



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

114

CR-491-2022 (O&M)

Date of Decision : 28.03.2025

Dr. SURENDER NAIN

... Petitioner

VERSUS

FAGGU RAM AND ORS

... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ravi Dutt Sharma, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

CM-5972-CII-2024

1. This is an application for restoration of the main petition which was dismissed for non-prosecution vide order dated 04.03.2024 passed by this Court.

2. For the reason stated in the application, the same is allowed and the main petition is restored to its original number and status. With the consent of the learned counsel for the petitioner, the main petition is taken on Board today itself.

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3. Learned counsel for defendant No.1-petitioner, at the outset, states that defendant No.1-petitioner does not press the ground that no notice was issued under Section 80(2) CPC and hence the suit could not have been filed. Learned counsel, however, prays that defendant No.1-petitioner would be satisfied if an issue is framed qua the court fees.

4. Heard.

5. In the present case learned counsel for defendant No.1-petitioner has already given up the claim that the suit is liable to be dismissed on the ground that no permission was sought under Section 80 CPC. The second argument of learned counsel for defendant No.1-petitioner that an issue ought to have been framed qua court fee would also not be required in view of the observations made by the Court concerned in para No.4 of the order dated 05.01.2022, which reads as under :

'After having heard the arguments of learned counsel for the parties, this Court is of the considered opinion that since in the present case, no relief is granted ex parte without hearing to the defendants, only permission to file application under Section 80 CPC is allowed, so the ground claimed by the defendant in application under Order 7 Rule 11 CPC is not maintainable. Further, the other ground that Court fee is not affixed as per claimed amount is also not maintainable due to the well settled case law in case titled as Amandeep Sidhu Versus M/s Ultratech Cement Limited and others, Cr. No.5893 of 2016 (O&M) D/d. 15.09.2016 (P&H), in which it is held that even if specific amount was claimed in the nature of suit, the same could not be termed to be definite claim as the same was always liable to vary as per assessment of evidence by the Court. The Court would be obligated to

ask the plaintiff to make good the deficiency in the court fee on determination of the lis. So at this stage, there is no ground to allow the application under Order VII Rule 11 CPC.'

A perusal of the above noted observation makes it clear that in case the Court finds that the court fees is required to be paid, the Court would ask the plaintiff to make good the deficiency on determination of the *lis*.

6. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

7. Any observation made herein shall not be treated as an expression of opinion on the merits of the case.

28.03.2025
Aman Jain

(ALKA SARIN)
JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*