

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Revision No.7199 of 2023
Date of Decision: 15.01.2024

Amrik Singh

...Revisionist-Petitioner

Versus

Malkit Singh

...Respondent

CORAM: HON’BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by: Mr. Prateek Mahajan, Legal Aid Counsel
for the revisionist-petitioner.

* * * *

MEENAKSHI I. MEHTA, J.

By filing the instant revision-petition under Article 227 of the Constitution of India, the petitioner-plaintiff (here-in-after to be referred as ‘the plaintiff’) has assailed the order (Annexure P-1) handed down by learned Additional District Judge, Sangrur (for short ‘the Lower Appellate Court’) in the appeal bearing **CA No.207 of 2023** titled as “**Amrik Singh versus Malkit Singh**” on 03.10.2023, whereby the application, Annexure P-7, moved by the respondent-defendant (here-in-after to be referred as ‘the defendant’) under Order 7 Rule 11 CPC for seeking rejection of the Grounds of Appeal and also the issuance of direction to him (plaintiff) to affix the Court-fee, as per the relief claimed by him, has been allowed.

2. I have heard learned Legal Aid counsel for the petitioner-plaintiff in the present revision-petition, at the preliminary stage and have also perused the file carefully.

3. Learned Legal Aid counsel for the plaintiff has contended that during the pendency of the Civil Suit, out of which the afore-referred appeal has arisen, the defendant had moved application Annexure P-3 with the prayer for rejection of the plaint on the ground of non-affixation of proper Court-fee thereon and the same had been dismissed vide order Annexure P-4 and CR No.93 of 2017, as preferred by him to lay challenge to the above-said order, had also been dismissed by this Court vide order Annexure P-5 and it being so, it is quite explicit that the dispute between the parties qua the affixation of Court-fee, has already been finalized in favour of the plaintiff but vide the impugned order, the Lower Appellate Court has again directed the plaintiff to affix the Court-fee, on the amount claimed by him, in accordance with Section 7(i) of the Court Fees Act and hence, the said order is not legally sustainable and deserves to be set-aside. He has placed reliance upon the judgment passed by Hon'ble Supreme Court in **Neelima Srivastava vs. State of Uttar Pradesh & Ors, 2021(3) SCT 622** in support of his contentions.

4. However, the afore-raised contentions are not tenable because undisputedly, the orders Annexures P-4 & P-5, had been passed in respect of application Annexure P-3, filed by the defendant before the trial Court during the pendency of the above-said Civil Suit, for seeking rejection of the plaint whereas the impugned order has been passed on application Annexure P-7, as moved by him in the afore-referred Civil Appeal with the prayer to reject the Grounds of Appeal, meaning thereby that vide this order, the Lower Appellate Court did not re-open the discussion on the merits of above-said application, Annexure P-3, as filed in the trial Court and rather, the plaintiff was required to affix the proper Court-fee afresh while filing the said appeal.

5. Admittedly, the plaintiff filed the said Civil Suit for claiming a sum of Rs.40 lac from the defendant as damages, on account of his malicious prosecution. As regards the order Annexure P-5, the same is of no help to him in view of the observations made by the Apex Court in State of Punjab & Ors vs. Dev Brat Sharma Civil Appeal No 2064 of 2022, Decided on 16.03.2022, to the effect that “in a suit where the amount of damages is claimed, the *ad-valorem* Court fees would be payable on the amount claimed”. The verdict as rendered by Hon’ble the Supreme Court in Neelima Srivastava (supra), is not applicable to the instant case as the facts and circumstances of this case are distinguishable from those of the mentioned above. In the afore-cited case, the High Court had already passed the order for considering the appellant for regularization of her services but the competent authority had rejected her claim in the light of the judgment passed by the Apex Court subsequently whereas in the present case, as pointed out earlier, the orders passed by the trial Court and this Court, i.e Annexures P-4 & P-5 respectively, have not been re-opened or considered afresh and rather, the impugned order pertains to the controversy between the parties qua the affixation of proper Court-fee on the Grounds of Appeal, filed by the plaintiff in the Lower Appellate Court.

6. As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the revision-petition in hand, being *sans* any merit, stands dismissed.

15.01.2024
seema

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes