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

CR-829-2017 (O&M)

Date of Decision : 15.01.2025

M/s Jai Bharat Rice Mills ... Petitioner(s)

Versus

District Food & Supplies Controller Palwal & Anr ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajesh Lamba, Advocate for the petitioner.

Mr. Suneel Ranga, DAG Haryana for the respondents.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the impugned order dated 07.12.2016 whereby the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) was allowed and the plaintiff-petitioner herein was directed to pay *ad valorem* court fee.

2. Learned counsel for the plaintiff-petitioner would contend that since only the operation of the impugned order was stayed, the trial continued the proceedings and now the case is at the stage of rebuttal and arguments and that the arguments have not been heard only because of the pendency of the present revision petition. The learned counsel would further contend that in the plaint a declaration has been sought that the amount is due towards the plaintiff-petitioner. It is further the contention that there is a dispute regarding the reason for the delivery of less quantity of paddy and as to whether the plaintiff-petitioner would be entitled to the amount as claimed, which would be a matter of evidence, and in view thereof it cannot

be said that the amount has been quantified. It is further the contention of the learned counsel that the suit is not for recovery but for declaration and mandatory injunction.

3. Per contra the learned counsel for the defendant-respondents has relied upon the judgments of this Court in the cases of **Tarawati Vs. Tej Ram @ Tej Pal & Anr. [2015 (7) RCR (Civil) 783]** and **Surender Kumar @ Salender Kumar Vs. Abid Khan & Ors. [2023 (1) RCR (Civil) 845]** to contend that once the amount has been quantified, *ad valorem* court fee would have to be paid.

4. I have heard the learned counsel for the parties.

5. It is trite that at the stage of deciding the application under Order 7 Rule 11 CPC, only the contents of the plaint are to be seen. As per the plaint itself there appears to be a dispute as to whether the said amount is due towards to the plaintiff-petitioner as about 2000 Qtls. of paddy remained unmilled and in the plaint the plaintiff-petitioner has tried to explain the delivery of less quantity of 703.28 Qtls. as being beyond the control of the plaintiff-petitioner, hence, the quantification of the amount due would only be arrived at after the evidence has been gone into.

6. The judgments relied upon by the learned counsel for the defendant-respondents would not come to his aid as in the case of **Tarawati** (supra) it was a case of recovery of ₹37,00,000/- wherein the amount was quantified. In the case of **Surender Kumar @ Salender Kumar** (supra) it was held that under the garb of declaration and mandatory injunction, the petitioner therein was seeking recovery as damages. In the present case, as

noticed above, there is a serious dispute qua the amount which is due towards the plaintiff-petitioner herein which can only be quantified once the evidence has been led by both the parties. In any case, the matter is at the fag end inasmuch as the same is now fixed for rebuttal and arguments.

7. In view of the above, the present revision petition is allowed. The impugned order dated 07.12.2016 is set aside. Pending applications, if any, also stand disposed off.

15.01.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO