plaintiff cannot be called upon to pay entire court fee, which is yet to be ascertained. As such, the Civil Miscellaneous Appeal is allowed, with condition that the plaintiff shall be called upon to pay the exact court fee at the final adjudication of the case, in case, the plaintiff is able to make out a case of damages to the extent of certain amount.”

In view of the aforesaid observations, the appeal was allowed and the order dated 18.07.2019 was set aside.

Feeling aggrieved by the aforesaid order, the petitioners-defendants have filed the present revision petition.

In pursuance of the notice issued, respondent-plaintiff made appearance through counsel.

Learned counsel for the parties heard.

Before proceeding further, it is pertinent to mention that Sukhjinder Kaur, who was concluded to be not pauper, has not challenged the order of denial of pauperism. In fact, it is only the petitioners-defendants, who have filed the revision petition, to assail the order with regard to observations made by learned Appellate Court, about there to be



no necessity to pay the Court fee, at this stage.

Perusal of the plaint, copy whereof is Annexure P-1, reveals that the suit for damages has been filed for the specified amount of Rs.20 lakh for malicious prosecution. From the contents of the same, it is evident that the it was during the pendency of divorce petition, filed at the instance of the husband of respondent-Sukhjinder Kaur, that both the petitioners-defendants had appeared as a witness and had furnished affidavits, which were not relied upon by learned trial Court and divorce petition was decided in favour of Sukhjinder Kaur. In this backdrop, in the plaint, there is specific mention made that the plaintiff is entitled to recover from the defendant the amount of detailed below:-

- | | | |
|----|--|----------------|
| a) | On account of mental pain, agony and harassment. | Rs.5,00,000/- |
| b) | On account of wrongful litigation and attendance in Court for 2 years | Rs.3,00,000/- |
| c) | On account of special damages for defaming the plaintiff and tarnishing her image in society and medical treatment | Rs.12,00,000/- |

Furthermore, in paragraph No.13 of the plaint, it is submitted that plaintiff i.e. Sukhjinder Kaur had requested the defendants to pay the abovesaid damages to her, on account of mental agony, harassment, medical treatment and loss of reputation in the society, but however, the defendants did not bother and refused to pay any heed to the request of the plaintiff. Hence, the suit.

In the prayer clause, she had made a prayer for decree for recovery of damages, to the tune of Rs.20 lakh, on account of loss occasioned to the



plaintiff by the defamatory and false evidence of defendants.

Thus, from the contents of the plaint, it is evident that the respondent-plaintiff had capped her claim in suit for damages upto Rs.20 lakh. Hence, it is the recovery of specified amount of Rs.20 lakh, which has been sought.

Though, it is submitted that it is un-ascertained amount, but however, it is not so. The amount, as such, has been specified. In this regard, beneficial reference is made to decision rendered by Hon’ble Supreme Court '*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 dictum, when recovery is alleged to be effected of a specified amount, therefore, the Court fee is required to be affixed. In these circumstances, the impugned order dated 02.12.2019, qua question of fixation of Court fee, warrants interference and the same is set aside to this effect, as a result whereof, the respondent-plaintiff is directed to affix the Court fee, on the amount of Rs.20 lakh, for which amount, the suit for damages has been filed.

In view of the aforesaid observations, the present revision petition is hereby allowed.

July 30, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No