

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserved: 17.02.2021

Date of Decision: 18.03.2021

+ **CM(M) 106/2021 & CM No.4573/2021**

SHIV KUMAR GUPTA Petitioner
Through Mr.Abhimanyu Singla, Adv.

versus

POOJA & ANR. Respondents
Through Nemo

+ **CM(M) 127/2021 & CM No.5389/2021**

DINESH KUMAR Petitioner
Through Mr.Nikhil Malhotra, Adv.

versus

LEKH RAJ & ORS. Respondent
Through Nemo

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. These petitions have been filed by the petitioner(s) challenging the order(s) passed by the learned Trial Court(s) in their respective Suits calling upon the petitioner(s) herein, who are the plaintiffs in the Suit(s), to deposit the deficit court fee. The Suits filed by the petitioner(s) are claiming damages qua their alleged defamation.

2. The question that arises for consideration in the present petitions is as to whether the court fee payable on such Suits claiming damages for defamation is *ad valorem* according to the amount claimed or whether the petitioners, as plaintiffs, can value the Suit for purposes of court fee at a value different from the amount claimed in the Suit and pay the court fee according to the said amount, with an undertaking to pay the court fee upon the amount which is finally determined by the learned Trial Court(s) in the Suits as damages payable to the petitioners.

3. The learned Trial Court has held that the petitioners are to pay the court fee on the amount claimed in the Suit.

4. In support of their submission that the petitioners are entitled to put their own valuation to the relief of damages and pay court-fee at such value, with an undertaking to deposit more court fee when the actual damages are awarded by the court, the learned counsels for the petitioners have placed reliance on the judgments of the Supreme Court as well as of the Punjab and Haryana High Court as mentioned herein-under:

- ***Shiv Kumar Sharma v. Santosh Kumari***, (2007) 8 SCC 600;
- ***Amandeep Sidhu v. M/s Ultratech Cement Limited & Ors.***, 2016 SCC OnLine P&H 15769;
- ***Maha Singh v. Mukesh & Anr.***, [Judgment dated 01.04.2019 in Civil Revision No. 5478 of 2019 (O&M)];
- ***Mange Ram v. State of Haryana and Ors.***, [Judgment dated 25.11.2019 in Civil Revision No.10281 of 2018 (O&M)];

- ***Dev Brat Sharma v. State of Punjab and Ors.***, (Judgment dated 11.08.2017 in Civil Revision No. 291 of 2017);
- ***M/S Commercial Aviation & Travel Company and Ors. v. Vimla Pannalal***, (1998) 3 SCC 423;
- ***Bharpoor Singh & Anr v. Lachhman Singh***, [Judgment dated 17.01.2017 in Civil Revision No. 226 of 2017 (O&M)];
- ***Subhash Chander Goel v. Harvind Sagar***, AIR 2003 P&H 248;
- ***State of Punjab and Ors v. Jagdip Singh Chowhan***, 2004 SCC OnLine P&H 1022;
- ***S. Ajit Singh Kohar v. Shashi Kant***, (Judgment dated 25.08.2014 in Civil Revision No. 5638 of 2014);
- ***Kashmir Singh v. Mandeep Kaur & Ors.***, (Judgment dated 05.10.2018 in Civil Revision No. 6759 of 2018);

5. I have considered the submissions made by the learned counsels for the petitioners, however, find no merit in the same.

6. Section 7(i) of the Court Fees Act, 1870 (hereinafter referred to as 'the Act') requires the plaintiff to pay the court fee in a Suit, *inter alia* claiming damages, *ad valorem* according to the amount claimed. Section 7(iv)(f) of the Act, on the other-hand, requires the plaintiff, where the Suit is *inter alia* for accounts, to put a valuation on the relief sought and to pay the court fee on such relief.

7. In CM(M) 106/2021 titled as ***Shiv Kumar Gupta v. Pooja & Anr.***, the petitioner has filed the Suit for seeking Permanent Injunction

and claimed compensation for slander against the respondents. The following prayer is made by the petitioner in the Suit:

“2. Decree for payment of Rs.1.25 Crore as Compensation for the Slander, Damages and Compensation for the mental harassment caused by the defendants, against the defendants and in favour of the plaintiff.”

8. As far as valuation of the suit for purposes of jurisdiction and court fee, paragraph 31 of the Suit reads as under:

“31. That the valuation of the suit for the purpose of court fee and jurisdiction qua prayer no.1 is fixed at Rs.130/- (for the purposes of Injunction), upon which a Court fee of Rs.13/- has been affixed. Qua prayer no.2 the subject matter of the suit is valued at Rs.1.25/- Crore; being compensation for Slander/Recovery of the Damages. Hence this Hon'ble Court has pecuniary jurisdiction to try and dispose of the present suit. However the quantum of compensation/damages is yet to be determined by the Court. In view of the settled law, the plaintiff is not required to pay ad-voleram Court fee on the amount of sought for compensation. Hence the plaintiff is affixing a Court fee of Rs.50/- on the plaint qua prayer no.2; being tentative. However the plaintiff undertakes to pay the Court fee on the awarded amount at the time of passing the final judgment and decree. Hence this Hon'ble Court has jurisdiction to try and dispose off the suit.”

9. A reading of the above paragraph would show that while a specific amount of Rs.1.25 Crores is claimed as damages/compensation from the respondents and the petitioner has valued the Suit for the purposes of jurisdiction also at that value, for the purposes of court fee, the petitioner has affixed a fixed court fee of

Rs.50/-, claiming that he is not required to pay *ad valorem* court fee and undertakes to pay the deficit court fee on the awarded amount at the time of passing of the final judgment and decree.

10. In CM(M) 127/2021 titled as ***Dinesh Kumar v. Lekh Raj & Ors.***, the petitioner has challenged the order dated 16.01.2021 passed by the learned Trial Court dismissing the application of the petitioner seeking amendment of the plaint and calling upon the petitioner to pay the deficit court fee. The Suit in question is one filed for claiming damages on account of defamation. It makes *inter alia* the following prayer:

“i. Recovery of an amount of Rs.1,00,00,000/- or of such amount (over and above an amount of Rs.10 lakh) as may be quantified/adjudicated by this Hon'ble Court on account of damages, may please be passed in favour of the plaintiff and against the defendants, directing the defendants to pay the same, jointly and severally, alongwith pendentelite and future interest @ 12% p.a. till the realisation of the decretal amount in the interest of justice and fair play.”

11. Paragraph 40 of the plaint gives the valuation of the Suit for the purposes of court fee and jurisdiction and reads as under:

“40. That value of the suit for the purpose of jurisdiction is Rs.1,00,00,000/- and value of the suit for the purpose of court fee is Rs. 10,00,000/- and an appropriate court fees of Rs. 12,110/- has been affixed herewith. The plaintiff undertakes to affix the deficit court fee at the time of final decree of the suit.”

12. The petitioner thereafter filed an application whereby he sought an amendment in paragraph 40 of the plaint to be read as under:

“40. That value of the suit for the purpose of court fee and jurisdiction is Rs.1,00,00,000/-. However, since the plaintiff has tentatively assessed the damages to be Rs.1 Crore, and finally assessed/quantified minimum damages as Rs.10 lakh, so an amount of Rs.12,110/- has been affixed as court fee on Rs.10 lakh. The plaintiff undertakes to pay deficit court fee on the final assessment/adjudication/quantification of damages (over and above Rs.10 lakhs) by this Hon'ble Court at the time when the damages are so quantified.”

13. The plaintiff also sought to amend the prayer clause in the plaint to read as under:

“i. Recovery of an amount of Rs.1,00,00,000/- or of such amount (over and above an amount of Rs.10 lakh) as may be quantified/adjudicated by this Hon'ble Court on account of damages, may please be passed in favour of the plaintiff and against the defendants, directing the defendants to pay the same, jointly and severally, alongwith pendentelite and future interest @ 12% p.a. till the realization of the decretal amount in the interest of justice and fair play.”

14. A reading of the above plaints in both the Suits would show that the petitioners have prayed for a specific amount as damages. Section 7(i) of the Act clearly provides that in a Suit for money, including Suit for damages, the court fee shall be payable according to the amount claimed in the Suit. Section 7(iv)(f) of the Act, which is for suit for accounts, can have no application to such a Suit. There are no accounts to be taken in the Suit.

15. In *K.C. Sakaria v. Govt. Of State of Kerala & Anr.*, (2006) 2 SCC 285, the Supreme Court, in relation to a Suit filed by a contractor

seeking recovery of money for the work done and contending it to be a Suit for accounts, held as under:

“15. It is now well settled that the right to claim rendition of accounts is an unusual form of relief granted only in certain specific cases and to be claimed when the relationship between the parties is such that the rendition of accounts is the only relief which will enable the plaintiff to satisfactorily assert his legal right (vide Jowahar Singh v. Haria Mal [(1899) 60 PR 1899: 6 Punj LR 1900], followed in Gulam Qutab-ud-din Khan v. Mian Faiz Bakhsh [AIR 1925 Lah 100], State of J&K v. L. Tota Ram [AIR 1971 J&K 71], Triloki Nath Dhar v. Dharmarth Counsel [AIR 1975 J&K 76]). The right to seek rendition of accounts is recognised in law in administration suits for accounts of any property and for its administration, suits by a partner of a firm for dissolution of the partnership firm and accounts, suits by beneficiary against trustee(s), suits by a member of a joint family against the karta for partition and accounts, suits by a co-sharer against other co-sharer(s) who has/have received the profits of a common property, suits by principal against an agent, and suits by a minor against a person who has received the funds of the minor.

16. Even where there is no specific provision for rendition of accounts, courts have recognised an equitable right to claim rendition of accounts. In Narandas Morardas Gaziwala v. S.P. Am. Papammal [1966 Supp SCR 38: AIR 1967 SC 333] this Court considered the maintainability of a suit by an agent against the principal for accounts. Negating the contention that only a principal can sue the agent for rendering proper accounts and not vice versa (as Section 213 of the Contract Act provided that an agent is bound to render proper accounts to his principal on demand without a corresponding provision in the Contract Act enabling the agent to sue the principal for accounts), this Court held: (SCR pp. 40 F and 42 D-E)

“In our opinion, the statute is not exhaustive and the right of the agent to sue the principal for accounts is an equitable right arising under special circumstances and is not a statutory right.

Though an agent has no statutory right for an account from his principal, nevertheless there may be special circumstances rendering it equitable that the principal should account to the agent. Such a case may arise where all the accounts are in the possession of the principal and the agent does not possess accounts to enable him to determine his claim for commission against his principal. The right of the agent may also arise in an exceptional case where his remuneration depends on the extent of dealings which are not known to him or where he cannot be aware of the extent of the amount due to him unless the accounts of his principal are gone into.”

17. To summarise, a suit for rendition of accounts can be maintained only if a person suing has a right to receive an account from the defendant. Such a right can either be (a) created or recognised under a statute; or (b) based on the fiduciary relationship between the parties as in the case of a beneficiary and a trustee; or (c) claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his legal right. Such a right to seek accounts cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that the person suing did not know the exact amount due to him, as that will open the floodgates for converting several types of money claims into suits for accounts, to avoid payment of court fee at the time of institution.”

16. Following the above judgment, this Court, in ***Hari Gokal Jewellers v. Satish Kapur***, 2006 SCC OnLine Del 482, has held as under:

“11. In view of these facts as stated in the plaint and the documents filed by the plaintiff, there can hardly be any doubt that suit for rendition of accounts would not be maintainable. Furthermore, in the plaint there is no reference to any fiduciary or other relationship like master or servant, employee and contractor, regular mutuality of accounts maintained in the normal course of business where a party holds the goods in trust or otherwise and members of the trust. The vague averments made in the plaint do not give rise to any definite cause of action, which could form basis for institution of suit for rendition of accounts. Another facet of the present case is that the plaintiff had himself given a notice for recovery of a definite amount and so as he maintained in the plaint by paying the 12% interest to the said amount and valuing the suit at a sum of Rs. 18 lakhs. The plaintiff is certainly master of the suit as a discretion to value the suit for purposes of court fee and jurisdiction but this discretion of the plaintiff has to be regulated by the well settled canons of law. Where the plaintiff in his notice and even then in the plaint claims a definite sum, which in the notice dated 7th October, 2004 was claimed beyond any shadow of doubt, the suit for rendition of accounts could not be instituted by the said plaintiff.”

17. The petitioners having claimed specific amount as damages, therefore, were liable to pay court fee on such amount. They cannot arbitrarily value the reliefs claimed so as to avoid their liability of paying the court fee alongwith the plaint.

18. In *M/s Commercial Aviation Travel* (supra), the Supreme Court was considering a Suit which prayed *inter alia* for dissolution of the partnership and for accounts. While upholding the dismissal of an application filed by the defendant therein under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'), the Supreme Court held that in a Suit for accounts it is difficult for the Court as well to come to a finding even as to the approximate correct valuation of the relief; the Court therefore, has no other alternative than to accept the plaintiff's valuation tentatively. If the Court is itself unable to say what the correct valuation of the relief is, it cannot require the plaintiff to correct the valuation that has been made by him. It was, however, further held that where certain positive objective standards are available for the purpose of determination of the valuation of the relief and yet the plaintiff ignores the same and puts an arbitrary valuation, the Court would be entitled to interfere under Order VII Rule 11(b) of the Code, for in such cases the Court will be in the position to determine the correct valuation with reference to the objective standards or materials available to it. In such cases, the plaintiff will not be permitted to put an arbitrary valuation *dehors* such objective standards or material.

19. In the present case, the objective and positive material for the correct valuation of the relief claimed was available in the relief itself. The petitioners have claimed a specific amount in their respective Suit. They cannot therefore, arbitrarily value the Suit for the purposes of court fee and pay a lesser amount as court fee.

20. This Court in *M/s. R & D Enterprises (Export) & Anr. v. Air France & Anr.*, ILR (1998) I Delhi 528, in a claim made under the Carriage by Air Act, 1972, held that it is the duty of the Court, in which the Suit is instituted, to ensure, at the time of institution of the Suit, that proper court fee has been paid according to the Act. The Court therein held that for simple Suits for money, there is no provision or warrant to fix a tentative value of the court fee in the plaint. Rejecting the plea of the plaintiff therein that the claim, though of money, is tentative in nature and is yet to be determined by the Court and that the plaintiff shall pay the court fee once the same is determined by the Court, this Court held as under:

“10. In the instant case the amount claimed in plaint para 23, as noticed above, being Rs.5,00,002/-, court fees is payable on this amount. The amount of compensation payable has to be decided by the court on the merits of the case. It may be found to be more or less than the amount claimed in the suit or it may be that it is held to be not payable. Can the plaintiff for this uncertainty be allowed to pay court fees on some tentative value, arbitrarily fixed, instead of the amount claimed by him in the suit, even though with an averment to make up the deficiency, if any, at a later stage? Obviously not, for otherwise this would tantamount to undue and unfair advantage and indeed an abuse of the process of the court by enabling a plaintiff to make a highly exaggerated claim at an astronomical figure and having trial process for adjudication of issues raised without payment of proper court fee on the claim so laid.

11. Besides, this being a money suit and the court fees payable being ad-valorem, the plaintiff having affixed the jurisdictional value of the suit at

Rs.5,00,002 cannot, in view of section 8 of the Suits Valuation Act, 1887 be heard to say that the value for purposes of court fee in any pointed circumstances could be affixed at a lesser or tentative amount.”

21. The reliance placed by the learned counsels for the petitioners on the judgment of the Supreme Court in ***Shiv Kumar Sharma*** (supra) is ill-founded inasmuch as the Supreme Court therein was considering a claim for *mesne* profits and the liberty granted by the High Court to the plaintiff therein to claim damages/*mesne* profits in a separate Suit. It was in that context that the Supreme Court observed that in a case where damages are required to be calculated, for example, future *mesne* profits, a fixed court fee is to be paid, but on the quantum determined by the Court, the balance court fee would have to be paid when final decree is to be prepared. The “damages” mentioned therein were clearly in the nature of future *mesne* profits which were yet to be determined by the Court.

22. As far as the judgments of the Punjab & Haryana High Court cited by the learned counsels for the petitioners are concerned, apart from the fact that they are not binding on this Court, even otherwise, they have been doubted and not followed even by the Punjab & Haryana High Court.

23. As an exemplar, in ***Kushalpal Singh & Ors. v. Fortis Healthcare Limited & Ors.***, (Judgment dated 05.03.2020 in Civil Revision No. 5931 of 2019), the Punjab & Haryana High Court considered the

conflicting decisions of that Court on the issue of proper court fee to be affixed in the Suits claiming damages, and held that where specific amount of damages/compensation is being claimed, the court fee has to be paid on such amount. The Court further held as under:

“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.”

24. Reference in this regard may also be had to the judgment of the Punjab & Haryana High Court in **Ranjit Kaur & Ors. v. Punjab State Electricity Board & Ors.**, 2006 SCC OnLine P&H 1095, holding that in Suit claiming damages *ad valorem* court fee needs to be affixed.

25. In view of the above, I find no infirmity in the orders passed by the learned Trial Court(s) in the present petitions. However, as both the Suits are at an initial stage, it shall be open to the petitioners to file applications seeking amendment in their respective plaints, if so

advised, to claim a lower amount of damages, and pay *ad valorem* court fee on the amount which may be so claimed.

26. The petitions are therefore dismissed with the above observations. There shall be no order as to costs.

NAVIN CHAWLA, J

MARCH 18, 2021/Arya/P

