

Punjab and Haryana High Court

*Amol Rattan Singh, J.*

**Kushalpal Singh v. Fortis Healthcare Ltd.**

CR No. 5931 of 2019

05.03.2020

Present: Mr. B.S. Bedi, Advocate, for the petitioners. Mr. Sanjeev Sharma, Senior Advocate, with Mr. Munish Kapila, Advocate, for respondents no. 1 to 4.

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**Amol Rattan Singh, J.**

1. In this petition, the petitioners challenge the order of the learned Civil Judge (Senior Division), Mohali (trial court), dated 05.08.2019, by which the application filed by the respondent-defendants under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908, has been allowed.

2. The sole ground taken in that application (copy Annexure P-2), for rejection of the plaint in the suit filed by the petitioners herein, is that though vide the said suit they had sought a recovery of Rs.2,00,00,000/- as compensation and damages for the death of the father of three of the plaintiffs (husband of appellant- plaintiff no.2), they had only filed court fee of Rs.5350/-, commensurate to a suit value of Rs.1,00,000/-, with them having contended in paragraph 19 of their plaint that “a tentative compensation of notional amount of Rs.1,00,000/- may be taken as value for the purpose of jurisdiction and court fee for claim of damages as compensation”.

3. The petitioners herein (plaintiffs), having filed a reply to that application, it was stated therein that though they were claiming Rs.2,00,00,000/- by way of damages/compensation due to the negligent act of the defendants (as alleged), however refund of a bill for an amount of Rs.13,87,000/- was also sought, and therefore “a notional amount of Rs.1,00,000/- may be taken as value for the purpose of jurisdiction and court fee for claim of damages as compensation”.

Hence, it was contended that they had affixed proper court fee and consequently the application of the respondent-defendants was required to be dismissed.

4. After having considered the matter, the learned trial court, vide the impugned order, referring to various judgments cited on behalf of the petitioner- plaintiffs, including one of this court in *State of Punjab v. Jagdip Singh Chowhan and others* 2005 (1) RCR (Civil) 54, as also three judgments of the Supreme Court eventually held that court fee would be payable, ad valorem would be payable on the amount of Rs.2,00,00,000/- as had been claimed by way of damages.

5. Before this court, learned counsel for the petitioner has relied upon a judgment of the Supreme Court in *M/s Commercial Aviation & Travel Company v. Mrs. Vimla Panna Lal* (Civil Appeal No. 2137 of 1988), decided on 13.07.1988, and various judgments of co-ordinate Benches of this court, to contend that court fee, even in a suit for damages, can be affixed on a notional value assigned in the suit.

The other judgments that he relies upon are as listed below:-

(i) *Manpreet Singh v. Gurmail Singh and others* (CR No. 5662 of 2014), decided on 01.04.2016;

(ii) *State of Punjab and others v. Jagdip Singh Chowhan* (CR No. 2933 of 2004), decided on 14.10.2004;

(iii) *Subhash Chander Goel v. Harvind Sagar* (CR No. 2785 of 2001), decided on 21.02.2003 and

(iv) *Hemraj v. Harchet Singh* Law Finder Doc ID # 135495.

6. The contention of learned counsel is that even though clause (i) of Section 7 of the Court Fees Act, 1870, stipulates that in a suit claiming money, including a suit for damages or compensation, the court fee must be fixed according to the amount claimed, yet, in view of what is stated at the end of clause iv (before clause v), of Section 7, to the effect that in all such suits the plaintiff shall state the amount at which he values the relief sought, it would only be the value as has been stated by the plaintiff in the suit that is to be taken as such, for the purpose of assessment of court fee.

He submits that in the aforesaid judgments it has been held that eventually the amount of damages to be awarded (if any) to the plaintiff, not being fully determinable by the court at the initial stage, it is only after the damages are assessed by the court, on the basis of evidence led, would the exact amount of the court fee be also assessable accordingly, *ad valorem*, which is thereafter to be paid by the plaintiff.

7. Per contra, Mr. Sanjeev Sharma, learned senior counsel appearing for the respondents, first points to the provision itself, i.e. Section 7 (i) of the Court Fees Act, 1870, to submit that as regards what is stated at the end of clause (iv) of Section 7, that would not be applicable to suits for damages or compensation, even in the light of a judgment of a co-ordinate Bench of this court in *Manjeet Singh v. Beant Sharma* (CR No. 6146 of 2010), decided on 30.07.2012.

He further submits that the said provision is only in the context of clause (iv) of Section 7, which is why it is stated so at that 'place' and not at any other point in relation to any clause before or thereafter.

Other than the above, Mr. Sharma also relies upon a judgment of the Supreme Court in the *State of Punjab v. Jagdip Singh Chowhan and others* (Civil Appeal No. 3987 of 2006), decided on 29.05.2012, and of co-ordinate Benches of this court in *Ranjit Kaur v. Punjab*



10. Though Mr. Bedi, learned counsel for the petitioners, has submitted that if the said clause is to be seen alongwith what has been held in the judgments cited by him, it would have to be taken that the discretion granted to the plaintiff to put a value to the relief he seeks, has to apply even to suits falling within clause (i) of the said provision, I find myself unable to agree with him.

That is for the reason that the said line is seen to be coming within the provision of clause (iv), before the heading of the next clause starts, i.e. before clause (v); and consequently, the discretion granted to the plaintiff to value the suit property has to be taken to be in the context of what market value he assesses the suit property at, or his share in any joint family property, or the amount that he seeks in any suit for rendition of accounts etc. On the other hand, in my opinion, with clause (i) specifically stipulating that in suits for money, including suits for damages or compensation, court fee has to be paid "according to the amount claimed" and the said clause in fact terminates at that point itself with clauses (ii), (iii) and (iv) thereafter following, the fee to be paid in a money suit, has to be as per the specific amount claimed, either by way of damages/compensation, or arrears of maintenance etc. The discretion granted for the plaintiff for assigning a value to the relief that he seeks as regards clause (iv), would seem to be logically for the reason that where no market value is assigned to a particular immovable property, or a particular share in joint family property, or after rendition of accounts, it can only be the plaintiff who can assess the relief sought by him, in the context of suits seeking a decree qua those subject matters.

Of course, in the case of relief sought after rendition of accounts, the plaintiff has to be give a specific amount that he seeks; but that is an amount which possibly may not be determinable at the initial stage, it being an amount payable only after accounts are rendered and settled.

11. On the other hand, in a 'money suit' for damages or compensation, obviously the plaintiff has already claimed a specific amount as damages and therefore, for her/him to first say that he/she is seeking a particular amount by way of damages but then to thereafter say that, nevertheless, for the purpose of valuation of the suit the damages are to be taken to be less than even 1% of what he actually seeks, would be a completely illogical paradox, in the opinion of this court.

Hence, once the plaintiff has chosen to seek damages for a specific quantified amount of money, he cannot then be seen to avoid paying court fee on that amount, by simply making an averment that for the purpose of court fee the suit would be valued at a far lesser amount.

12. However, in a situation where the wording of the plaint was to the effect that the plaintiff seeks damages of only Rs.1,00,000/-, but leaves it to the discretion of the court to grant any higher amount after evidence is led, without specifying that amount at all, thereby leaving it entirely discretion to the court, then he may be required to pay court fee only according to the specific amount as claimed, and if the court for any reason, after due application of judicious mind, finds that a higher amount of compensation is to be awarded,

then at that stage a higher amount could be awarded subject to payment of court fee on such higher amount.

In the present case, however, the petitioner-plaintiffs have actually asked for damages/compensation of a specific amount of Rs.2,00,00,000/-, and therefore, they cannot be seen thereafter to whittle down the value of the relief sought, by simply adding a line to the effect that however a tentative compensation of a notional amount of Rs.1,00,000/- may be taken as the 'suit value' for the purpose of jurisdiction and court fee, even in a suit seeking damages/ compensation.

13. Coming then to the judgments cited by Mr. Bedi, learned counsel for the petitioners.

Undoubtedly, in Manpreet Singhs' case (supra), it was again a matter where damages to the tune of Rs.50,00,000/- had been sought, for defamation etc. and this court had held, by citing earlier judgments of this court in Subhash Chander Goels' and Chowhans' cases (both supra), that court fee would be payable ad valorem, not on the amount sought way of of damages but on the value assessed for that purpose by the plaintiff.

(It is to be noticed that even Subhash Chanders' case was a suit for damages as had been claimed by the plaintiff therein, with this court having however held as above).

14. However, Chowhans' case was 'carried' to the Supreme Court, as has been pointed out by Mr. Sharma, learned senior counsel appearing for the respondents, by way of Civil Appeal no.3987 of 2006, which was allowed on 29.05.2012 by the Supreme Court, holding as follows:-

"It is worth nothing, for the said purpose the suit was valued at Rs. 1,43,000/- though a decree was sought for Rs. two crores approximately. There can be no dispute that in a suit for malicious prosecution, ad valorem court fee is payable. Faced with this situation, the learned counsel for respondent no. 1 could only state that he will file an application for amendment before the trial court either restricting his claim to the amount on which the court fee has been paid or may enhance the claim beyond the said amount and will not pay the ad valorem court fee on the same. Recording such statement of respondent no. 1, we set aside the order passed by the learned Single Judge and grant him liberty to file the requisite amendment to bring the plaint in order."

It is also to be specifically noticed that in Jagdip Singh Chowhans' case the order passed by the Apex Court was in a matter in which the suit for the purpose of court fee had been valued at Rs. 1,43,000/-, though a decree was sought for an amount of Rs. 2,00,00,000/- approximately.

Thus, though in that case, the relief sought was not for an exact amount of Rs.2,00,00,000/- but for Rs.2,00,00,000/- approximately, as has been stated in the order of the Apex Court, even so it was held that court fee would be payable on that amount and not on the lesser amount of Rs.1,43,000/- for which the suit had been valued by the plaintiff therein for the purpose of determining court fee.

Liberty, however, had been granted by the Supreme Court on a statement made by counsel appearing for the respondent-plaintiff therein, to either restrict his claim to the amount for which court fee had been paid, or to seek an enhanced amount of damages by paying court fee ad valorem on such enhanced amount.

15. Other than the above order of the Supreme Court, it is seen that in Manjeet Singhs' case (cited by learned Senior Counsel for the respondents), after considering the judgment in Ranjit Kaur's case (both supra), the judgments of this court in Hemraj, Jagdip Singh Chowhans, Subhash Chander Goel (all supra), have been duly noticed, but with it thereafter held that in a suit for damages it would be the specific amount in respect of which a decree is sought by the plaintiff, that would determine the court fee to be paid, ad valorem, thereupon.

In view of the above, I find myself unable to agree with Mr. Bedi, with it to be further noticed that, firstly, in R.S. Maliks' case (supra), even the judgment of the Supreme Court in Commercial Aviation & Travel Company (supra) has been considered (as was earlier also referred to in Manpreet Singhs' case). The said judgment relied upon by learned counsel for the petitioner (in Commercial Aviation), is one in which the suit filed by the plaintiff was seeking dissolution of a partnership and for rendition of accounts, in which the suit had been valued for the purpose of jurisdiction at Rs. 25,00,000/-.

Thus, it was not a suit specifically seeking damages, as is so in the present lis whereby the petitioners have sought damages for an amount of Rs. 2,00,00,000/- from the respondents, for the unfortunate death of a family member.

16. Therefore, in view of the above discussion, though there are differing views in judgments of co-ordinate Benches of this court, with this Bench respectfully agreeing with the view held in Ranjit Kaur's and Manjeet Singhs' cases (both supra), it would otherwise have been necessary to refer the matter to a Division Bench; however, firstly, in view of the fact that in both those cases the contrary view of this court in Chowhans', Hemrajs' and Subhash Chander Goels' cases were duly noticed, with the 'subsequent Benches' still having come to a conclusion, after discussing the provisions of the Act, that court fee would be payable ad valorem on the specific amount of damages claimed in the suit, and moreover the order of the Supreme Court having now in any case made that clear in Chowhans' case itself, it is not considered necessary to refer the matter to a larger Bench.

17. Consequently, finding no merit in this petition, it is dismissed.

As a result of dismissal of this petition, the petitioners would pay court fee ad valorem in terms of the impugned order, by the next date of hearing before the trial court, which is stated to be 16.04.2020.