

Before Anil Kshetarpal, J.

JAI SAI RAM STEEL PRIVATE LTD.—Petitioner

versus

RAMESH SINGLA—Respondent

CR No.952 of 2021

May 4, 2021

Constitution of India, 1950—Art. 227—Code of Civil Procedure, 1908—O.7 RL.11 —Court Fees Act, 1870—S.7—Ad-valorem Court fee—Held, apparent that plaintiff claimed definite amount of Rs.6,35,00,000/- and suit is for recovery of money, therefore, as per Section 7(i) of Act, ad valorem court fee is payable according to amount claimed—Direction to pay ad-valorem Court fee on amount claimed in suit proper.

Held that, thus, it is apparent that whenever the suit is for money, the Court fee is payable according to the amount claimed. Under Order VII Rule 11 CPC the Court is entitled to carefully examine the contents of the plaint to arrive at a conclusion. It is apparent that the plaintiff has claimed a definite amount of Rs.6,35,00,000/-. On careful reading of the prayer made in the plaint, it is apparent that the plaintiff has sought recovery of the amount noted above. In such a situation, the plaintiff cannot save himself from payment of the Court fee by clever drafting. In fact, the suit is for recovery although, styled as suit for mandatory injunction. From the reading of the contents of the plaint, the suit is for recovery of the amount although cleverly projected as a suit for grant of mandatory injunction.

(Para 10)

Sushil Jain, Advocate
for the petitioner.

ANIL KSHETARPAL, J.

(1) Through this revision petition filed under Article 227 of the Constitution of India, the petitioner-plaintiff assails the correctness of order dated 09.03.2021 passed by the Additional Civil Judge (Sr. Div.), Sonapat, directing it to pay the ad-valorem Court fee on the amount claimed in the suit.

(2) Some facts are required to be noticed. The parties are being referred to their status in the suit. The plaintiff filed a suit for

mandatory injunction with a consequential relief of permanent injunction under Sections 37, 38 and 39 of the Specific Relief Act, 1963. The plaintiff is a private limited company. It is claimed that there was loss in the factory due to which an amount of Rs.50,00,000/- was borrowed from the defendant. Thereafter, the plaintiff company could not run smoothly and another sum of Rs.50,00,000/- was borrowed through defendant from one Surender Kumar. However, the plaintiff could not repay the aforesaid amount also. Thus, an agreement to sell was executed by the Director of the plaintiff company with respect to house situated in Housing Board Colony, Murthal Road, Sonapat. Pursuant whereof a sale deed was executed in favour of Surender's sister. It was claimed that the total price of the house was Rs.90,00,000/- out of which Rs.50,00,000/- was adjusted and remaining amount of Rs.40,00,000/- was to be paid by Surender to the defendant on behalf of the plaintiff. Thereafter, the plaintiff executed a sale deed of the land underneath the factory in favour of the defendant. However, ownership of the building constructed thereon and machinery remained with the plaintiff. A separate agreement was executed between the plaintiff and the defendant, according to which the plaintiff agreed to pay a sum of Rs.2,15,000/- to the defendant as rent. It was further agreed that if the plaintiff fails to make the payment, the defendant will get vacant possession of the land underneath the factory and the plaintiff will be at liberty to remove the machines and other assets.

(3) In para 6 of the plaint, the plaintiff's pleading reads as under:-

“6. That on 05.02.2021, the plaintiff came to know that the defendant along with some bad elements of the society came to the factory and broken the lock and removed the scraps of the amount of Rs. 1,65,00,000/- from the premises of the factory and similarly he has also removed the machinery amounting to Rs.3,35,00,000/- and also removed mould amounting to Rs.35.00 lakh and also removed the other articles amounting to Rs.1.00 Crore, which were lying inside the premises of the said factory. In this manner, the defendant removed all the articles of the factory without the consent and in absence of the plaintiff.”

(4) The prayer made in the suit reads as under:-

“It is, therefore, humbly prayed before the Hon'ble court that a decree for mandatory injunction directing the

defendant to make the payment of all the articles, which have been removed by him of which the details given in para No.6 of the plaint and further prayed that the defendant may kindly be restrained from interfering in the premises of the factory and also restrained from removing any articles from the premises of the factory of the plaintiff forcibly and illegally, may kindly be passed in favour of the plaintiff and against the defendant. Cost of the suit be also awarded and any other relief, which this Hon'ble Court deems proper in the given circumstances be also granted.”

(5) The defendant filed an application under Order 7 Rule 11 CPC for rejection of the plaint.

(6) Learned Trial Court found that the plaintiff seeks to recover a definite amount of Rs.6,35,00,000/- and therefore, liable to pay ad-valorem Court fee on the amount claimed.

(7) Heard learned counsel for the petitioner at length and with his able assistance perused the paper book.

(8) Learned counsel representing the petitioner contends that the plaintiff had filed a suit for mandatory injunction and therefore, the Trial Court erred in directing it to pay ad-valorem Court fee. He relies upon judgments passed in *Amandeep Sidhu* versus *Ultra Tech Cement Ltd. and others*¹, *Shiv Kumar Sharma* versus *Santosh Kumari*² and *M/s Meticulous Pharmaceutical* versus *Pawan Kumar*³, in support of his contention.

(9) At the outset, it is important to note that the amount of Court fee is regulated by the Court Fees Act, 1870 (in short ‘the Act’). Section 7 prescribes the procedure to compute the amount of fee payable in a suit. Where the suit is for money including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically, Section 7(i) lays down how the amount of Court fee payable is required to be calculated. Section 7(i) is extracted as under:-

(i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of

¹ (2017)1 PLR 786,

² (2007) 8 SCC 600

³ (2018)191 PLR 816

other sums payable periodically)—according to the amount claimed; —(i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)—according to the amount claimed;" for maintenance and annuities.

(10) Thus, it is apparent that whenever the suit is for money, the Court fee is payable according to the amount claimed. Under Order VII Rule 11 CPC the court is entitled to carefully examine the contents of the plaint to arrive at a conclusion. It is apparent that the plaintiff has claimed a definite amount of Rs.6,35,00,000/-. On careful reading of the prayer made in the plaint, it is apparent that the plaintiff has sought recovery of the amount noted above. In such a situation, the plaintiff cannot save himself from payment of the Court fee by clever drafting. In fact, the suit is for recovery although, styled as suit for mandatory injunction. From the reading of the contents of the plaint, the suit is for recovery of the amount although cleverly projected as a suit for grant of mandatory injunction.

(11) Now, let us examine the judgments relied upon. In *Amandeep Sidhu* (supra), the plaintiff-petitioner had filed a suit for recovery of Rs.1,00,00,000/- for injuries suffered by him due to negligence of his employer-defendant No.1. In such circumstances, the Court held that the amount of Court fee shall be contingent upon the final determination of the amount of compensation. In the considered opinion of the court, the aforesaid judgment is not applicable to the facts of the present case.

(12) In *Shiv Kumar Sharma* (supra), the Hon'ble Supreme Court after finding that both the parties had entered into agreement to sell with respect to respective properties owned by them by way of cross agreements but no sale deed was executed, although the agreement had been partially acted upon, came to a conclusion that since no damages for mesne profits were sought, therefore, no ad valorem court fee was payable. The Court further observed that if the damages for mesne profits would have been sought, the Court fee would have been payable. In the considered view of this Court, the aforesaid judgment, with greatest respect, does not lay down that when the court finds recovery of a definite amount has been sought, still the ad valorem court cannot be ordered.

(13) Last judgment relied upon by the petitioner is in *Meticulous Pharmaceutical* (supra). In the aforesaid case, the plaintiff filed a suit for mandatory injunction to return the stock of medicine worth

Rs.7,56,000/-. Inthat case, the plaintiff had appointed the defendant as a consignee agent. The rendition of account was prayed for. In those circumstances, while dismissing the revision petition, the Court held that the learned Trial Court was correct in dismissing the application filed under Order 7 Rule 11 CPC. Thus, it is obvious that the aforesaid judgment is not applicable.

(14) Keeping in view the aforesaid discussion, the judgments relied upon by the learned counsel have no application. In the present case, on plain reading of the plaint, it is apparent that the suit is for the money and therefore, as per Section 7(i) of the Act, the ad valorem court fee is payable according to the amount claimed.

(15) Keeping in view the aforesaid facts, no ground to interfere in the order passed by learned Trial Court in exercise of jurisdiction under Article 227 of the Constitution of India is made out.

(16) Hence, the revision petition is dismissed.

Ritambhra Rishi