

2024:PHHC: 008275

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.7026 of 2023

Date of Decision:22 .01.2024

Brij Mohan Sharma

...Revisionist-Petitioner

Versus

Rajeev Kumar

...Respondent

CORAM: ***HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

Argued by:- Mr. Jayant Yadav, Advocate
for the revisionist-petitioner.

MEENAKSHI I. MEHTA, J.

By way of the instant revision-petition, the petitioner-defendant (here-in-after to be referred as 'the defendant') has laid challenge to the order (Annexure P-8) passed by learned Additional Civil Judge (Senior Division), Rewari (for short 'the trial Court') on 14.09.2023 in ***Civil Suit No.164 of 2023*** titled as '***Rajeev Kumar Vs. Brij Mohan***', whereby his prayer for the rejection of plaint in view of the provisions contained in Order 7 Rule 11 CPC, has been declined.

2. Shorn and short of unnecessary details, the facts emerging from the perusal of the file and culminating in the filing of the present revision-petition, are that the respondent-plaintiff (here-in-after to be referred as 'the plaintiff') filed the afore-referred Civil Suit against the defendant for seeking a decree for the recovery of Rs.19,20,000/-. In para No.8 of the plaint, he (plaintiff) categorically pleaded that the Court-fee worth Rs.47,550/- was to

be affixed on the plaint but due to insufficiency of the Court-fee stamps, the Suit was being filed with the stamp-paper worth Rs.50/- and the remaining Court-fee would be paid/affixed later-on. Then, on 02.08.2023, he (plaintiff) moved application Annexure P-2 for making good the above-said deficiency of Rs.47,500/- in the Court-fee and he submitted the same accordingly, as reflected in the order Annexure P-3 passed by the trial Court on that day. However, thereafter, on 31.08.2023, the defendant moved an application (Annexure P-5) under Order 7 Rule 11 CPC for seeking the rejection of the plaint, while claiming that the Court-fee worth Rs.1,00,100/- was required to be paid/affixed thereon (plaint) in accordance with the amount sought to be recovered by the plaintiff in the Suit but he had failed to affix the same within the period of limitation as prescribed for filing the afore-said Suit and therefore, his claim had become time-barred. In the meantime, the plaintiff filed application Annexure P-7 for seeking permission to submit the Court-fee of Rs.52,650/- and averred therein that he was submitting the same, in view of the above-referred application, Annexure P-5 and just to avoid any controversy. The defendant resisted the same and prayed for rejection of the plaint on the ground of the afore-mentioned Suit having become time-barred due to the delay in filing the Court-fee but vide the impugned order, the trial Court has rejected his above-said prayer, as already discussed in the opening para of this judgment.

3. I have heard learned counsel for the petitioner-defendant in the instant revision-petition, at the preliminary stage and have also gone through the file carefully.

4. Learned counsel for the petitioner-defendant has contended that the plaintiff claims to have given the alleged amount to the defendant as loan, on 09.02.2020 and though he filed the afore-said Suit on 03.02.2023 but he had furnished/filed the requisite Court-fee on 14.09.2023 after the filing of application Annexure P-5 by the defendant for the rejection of the plaint, whereas the prescribed period of limitation to file the Suit had expired on 08.02.2023, i.e much prior thereto and therefore, the plaint deserved to be rejected on this score, as envisaged under Order 7 Rule 11 CPC. To buttress his contentions, he has placed reliance upon the verdicts rendered by Hon'ble Supreme Court in **P.K. Palanisamy vs. N. Arumugham and another, SLP (Civil) No.2308 of 2009 decided on 23.07.2009** and **K.C. Skaria vs. Govt. of State of Kerala and another 2006(1) RCR (Civil) 460.**

5. However, the above-raised contentions are bereft of any force because as pointed out earlier, the plaintiff had specifically mentioned in para No.8 of the plaint that the appropriate Court-fee could not be affixed on the plaint due to insufficiency of the Court-fee stamps and as is explicit from order Annexure P-3, he had made the deficiency of the Court-fee good on 02.08.2023, by moving application Annexure P-2 in this regard. Though in the said application, the plaintiff did not specifically mention the provision of law under which it had been filed but the Apex Court has observed in **P.K. Palanisamy (Supra)** itself that “*it is well settled that mentioning of the wrong provision or non-mentioning of a provision does not invalidate an order if the Court and/or statutory authority had the requisite jurisdiction therefore*”.

In view of these observations, it is held that for all the intents and purposes,

application Annexure P-2 cannot be construed to have been moved for any other purpose than the one, as provided for in Section 149 CPC and the trial Court also had the jurisdiction to entertain and decide such application and to add to it, a perusal of order Annexure P-3 reveals that it had been passed in the presence of the counsel for the defendant and there is nothing in this order to suggest that he (counsel) had raised any objection qua the filing of the Court-fee by the plaintiff on that day. It being so, even if the Court-fee had been filed/made good on 02.08.2023, even then, the plaint is to be taken to have the same force and effect as if the said Court-fee had been paid in the first instance, as provided/intended in the afore-mentioned provisions.

6. Further, for dealing with the issue of submission of the Court-fee of Rs.52,650/- by the plaintiff after the filing of application Annexure P-5 by the defendant, it would be necessary to advert to clauses (b) and (c) of Order 7 Rule 11 CPC which specifically provide for the rejection of plaint on the grounds pertaining to the Court-fee and the same read as under:-

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

(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.”.

and in the present case, as already discussed in the preceding paragraphs, the plaintiff has furnished/filed the Court-fee, as asserted/alleged by the defendant in his application Annexure P-5 to be deficit, even before the trial Court had the occasion to pass any order for making the alleged deficiency good and to grant him the time for doing so, as required under the above-quoted provisions.

7. Seen from yet another angle, the instant revision-petition is not maintainable in view of the observations made by Hon'ble Supreme Court in **Sri Rathnavarmaraja vs.Smt. Vimla AIR 1961 SC 1299** to the effect that *“whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State and the defendant who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior Courts by appeal or in revision against the order adjudging payment of court-fee payable on the plaint.”*

8. As regards the observations made by the Apex Court in **P.K. Palanisamy (supra)**, these do not further the cause of the defendant because it has, rather, been held therein that once an application under Section 149 CPC is allowed, Order 7 Rule 11(c) of the Code shall have no application. Then, so far as the judgment as handed down by Hon'ble the Supreme Court in **K.C. Skaria (supra)** is concerned, the same also does not come to the aid of the defendant as the facts and circumstances of the afore-mentioned case are quite distinguishable from those of the present one because in the above-referred case, the Apex Court has made the specific observations which are as under: -

“A careful reading of Section 149 shows that it would apply only in respect of the court fee payable at the time of institution of the suit. If the court fee due on the plaint when instituted, is not paid wholly or partly by the person instituting the suit, the court in its discretion, may allow him to pay the court fee or deficit court fee within the period fixed by it. Section 149 has no application where the court fee, due on the plaint as per the valuation of the suit, is fully paid, but subsequently it is found that a larger amount is due to the plaintiff. For example, if the plaintiff values the suit at Rs.2 lacs and the court fee payable is Rs.20,000/- and the plaintiff pays a court fee of Rs.10,000/-, on his request time for payment of balance of Rs.10,000/- can be extended by the court at its discretion under Section 149 CPC. But where the claim was Rs.2 lacs and full court fee on Rs.2 lacs was paid at the time of institution of the suit, and during evidence it transpires that the amount due to plaintiff is actually Rs.5 lacs and not Rs.2 lacs, the question of permitting the plaintiff to pay deficit court fee at that stage by calling in aid Section 149, does not arise as no court fee becomes payable at that stage. Plaintiff can increase the claim only by seeking amendment of the plaint and paying additional court fee on the amended claim. In regard to such amended claim also, Section 149 may be pressed into service. But then amendment would depend on limitation and may not be permitted after the period of limitation.”

whereas in the instant case, the plaintiff has neither sought the amendment in his claim, as initially put-forth by him in the Civil Suit, so as to increase it nor any such increase has been transpired from the evidence.

9. As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, irregularity, infirmity or perversity so as to warrant any interference by this Court. Resultantly, the revision-petition in hand stands dismissed accordingly.

22nd January, 2024
pooja

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*