

ORDER BELOW EXH.32 IN SPL.C.S. NO.59/2020

(Mohite Pushpa Vs. Yashwant Education & Ors.)

[CNR No.MHSO12-000657-2020]

The defendant No.2 has filed present application for rejection of plaint under Order 7, Rule 11 of Code of Civil Procedure, 1908. It is his contention that, the plaintiff has filed the suit for malicious prosecution and consequential reliefs and for defamation. In para No.1 of the plaint, plaintiff has claimed Rs.50 lakhs without filing proper stamp duty and court fees. Therefore, the plaint is liable to be rejected under Order 7, Rule 11 of CPC.

2) The plaintiff has filed her reply at Exh.33 and objected the application on the ground that, the issues are framed in the suit and the burden is casted upon the plaintiff, whether she has proved that she is entitled for compensation as prayed. The issue No.2 is regarding proof of malicious prosecution. Therefore, even though plaintiff is claiming Rs.50 lakhs, after the defamation and malice is proved the plaintiff is to prove the quantification of compensation prayed by her and that too, by adducing evidence. Therefore, the relief at this stage cannot be valued at the behest of the defendant, or as prayed by the plaintiff by way of Rs.50 lakhs. If the defendant admits the position about the defamation and character assassination of plaintiff, then he must say by filing additional written statement so that plaintiff can value the relief claimed but unless the malicious intention is not brought on record and magnitude of defamation in the society at large brought on record, we cannot assume at this stage that plaintiff is entitled for Rs.50 lakhs and she should pay court fee

for the same. The application is silent about provisions of future compensation without quantification is required to pay court fee when it is uncertain about its grant to the plaintiff. If the first and second issue is in the affirmative and if this court thinks plaintiff is not entitled for compensatory relief, then there would be no question of paying the court fee on the relief claimed by way of compensation. The application is devoid of merits and filed only to prolong the suit. Lastly it is prayed that application be rejected with cost and defendants be directed to conduct cross-examination.

3) Perused the application and say thereon. Heard both sides. The learned advocate for defendant No.2 Shri. Kshirsagar argued that, the criminal court has passed orders in criminal case filed against the plaintiff. Serious allegations are made against the accused. Nowhere it is stated in the plaint that the allegations are false. Thereafter the accused in that case who is plaintiff in present suit has filed this suit for defamation and damages of Rs.50 lakhs. She has not paid court fees on said amount. The plaintiff has claimed fixed amount and therefore she is liable to pay court fees. In support of his arguments he relied on the ruling in case of **Shivkumar Gupta Vs. Pooja & anr., 2021 DHC 998.**

4) Per contra, learned advocate for the plaintiff Shri. Shinde argued as per the reply at Exh.33 and further submitted that, the ruling relied on by defendant No.2 is not applicable to the case on hand as in that case the suit was for damages. In the case on hand, suit is for malicious prosecution. Unless it is proved court fee on compensation does not require.

5) In order to decide objections under Order 7, Rule 11 of Code of Civil Procedure, 1908 (CPC) the pleadings of plaintiff are germane. Considering the objections it is seen that, the provisions of Order 7, Rule 11(b) & (c) of CPC are applicable. According to said rule, the plaint shall be rejected; (b) where the relief claimed is under valued, and the plaintiff, on being required by the court to so correct the valuation within a time to be fixed by the court, fails to do so; and (c) where the relief claimed is properly valued, but the plaint is written upon paper in sufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so. Now it is to be seen, whether the reliefs claimed by the plaintiff are properly valued and proper court fee has been paid by the plaintiff or not.

6) On perusal of plaint it is seen that, the plaintiff has claimed compensation and damages of Rs.50 lakhs. She has made specific prayer in para 31(b) of the plaint for award of damages and compensation of Rs.50 lakhs. The plaint para No.30 is in respect of suit valuation. It is seen that the suit is valued for the purpose of jurisdiction and court fee stamp at Rs.200/- and it is mentioned in said paragraph that, *“The plaintiff filed suit for malicious prosecution and consequential relief of damages/compensation for malicious prosecution and defamation, hence prayer clause no.31 is valued at Rs.200/- At present and if directed to be given at the time of actual award of damages/compensation for defamation and malicious prosecution and as per court fee rules. The appropriate court fee stamp paid.”*

7) As per Section 6(i) of the Bombay Court Fees Act, 1959, “in suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities or of other sums payable periodically), the amount of fee payable in said suit is according to the amount claimed.” On perusal of above mentioned pleadings and reliefs claimed it is seen that, the plaintiff has claimed fix amount of Rs.50 lakhs for damages in the plaint and she has not valued the suit for said amount and has not paid proper court fees about her said relief. It is nowhere contention of plaintiff that, she is entitled for more or less amount for damages/compensation, than Rs.50 lakhs as claimed by her and the amount of compensation/damages is uncertain and it depends upon the order of the court. In case of **Shivkumar Gupta Vs. Pooja & anr.** (cited supra) the Hon'ble Delhi High Court has held that, “in the present case the objective and positive material for 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.”

8) The analogy put forth by the plaintiff and her learned advocate that, if the malicious prosecution is proved by the plaintiff, then the plaintiff is required to prove the quantification of compensation and if the court held that the plaintiff is entitled for damages of Rs.50 lakhs, or of any amount, then only plaintiff is liable to pay court fee, is very surprising and unacceptable. If this analogy is applied to each & every case, then no one will pay the court fee and

make submission that if the suit is dismissed then plaintiff is not liable to pay the court fees. The object behind enactment of the Bombay Court Fees Act is that, the court fees are charged, to meet to some extent, the expenditure incurred by the State Government on the administration of justice. Therefore, the contentions of plaintiff in her reply are not having any merits and liable to be discarded.

9) Considering all above discussion, it become clear that the plaintiff has not properly valued the suit for her claim of Rs.50 lakhs and has not paid proper court fees, even though she claimed specific amount in the suit. Therefore, plaintiff is liable to pay proper court fees by valuing the suit properly. Thus, the application deserves to be partly allowed. Hence, the following order.

: ORDER :

1. The application below Exh.32 filed by defendant No.2 is partly allowed with costs.
2. The plaintiff is directed to value the suit properly for her relief of damages/compensation of Rs.50 lakhs and to pay proper court fees within the period of 15 days from the date of this order in view of the provisions of Order 7, Rule 11(b) & (c) of the Code of Civil Procedure, 1908.

Date : 26/07/2023

(**Revati M. Kante**)
Jt. Civil Judge, Sr. Div., Barshi.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order are same word to word as per the original Judgment/Order.

- a) Name of the Stenographer : R.P. Sakinal, Steno. Grade-2
- b) Court : Jt. CJSD and ACJM Court,
Barshi.
- c) Date of Judgment/Order : 26.07.2023
- d) Judgment/Order signed by
the Presiding Officer on : 26.07.2023
- e) Judgment/Order uploaded on : 26.07.2023