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

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Date of decision:23.01.2025

ASHOK SAINI

...PETITIONER

VS.

NEELAM JAIN AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Anuj Balian, Advocate for the petitioner.

Mr. Sunil K. Pandey, Advocate for

Mr. Raj K. Rana, Advocate for respondent No.1.

PANKAJ JAIN, J. (ORAL)

1. Defendant is in revision petition aggrieved of order dated 09.10.2024 passed by the learned Additional Civil Judge (Senior Division), Ambala whereby application filed under Order VII Rule 11 CPC seeking rejection of plaint for want of affixation of ad valorem Court fee, stands declined.

2. Learned counsel for the defendant-petitioner has drawn attention of this Court to the plaint to submit that in para 21 of the plaint, the plaintiff himself has quantified the alleged loss caused to the building and in the prayer clause, has sought damages. In para 28 plaintiff has very cleverly valued the suit for the purpose of court fee to be a mere suit for declaration



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and has affixed court fee of Rs.25/- only. He submits that from the composite reading of the plaint, the only inference that can be drawn is that it is a money suit wherein the plaintiff seeks recovery of Rs.25 lacs on account of damages. The Court below erred in dismissing the application filed by the defendant under Order VII Rule 11 CPC. It has been averred that the suit would fall within the ambit of Section 7 (i) of the Court Fees Act, 1870 (for short “1870 Act”) and thus the plaintiff is liable to pay ad valorem Court fee.

3. Per contra, learned counsel for the respondent-plaintiff submits that the instant suit is the one for declaration. The plaintiff is not seeking recovery and thus it cannot be termed as money suit relatable to Section 7(i) of the 1870 Act. It is the one which would fall within the ambit of Section 7 (iv) of the 1870 Act and would be thus covered by item 17(3) as contained in Schedule II. Further reliance is being placed upon **Suhrid Singh @ Sardool Singh versus Randhir Singh and others, 2010 AIR (Supreme Court) 2807** to submit that where the suit is for declaration, the same would be governed by Section 7 (iv) (c) of the 1870 Act and thus the same would be assessed in terms of Article 17 (3) of the Second Schedule appended to 1870 Act.

4. I have heard rival contentions of the parties and carefully gone through the record of the case.

5. In order to appreciate the contentions raised by the counsel, the relevant pleadings raised in the plaint need to be perused:-

*“21. That finding no alternative the plaintiff approached
Sh. C.L. Arora Registered Valuer Civil Engg. and*



Property Consultant #4318/1, Cross Road No.3, Ambala Cantt for assessing the loss of the building of the plaintiff and Sh. C.L. Arora submitted his report vide reference No.40/CLA/CC/Technical/VR/Neelam/22-23 dated 12.07.2022 and the copy of the report is Annexure P27. As per Annexure P27 the valuation of damaged building comes to Rs.20, 15,573/- and the detail of net value is as under:-

VALUATION OF DAMAGED BUILDING:-

The damaged building was 15-20 years old having total covered area of 1800 sft.

The replacement cost of Building 1800 sft or 167.20 sqm.

@ Rs.17,640/-per sq.m = Rs.29,50,819.00

*Depreciated Cost(-)29,50,819X30
/100 =(-) Rs.08,85,246.00*

D/D for Scrap Material (L.S) = Rs.50,000.00

Net Value = Rs. 20,15,573.00”

(Rupees Twenty lacs, fifteen

thousands, five hundred and seventy three only)

22 to 27 xxxxxx

28. That value of the suit for the purpose of court fee is assessed Rs.200/- upon which a court fees stamp of Rs.25/- is affixed on the petition.

29 to 30 xxxxxx



It is therefore prayed, that for Declaration to the effect that the plaintiff is entitled to recover unliquidated damages to the tune of Rs. 20,15,573/- being caused H.No.696/B-627, Old to No.G-18, (Municipal I.D. 88C765U582), Tubewell Colony, Mahesh Nagar, Ambala Cantt owned by the plaintiff on the basis of technical inspection report of damagebuilding No.G-18, (Municipal I.D. 80C7650502), Tubewell Colony. Mahesh Magar, Ambala Cantt dated 12.07.2022 issued by Bh. C.L. Arora, Register Valuer Civil Engineer, #4318/1, Cross Road No.3, Ambala Cantt along with Rs.5,00,000/- compensation an for mental and physical agony caused to the plaintiff by the defendant No.1 to 3 on the basis of oral as well as documentary evidence Under order 7 rule one CPC, may kindly be decreed in the interest of law, justice and equity.”

6. In terms of the prayer clause as reproduced hereinabove, the plaintiff claims his entitlement to recover unliquidated damages to the tune of Rs.20,15,573/- relying upon the report of the valuer and further seeks liquidated damages to the tune of Rs.5 lacs as compensation of mental and physical agony.

7. In view of the above, this Court has no hesitation in holding that the suit filed by the plaintiff would fall within Section 7 (i) of the 1870 Act and is in fact a money suit wherein the plaintiff is seeking damages and



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is thus entitled to pay ad valorem Court fee according to the amount claimed.

8. Reliance placed upon **Suhrid Singh @ Sardool Singh's case (supra)** is misplaced. The question involved in **Suhrid Singh @ Sardool Singh's case (supra)** relates to challenge to the sale deed.

9. **Suhrid Singh @ Sardool Singh's case (supra)** does not canvass the proposition as involved in the present petition and thus the ratio thereof is not applicable to the facts of the present case.

10. In view of the above, this Court finds that the trial Court erred in dismissing the application filed by the defendant holding that there is no assessment of damages. The trial Court ought to have read the plaint as a whole and should have looked beyond smokescreen created by innovative pleading to ascertain the real nature of the suit.

11. The present petition is allowed.

12. Keeping in view the aforesaid facts and circumstances and on request made by counsel for the respondent, the respondent is granted four weeks' time to make deficiency in the Court fee good and affix the Court fee in terms of the prayer clause.

23.01.2025

*A.Kaundal***(PANKAJ JAIN)****JUDGE**

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No