

Before B. S. Walia, J.

NAVEEN GULATI—*Petitioner*

versus

SANJEEV KUMAR AND ANOTHER—*Respondents*

CR No. 1768 of 2016

December 18, 2018

Code of Civil Procedure, 1908—Order 7, Rl. 11—Damages claimed for malicious prosecution—Court fee not to be assessed as suit for damages—Court fee to be paid only upon amount decreed—Held, plaint could not be rejected on account of non-payment of advalorem Court fee.

Held that in a suit for recovery of damages and compensation for malicious prosecution only tentative court fee is required to be affixed at the time of filing of the suit and appropriate court fee was liable to be affixed by the plaintiff on the amount decreed by the learned trial Court.

(Para 8)

Further held that in the light of the position as noted above, the revision petition is allowed, impugned order dated 14.01.2016 is set aside and the valuation given by the petitioner-plaintiff is directed to be accepted tentatively. The exact amount of court fee payable shall be determined at the time of passing of the decree and the petitioner plaintiff shall be bound to pay the court fee as determined by the Court.

(Para 11)

Rohit Mittal, Advocate for
Vansh Malhotra, Advocate
for the petitioner.

C.L. Sharma, Advocate
for the respondents.

B.S.WALIA, J. oral

(1) Challenge in the instant revision petition is to order dated 14.01.2016 (Annexure P-1), passed by the learned Civil Judge (Senior Division), Kalka, allowing the application filed by the respondents-defendants under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter referred to as ‘CPC’) and directing the petitioner-plaintiff to make payment of advalorem court fee.

(2) Learned counsel for the petitioner contended that no doubt details of amount claimed by the petitioner as damages on account of malicious prosecution had been given in the plaint but the amount as given in the plaint was tentative besides the petitioner had categorically mentioned in the plaint that his reputation could not be measured in terms of money and had restricted his claim tentatively to Rs.15 Lakh as also that the exact amount which the petitioner/plaintiff would be entitled to on account of damages for malicious prosecution at the hands of the respondents/ defendants could be ascertained only after appreciation of the evidence to be produced by the parties, therefore, the impugned order was legally unsustainable and liable to be set aside particularly since the court fee to be assessed by the learned trial Court at the time of passing of the decree would be binding on the petitioner-plaintiff and he would be bound to pay the court fee as determined.

(3) Per contra, learned counsel for the respondents-defendants has reiterated the reasoning leading to the passing of the impugned order and has prayed for dismissal of the revision petition.

(4) I have considered the submission of learned counsel for the parties.

(5) A perusal of head note of plaint (Annexure P-4) reveals that the civil suit was filed for recovery of Rs. 15 Lakh (tentative) as damages for malicious prosecution along with interest @ 12% per annum from the date of filing of the suit till its realization. Paragraph No.10 of the plaint no doubt mentions that the petitioner-plaintiff had spent Rs. 1 Lakh on litigation including transportation etc. besides the petitioner-plaintiff had suffered loss of about Rs. 10 Lakh in business and also spent Rs. 4 Lakh approximately on his treatment and was also spending huge amount every month for his routine medication and medical checkup. Besides in paragraph No.11, of the plaint, it is mentioned that the petitioners reputation could not be measured in terms of money but still the petitioner-plaintiff restricted his claim tentatively to Rs. 15 Lakh while stating that he would be bound by the assessment actually made by the Court eventually.

(6) The learned trial Court took into account that the petitioner-plaintiff had filed a suit for recovery of Rs. 15 Lakh as damages for malicious prosecution along with interest @ 12% per annum and the same relief had been prayed for in the head note of the plaint as well as prayer clause while in paragraph No.10 of the plaint, the petitioner-plaintiff had raised a clear plea that he had incurred an amount of Rs. 1 Lakh on litigation, had suffered losses in business up to Rs. 10 Lakh

besides had spent Rs. 4 Lakh on his treatment. Therefore, as a whole, the petitioner-plaintiff had sought relief of Rs. 15 Lakh as damages allegedly caused by the respondents-defendants on account of malicious prosecution. In the aforementioned background, the learned trial Court concluded that the petitioner-plaintiff had taken a clear cut plea in the plaint with regard to losses allegedly caused to him due to malicious prosecution at the instance of the respondents-defendants and the relief sought by the petitioner-plaintiff was also very specific and clear, therefore, the application was allowed and the petitioner-plaintiff was directed to pay advalorem court fee on the relief of Rs. 15 Lakh sought in the suit.

(7) Learned counsel for the petitioner-plaintiff has relied upon the decision of this Court in CR No.1732 of 2016, titled as *Ashok Kumar Mittal* versus *Sat Kamal Pathak* and others decided on 31.07.2017, which was also pertaining to an order allowing application moved in the said case under Order 7 Rule 11 CPC and directing the plaintiff therein to make good the deficiency of court fees. The aforementioned suit was also a civil suit for recovery of damages to the tune of Rs. 50 Lakh's for malicious prosecution, wrongful confinement, cruelty, physical and mental, loss of business and health of self and family members, loss of reputation and defamation. In the said case, a Coordinate Bench of this Court was pleased to observe as under:-

“At this point of time, it cannot be said by any stretch of imagination that the petitioner would be entitled for the above-said amount claimed by him on account of damages. It is so said because the plaintiff will have to prove his pleaded case, by leading cogent and convincing evidence so as to enable the learned trial court to arrive at a just conclusion. Having said that, this Court feels no hesitation to conclude that the learned trial court misdirected itself, while passing the impugned order and the same cannot be sustained.”

“It goes without saying that at the time of deciding the suit, in case the learned trial court comes to a conclusion that the plaintiff is entitled for a particular amount, the learned trial court would do well by directing the plaintiff to pay the remaining court fee to the extent it would be found deficient and the plaintiff shall be bound to pay the court fee accordingly.”

“Unless the matter is adjudicated upon by the learned trial court after proper appreciation of the evidence to be brought on record by both the parties, plaintiff-petitioner cannot be directed to pay ad valorem court fee on the total amount claimed by him on account of damages. It is so said because the principle of evaluation of suit, applied in the simple suit for recovery of liquidated claim, cannot be made applicable to a suit for damages for malicious prosecution, for the purpose of payment of court fee. At this stage, only a tentative valuation can be made and such tentative violation should be accepted by the learned court.”

(8) Learned counsel for the petitioner-plaintiff has also referred to the decision of this Court in **CR No.6904 of 2016, titled as Darshan Singh** versus **Falwinder Singh and others** decided on 22.02.2018, wherein in a suit for recovery of Rs. 7 Lakh as damages and compensation for malicious prosecution, a Coordinate Bench upheld the order of the learned trial Court that in a suit for recovery of damages and compensation for malicious prosecution only tentative court fee is required to be affixed at the time of filing of the suit and appropriate court fee was liable to be affixed by the plaintiff on the amount decreed by the learned trial Court.

(9) The Coordinate Bench of this Court by taking a note of the judgments of Hon’ble the Supreme Court in **M/s Commercial Aviation and Travel Company** versus **Vimla Pannalal**¹, **Subhash Chander Goel** versus **Harvinder Sagar**², **State of Punjab and others** versus **Jagdip Singh Chowan**³, **Saleem** versus **Usman Gani and another**⁴, **Tarwinder Kumar Bedi** versus **Jit Parkash**⁵, **S.Ajit Singh Kohar** versus **Shashi Kant**⁶, **Jaspal singh and another** versus **Gurbinder Singh**⁷ and **Bharpoor Singh and another** versus **Lachman Singh**⁸ allowed the revision petition, set aside the impugned order directing payment of advalorem court fee on the ground that unless the learned court was able to determine the correct valuation of relief claimed by the plaintiff,

¹ (1988) 3 SCC 423

² 2003 AIR (Punjab) 248

³ 2005(1) RCR (Civil) 54

⁴ 2015 (2) PLR 39

⁵ 2015 (2) PLR 92

⁶ 2015 (1) Law Herald 767

⁷ 2015 (3) PLR 97

⁸ 2015 (3) PLR 97

there was no scope for directing the plaintiff to pay ad valorem court fee and the same would be possible only after the trial court recorded appropriate findings after appreciation of evidence and arrived at a final determination as to what specific amount the plaintiff would be entitled to.

(10) In the instant case, a perusal of the plaint reveals that the petitioner-plaintiff filed a suit for recovery of Rs. 15 Lakh (tentative) as damages for malicious prosecution. No doubt in paragraph No.10, details of amount in approximation have been given by the petitioner-plaintiff on account of malicious prosecution but the aforesaid amount is tentative. Likewise in paragraph No.11 of the plaint, the petitioner-plaintiff has categorically mentioned that his reputation cannot be measured in terms of money, even then the petitioner-plaintiff has restricted his claim tentatively to a sum of Rs. 15 lakh. However, it would be possible for the learned trial court to arrive at a judicious conclusion as to how much amount the petitioner plaintiff would be entitled to on account of damages for malicious prosecution at the hands of the respondents-defendants only after appreciation of evidence to be produced by the parties.

(11) In the light of the position as noted above, the revision petition is allowed, impugned order dated 14.01.2016 is set aside and the valuation given by the petitioner-plaintiff is directed to be accepted tentatively. The exact amount of court fee payable shall be determined at the time of passing of the decree and the petitioner plaintiff shall be bound to pay the court fee as determined by the Court.

(12) Revision petition is allowed in the aforementioned terms.

Ritambara Rishi