



CR-5655-2025 (O&M)

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

CR-5655-2025 (O&M)

Reserved on : 02.09.2025

Date of Pronouncement : 10.09.2025

Amandeep Singh

.....Petitioner

Vs.

Kulwinder Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present : Mr. Ramesh Sharma, Advocate,
for the petitioner.

SUDEEPTI SHARMA J. (ORAL)

1. The present revision petition has been filed for setting aside the order dated 13.12.2024 passed by learned Civil Judge (Junior Division), Nakodar, whereby, the application filed by the respondent under Order 7 Rule 11 CPC read with Section 151 CPC for rejection of the plaint has been partly allowed and the petitioner has been directed to pay ad volorem court fee in respect of the relief of possession and recovery of mesne profits.

2. Learned counsel for the petitioner contends that the application filed by the respondent under Order 7 Rule 11 CPC read with Section 151 CPC for rejection of plaint has wrongly been partly allowed, vide order dated 13.12.2024. He relies upon judgment passed by Allahabad High Court in **Urmila Devi Vs. Rajendra Pal Tayal and others, 2023(3) Civil Court**



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Cases 062 (Allahabad) and prays for setting aside the order dated 13.12.2024 passed by learned Civil Judge (Junior Division), Nakodar.

3. I have heard learned counsel for the petitioner and perused the case file with his able assistance.

4. A perusal of the file shows that the petitioner filed civil suit for mandatory injunction directing the respondent to handover the vacant possession of first floor of House No.728, measuring 14 Marlas 3 Sarsai situated at Mohalla Kartar nagar, Shahkot, District Jalandhar to the petitioner. The respondent filed application under Order 7 Rule 11 CPC read with Section 151 CPC for rejection of plaint on the ground that the court fee affixed with the plaint is undervalued, since the petitioner has filed suit seeking permanent and mandatory injunction as well as claiming mense profits at the rate of Rs.10,000/- per month from the date of termination of tenancy and the petitioner has not paid any amount towards this claim. Further, petitioner is required to pay court fee based on market value of the property as well as additional court fee for mense profits claim.

5. A perusal of the plaint filed by the petitioner shows that the suit is for mandatory injunction directing the respondent to handover the vacant possession of the first floor of House No.728, measuring 14 Marlas 3 Sarsai situated at Mohalla Kartar nagar, Shahkot, District Jalandhar to the petitioner and in the prayer clause, it has been prayed that the respondent be directed to pay mense profits at the rate of Rs.10,000/- per month from the date of



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termination of tenancy till the date of handing over the vacant possession of the suit property to the petitioner. Learned Civil Judge (Junior Division), Nakodar, vide its order dated 13.12.2024, has partly allowed the application under Order 7 Rule 11 CPC filed by the respondent on the ground that although, suit mentioned is for mandatory injunction but the substance of the suit is for possession of the suit property along with recovery of mense profits and the petitioner has quantified the amount which he intends to recover from the respondent i.e. Rs.10,000/- per month, therefore, he is required to pay ad volrum court fee on the said amount from the date of termination of tenancy till the filing of the suit.

6. A perusal of the impugned order dated 13.12.2024 shows that the same was passed without application of mind, since learned Civil Judge (Junior Division), Nakodar, did not appreciate the very fact that no mense profits were due at the time of filing of the present suit, therefore, no court fee was affixed. Further, the question regarding mense profits is yet to be decided as to how much amount to be paid as mense profits. Without deciding the mense profits, the direction to pay ad volrum court fee in respect of the relief of possession and recovery of mense profits as sought by the petitioner is bad in the eyes of law. Further, at the time of filing of the suit, no mense profits were due, therefore, no court fee was affixed. However, the petitioner undertakes to pay the court fee as ordered by the Court, if and when mense profits are awarded.



7. Now coming to the judgment relied upon by learned counsel for the petitioner. The relevant paragraphs of the judgment passed in *Urmila Devi's case (supra)* are reproduced as under:-

“2. The present appeal is directed against the order dated 25.04.2014 passed by the Additional Civil Judge (S.D.), Court No.2, Bulandshahar whereby the issue no.7 in Original Suit No.1285 of 2008 instituted by the plaintiff/appellant has been decided against the plaintiff/appellant and trial court has directed the plaintiff/appellant to pay court fees ad valorem.

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6. The trial court framed the issue with regard to the sufficiency of the court fee. According to the defendants/respondents though, the suit has been instituted for mandatory injunction, but essentially plaintiff/appellant is claiming relief of possession. Hence, the plaintiff/appellant is liable to pay the court fee ad valorem as provided under Section 7(v)(II) of the Court Fees Act.

7. The trial court after considering the facts in detail found substance in the contention of defendants/respondents and held that as the plaintiff/appellant is essentially claiming relief of recovery of possession, therefore, she is liable to pay court fee ad valorem as per Section 7(v)(II) of the Court Fees Act, 1887.

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21. In the said case, the suit property was sold by the original owner to the plaintiff, and possession of the defendant in the suit vis-a-vis the original owner was that of the licensee. After the purchase of the property by the plaintiff, he instituted a suit for mandatory injunction and paid the court fee as provided under Section 7(iv-B) of the Court Fees Act. The trial court found that plaintiff was liable to pay the court fee ad valorem. The matter came up before this Court in appeal. This Court in appeal considering the effect of Section 59 of the Indian Easement Act, 1882 held that as the plaintiff had got the property from the original licensor by transfer, the licence granted in favour of the defendant ceased to exist



and there was no relationship of licensor and licensee between plaintiff/appellant and defendant/respondent. In the said case, this Court found that as there was no relationship of licensor and licensee between subsequent purchaser i.e. plaintiff and the defendant, therefore, plaintiff has to claim a relief of possession for which the court fee as provided under Section 7(v)(II) of the Court Fees Act is to be paid.

22. *In the case of **Dinesh Kumar** (supra), this Court was considering a case where suit property was auctioned and the bid of the petitioner was highest, consequently, he was given suit property under the terms of the agreement. The petitioner paid certain installments and thereafter, he stopped payment of installments, and recovery was effected against him by the respondent/state which was challenged by the petitioner in the suit. The petitioner in the said case prayed for relief of injunction and paid a fixed court fee of Rs.500/-. The trial court held that the petitioner was liable to pay the court fee on the full amount which is sought to be recovered from him. The finding of the trial court was affirmed by the appellate court as well as by this Court in the writ petition. So, the facts of the said case were different from the facts of the present case as in that case court was considering a case where the plaintiff has challenged the recovery of money which according to him was being recovered from him illegally which is not so in the present case.*

23. *In the case of **Azizur Rahman** (supra), this Court recorded a specific finding in paragraph 5 that relief is for recovery of possession of the house which was valued at Rs.4 lac, consequently, the Court held that court fee is payable on that amount. Accordingly, this Court upheld the order of the trial court.*

24. *Thus, for the reasons given above, this Court is of the view that the trial court has acted illegally in holding that the plaintiff/appellant is liable to pay court fees under Section 7(v)(II) of the Court Fees Act. Consequently, the order of the trial court is set aside. It is further held that the fixed court fee paid by the plaintiff/appellant is correct and proper in the present case.*



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8. In view of the above discussion and judgment referred to above, this Court finds merit in the present petition and the same is **allowed**. Order dated 13.12.2024 passed by learned Civil Judge (Junior Division), Nakodar, is hereby set aside.

9. Pending application(s), if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

10.09.2025

Virender

Whether speaking/non-speaking : Yes/No

Whether reportable : Yes/No