

# The State Of Punjab vs Dev Brat Sharma on 16 March, 2022

**Author: Vikram Nath**

**Bench: Vikram Nath, Dinesh Maheshwari**

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO(s). 2064 OF 2022  
(arising out of SLP (Civil) No(s). 12468 of 2018)

STATE OF PUNJAB  
AND OTHERS

...APPELLANT(S)

VERSUS

DEV BRAT SHARMA

...RESPONDENT(S)

JUDGMENT

VIKRAM NATH, J.

Leave granted.

2. The State of Punjab and its officers have assailed the correctness of the judgment and order dated 11.08.2017 passed by the High Court of Punjab and Haryana, whereby the High Court allowed the revision petition filed by the respondent Dev Brat Sharma and further proceeded to reject the application of the appellant under Order VII Rule 11 read with Section 151 of Code of Civil Procedure 1 after setting aside the order dated 10.11.2016 passed by the Trial Court 1 Code of Civil Procedure - CPC holding that the respondent (plaintiff before the Trial Court) was required to make good deficiency in the Court fees on the amount of Rs. 20 Lakhs claimed by him as compensation.

FACTS:

3. The respondent instituted a suit for recovery of Rs.20 Lakhs as damages allegedly suffered by him on account of denying the status of freedom fighter by the defendants and also for the loss of reputation on account of non-issuance of certificate of freedom fighter along with interest @9% per annum from the date of institution of the suit till realization of the amount. The State of Punjab and five others (officers of the State Government) were impleaded as defendants.

This suit was registered as Case No.1661 of 2015 in the Court of Civil Judge (Senior Division), Jalandhar.

4. Briefly the facts as set out in the plaint were:

(i) that the respondent belongs to a renowned family of Jalandhar. He had retired as DDPO and was the youngest freedom fighter in the Quit India Movement. After retirement, he was practicing as an Advocate and commanded great respect among the residents of Jalandhar. Further details regarding his family background are also stated.

(ii) that the respondent was duly recognized by the Government of Punjab as a 'freedom fighter' but the defendant No.3, the Director, Lotteries, who was posted as Deputy Commissioner, Jalandhar at the relevant time, denied the said status.

(iii) that the respondent had filed two writ petitions before the High Court at Chandigarh bearing CWP No.15316 of 2013 and CWP No.18535 of 2013 against the rejection of his request for issuing the certificate of 'freedom fighter'. The High Court disposed of Writ Petition No.15316/2013 on 19.07.2013 and allowed Writ Petition No.18535/2013 on 14.11.2014.

(iv) that the respondent had to travel to Chandigarh several times, engage lawyers, pay fees and expenses for the said litigation at an old age, he had suffered great mental tension and torture on account of illegal acts of the defendant Nos.3 to 6 (officers of State of Punjab).

(v) that the grandson of the respondent could not get admission because of non-issuance of the said certificate and so he had to be admitted in a college in the State of Tamil Nadu.

(vi) that the respondent spent approximately Rs.2 Lakhs on litigation. He had to make several trips to Tamil Nadu for the education of his grandson, who otherwise could have been admitted in Punjab. As such, he suffered damages of approximately Rs.20 Lakhs, which included Rs.2 Lakhs for the litigation expenses, mental tension, harassment and further incidental damages.

5. Accordingly, a legal notice dated 16.03.2015 was given under Section 80 CPC calling upon the defendants to pay a sum of Rs.20 Lakhs as damages suffered by him. When despite notice, the said amount was not paid, a suit was instituted praying for the following reliefs:

"It is, therefore, respectfully prayed that the suit of the plaintiff for recovery of Rs.20,00,000/- (Rupees twenty lacs only) as damages suffered by the plaintiff on account of denying the status of Freedom Fighter to the plaintiff by the defendant No.3 who was posted as Deputy Commissioner, Jalandhar at the relevant time and loss of reputation on account of non-issuance of Certificate of Freedom Fighter for the use of his grandson, may kindly be decreed in favour of the plaintiff and against the defendant with costs, in the interest of justice and equity.

It is further prayed that the decretal amount may be allowed to be recovered along with interest at the rate of 9% per annum from the date of institution of the suit till

the realization of the amount.

It is further prayed that any other relief, which this Hon'ble Court may deem fit and proper may also be granted in favour of the plaintiff and against the defendant, in the interest of justice and equity."

6. According to the contents of paragraph 11 of the plaint, the valuation of the suit both for the purpose of court fees and jurisdiction was fixed at more than Rs.20 lakhs but court fees of Rs.50/- was affixed relying upon judgment of the Punjab & Haryana High Court. An undertaking to pay the court fees on the sum to be adjudicated as damages by the Court in due course of time was also stated. Paragraph 11 of the plaint is reproduced below:

"11. That the value of the suit for the purpose of court fee and jurisdiction is fixed at more than Rs.20,00,000/- (Rupees twenty lacs only) but in view of the latest law, laid down by the Hon'ble Punjab & Haryana High Court in case titled "Ajit Singh Kohar Vs. Shashi Kant" (CR No.5638 of 2014, decided on August 25th, 2014) that the suit for defamation for maligning reputation, the affixation of court fee of Rs.50/- is acceptable as exact value of the relief to be granted, cannot be ascertained at initial stage and accordingly, the Hon'ble High Court left the petitioner in that case to pay the court fee on the sum to be adjudicated as damages by the lower court in due course of time. The relevant portion of the order of the Hon'ble High Court is reproduced as under: -

"6. Sequelly, the impugned order is set aside leaving the petitioner to pay the court fee on the sum to be adjudicated as damages by the lower court in due course of time, but not at this initial stage, notwithstanding that the petitioner though, leaving the entire matter to the court for adjudication of the quantum of damages, he himself has given the quantum of damages to be Rs.2.00 Crores" Thus, in view of the aforesaid decision of the Hon'ble Punjab & Haryana High Court, though the plaintiff himself has given the quantum of damages to be Rs.20,00,000/- but at this initial stage, notwithstanding that the plaintiff though, leaving the entire matter to this Hon'ble Court for adjudication of the quantum of damages, is affixing the tentative court fee of Rs.50/-. However, the plaintiff undertakes to pay the court fee on the sum to be adjudicated as damages by this Hon'ble court in due course of time."

7. The appellants filed written statement wherein preliminary objections were raised, one of them being that the suit had not been properly stamped for the purposes of Court- fees. A replication was filed by the respondent reiterating the contents of the plaint and also refuting the preliminary objection.

8. The appellants thereafter preferred an application under Order VII Rule 11 (c) read with Section 151 CPC on the ground of non-payment of requisite Court-fees, which was registered as IA No.00001 of 2016.

9. The Trial Court, vide order dated 10.11.2016, disposed of the said application with the direction to the respondent to file the Court-fees on the amount of Rs.20 Lakhs as claimed by him and granted about 10 weeks' time to make good the deficiency.

10. The Trial Court first considered the judgment in the case of Manpreet Singh vs. Gurmail Singh and others<sup>2</sup>, relied upon by the respondent in support of his submissions and distinguished the same as being neither applicable nor helpful for the respondent on the facts of the said case. It further took into consideration the provisions contained in 2 (2016) 4 Civil Court Cases 503 (PLH) Section 7(i) of the Court Fees Act, 1870<sup>3</sup> as being applicable and, accordingly, directed the respondent to make good the Court- fees on the amount of Rs.20 lakhs claimed as damages.

11. Aggrieved by the aforesaid order, the respondent preferred a revision petition under Section 115 CPC before the High Court which was registered as CR No.291 of 2017. The High Court, vide judgment and order dated 11.08.2017, referred to a number of judgments to hold that as the actual and specified amount of damages was still to be assessed and determined by the Trial Court, as such, the direction of the Trial Court to pay ad valorem Court fees on the amount of Rs.20 lakhs was not sustainable in law.

12. The High Court was further influenced by the pleadings in the plaint and replication to the effect that the respondent undertakes to make good the court fees on the amount adjudicated as damages by the Court in due course of time.

13. The High Court, accordingly, set aside the order of the Trial Court dated 10.11.2016 and rejected the application of<sup>3</sup> The Act the appellant under Order VII Rule 11 CPC with a further direction to the Trial Court to proceed with the suit.

14. The above judgment of the High Court is under challenge. During the pendency of the Special Leave Petition, the suit was dismissed by the Trial Court on 28.02.2020. Aggrieved, the respondent has preferred an appeal under Section 96 of the CPC, which is pending.

#### ARGUMENTS:

15. We have heard on behalf of the appellant- Ms. Uttara Babbar, Advocate and on behalf of the respondent- Shri Abhimanyu Tiwari, Advocate.

16. Broadly, the submissions advanced on behalf of the appellants are:

(a) that the High Court fell in error in relying upon several judgments which had no application to the facts of the present case;

(b) that the judgment in the case of State of Punjab Vs. Jagdip Singh Chowhan<sup>4</sup> relied upon by the High Court was carried in appeal<sup>5</sup> before this Court and this Court has held<sup>4</sup> (2005) 1 RCR (Civil) 54.

that ad valorem court fees would be payable in a suit for malicious prosecution for a claim of Rs. 2 Crores;

(c) that the Court-fees was payable under Section 7(i) of the Act and that Section 7(iv) of the Act would have no application. Reliance is placed upon two judgments i.e. Ranjit Kaur vs. PSEB<sup>6</sup>, and Manjeet Singh vs. Beant Sharma<sup>7</sup>;

(d) that the respondent in writ petitions filed before the High Court had also claimed damages and compensation and once such relief has not been granted by the High Court, the suit itself, for the same relief was not maintainable and ought not to have been entertained. It was a clear abuse of process of law and such frivolous litigations ought to have been nipped in the bud.

17. On behalf of plaintiff-respondent, the learned counsel Shri Abhimanyu Tiwari has sought to justify the order of the High Court as just, valid and in accordance with law. According to learned counsel:

6 (2006) SCC Online P&H 1095 7 (2012) SCC Online P&H 13081

(a) the High Court rightly rejected the application under Order VII Rule 11 in view of the several judgments referred to in the order;

(b) as proper valuation could not be ascertained at the time of institution of the suit, there would not be any justification for charging ad valorem court fees on a tentative amount mentioned in the plaint;

(c) the High Court had left it open for the Trial Court to determine the actual valuation after trial whereupon the court fees would be recovered from the plaintiff for which he had given an undertaking also, and hence, no error could be said to have been committed by the High Court;

(d) reliance has been placed upon the following judgments in support of the above propositions:

i) M/s Commercial Aviation & Travel Company vs. Vimla Pannalal<sup>8</sup>.

ii) Hem Raj vs. Harchet Singh<sup>9</sup>;

iii) Subhash Chander Goel vs. Harvind Sagar<sup>10</sup>;

(iv) State of Punjab vs. Jagdip Singh Chowhan<sup>11</sup>(reversed by this Court);

8 (1988) 3 SCC 423, 9 (1993) Civil Court Cases 48 (P&H), 10 (2003) AIR (Punjab) 248, 11 (2005) 1 RCR (Civil) 54,

(v) Manpreet Singh vs. Gurmail Singh<sup>12</sup>;

(vi) Dr. B.L. Kapoor Memorial Hospital vs. Balbir Aggarwal<sup>13</sup>

(e) before Trial Court issue no.3 was framed relating to proper valuation of the suit for the purposes of the Court-

fees. Trial Court vide judgment and order dated 28.02.2020 although had dismissed the suit but held that the onus to prove the said issue was placed upon the defendants and as no evidence was led nor any argument advanced in support of the said issue, decided the same against the defendants- appellants. The judgment dated 28.02.2020 having not been carried further by the appellants, it would suggest that they had abandoned the said issue. In support of the said submission that an abandoned issue could not be resurrected in higher forum, reliance was placed upon following two judgments: -

i) M.P. Shreevastava vs. Mrs. Veena<sup>14</sup>;

ii) Shanbhagakannu Bhattar vs. Muthu Bhattar <sup>15</sup>.

<sup>12</sup> (2016) 3 PLR 751, <sup>13</sup> (2015) SCC Online P&H 1790.

<sup>14</sup> (1967) 1 SCR 147, <sup>15</sup> (AIR 1971 SC 2468.

(f) in the event this Court was of the view that the plaintiff was liable to pay ad valorem court fees on the amount mentioned in the plaint, then, the same would be of academic interest only as the appellants had abandoned their plea regarding valuation by not filing any cross objection or appeal against the judgment dated 28.02.2020. ANALYSIS:

18. Chapter III of the Act deals with 'Fees In Other Courts And In Public Offices.' Section 6 thereof provides that no document of any kind specified as chargeable in the First or Second Schedule of this Act would be filed, exhibited or recorded in any Court of Justice or would be received or furnished by any public officer, unless in respect of such document, fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document is paid. First Schedule lays down the computation of ad valorem Court fees whereas Second Schedule gives the table of fixed Court fees payable on different categories of plaints, documents and pleadings.

19. Section 7 thereof provides for computation of fees payable in certain suits. Sub-clause (i) refers to Money Suits which includes suits for damages, compensation, arrears of maintenance, annuities or other sums payable periodically where the fee payable would be according to the amount claimed. Then, there are other sub-clauses which are not relevant for the case in hand. However, sub-clause (iv) which has further six categories, namely, suits (a) for movable property of no market value; (b) to enforce a right to share in joint family property; (c) for a declaratory decree and consequential relief; (d) for an injunction; (e) for easements;

and (f) for accounts. The fees on a suit falling in these categories would be payable according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. It also states that in all such suits the plaintiff would state the amount at which he values the relief sought. Section 6 and relevant part of Section 7 of the Act are reproduced hereunder: -

“6. Fees on documents filed, etc., in Mofussil Courts or in public offices. – Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the First or Second Schedule to this act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document.

7.Computation of fees payable in certain suits. – The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows: -

for money.- (i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically) – according to the amount claimed.

.....

(iv) In suits –

for movable property of no market-value.

-(a) for moveable property where the subject- matter has no market-value, as, for instance, in the case of documents relating to title, to enforce a right to share in joint family property. – (b) to enforce the right to share in any property on the ground that it is joint family property, for a declaratory decree and consequential relief. – (c) to obtain a declaratory decree or order, where consequential relief is prayed, for an injunction. – (d) to obtain an injunction, for easements. – (e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and for accounts. – (f) for accounts-

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal;

In all such suits the plaintiff shall state the amount at which he values the relief sought;

.....”  
.....

20. The moot question for consideration is whether the suit in question as framed was a money suit for compensation/damages falling under Clause (i) of Section 7 or was a suit falling in any of the categories specified in clause (iv) of Section 7 of the Act. A reading of the relief clause would make it abundantly clear that this was a money suit for compensation/damages and not falling under any of the categories mentioned in clause (iv) of Section 7 of the Act. Therefore, there would be no question at all for the applicability of Section 7(iv) of the Act. It would be a simple case of applicability of Section 7(i) of the Act and ad valorem Court-fees would have to be paid as per Schedule 1 entry 1.

21. It is only with respect to the category of suits specified in clause (iv) of Section 7 of the Act that the plaintiff has the liberty of stating in the plaint the amount at which relief is valued and Court-fees would be payable on the said amount.

Liberty given under clause (iv) to the specific suits of six categories is not available to the suits falling under any other clause, be it (i), (ii), (iii) etc. Once the suit in question was a money suit for compensation and damages falling under clause (i) of Section 7 of the Act, ad valorem Court-fees would be payable on the amount claimed.

22. The High Court, in the impugned judgement, has referred to the following authorities in order to support the conclusion arrived at by it:

- 1) M/s Commercial Aviation and Travel Company vs. Vimla Pannala<sup>16</sup>;
- 2) Hem Raj vs. Harchet Singh<sup>17</sup>;
- 3) Subhash Chander Goel vs. Harvind Sagar (supra);
- 4) State of Punjab vs. Jagdip Singh Chowhan (supra);
- 5) Manpreet Singh vs. Gurmail Singh (supra);
- 6) Dr. B.L.Kapoor Memorial Hospital vs. Balbir Aggarwal (supra);
- 7) S.Ajit Singh Kohar vs. Sashi Kant (supra); and,
- 8) Bharpoor Singh and another vs. Lachhman Singh, 2017(1) Law Herald 609.

16 AIR (1988)3 SC 423 17 (1993) Civil Court Cases 48 (P&H)

23. The judgment in the case of Ms. Commercial Aviation and Travel Company (supra) is of this Court and rest of the judgments are of the Punjab and Haryana High Court. The judgment in the case of M/s Commercial Aviation and Travel Company (supra) has been relied upon by the High Court in the case of Hemraj (supra) which in turn has been followed in other cases. In the case of



Commercial Aviation and Travel Company (supra), the suit was filed for relief of dissolution of partnership and for accounts. For the purposes of jurisdiction, it was valued at Rs. 25 lacs whereas for the purposes of court fees the relief was valued at Rs. 500/-. In those circumstances, an application was moved by the defendant under Order VII Rule 11(b) CPC for rejection of the plaint on the ground that the suit has been grossly undervalued.

24. This Court considered the provisions under Section 7(iv) of the Act and was of the view that suits covered by Section 7(iv) were of such nature that it is difficult to lay down any standard of valuation and it was, therefore, that liberty was given to the plaintiff to give a separate valuation of the relief sought for the purposes of payment of court fees. This Court also observed that in a suit for accounts, it is almost impossible for the plaintiff to value the relief correctly. As such the judgement in the case of M/s Commercial Aviation (supra) has no application. The suit for accounts and dissolution of partnership would fall in one of the six categories as specified in Section 7(iv) of the Act.

25. This Court further relied upon a Constitution Bench decision of this Court in the case of S.R.M.A.R.M. Ramanathan Chettiar (supra) reported in AIR 1958 SC 245 equivalent of 1958 SCR 1024 and quoted a paragraph from the said judgment which explains why the legislature left it open for the plaintiff to value his claim for the six categories of the suit falling under Section 7(iv) of the Act. The basic reason was that as it was almost difficult to value the claim for any of the suits covered under Section 7(iv), therefore, for the purposes of payment of court fees, a different valuation for the relief sought could be given. All such suits were thus placed in Clause (iv) giving liberty to the plaintiff to give a separate valuation for relief sought. However, ultimately it would be the actual relief granted which would determine the court fees to be paid and the same may be made good by the plaintiff in case lesser court fees was paid.

26. In the case of Chettiar (supra), the relief claimed was for partition of the joint family properties and also for accounts in respect of the joint family assets managed by the respondent. The plaintiff further valued the claim for accounts at Rs. 1,000/- and paid a court fees of Rs. 100/- on the said amount. However, for the purposes of jurisdiction, the appellant gave a valuation of Rs. 15 lacs as the value of his share. The registry took objection with regard to the payment of the court fees and valuation, and therefore, the matter was referred to various authorities, officers and Court under the provisions of the Act. Ultimately after a series of innings, the matter was settled by the aforesaid judgment and while dealing with the said issue regarding different valuations and payment of court fees at the time of institution of the suit, this Court discussed the scheme of Section 7 and in that context, explained it as follows:

“If the scheme laid down for the computation of fees payable in suits covered by the several sub- sections of s. 7 is considered, it would be clear that, in respect of suits falling under sub-s. (iv), a departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of court fees. The theoretical basis of this provision appears to be that in cases in which the plaintiff is given the option to value his claim, it is really difficult to value the claim with any precision or definiteness. Take for instance the claim for partition where the plaintiff seeks to enforce his right

to share in any property on the ground that it is joint family property. The basis of the claim is that the property in respect of which a share is claimed is joint family property. In other words, it is property in which the plaintiff has an undivided share. What the plaintiff purports to do by making a claim for partition is to ask the court to give him certain specified properties separately and absolutely on his own account for his share in lieu of his undivided share in the whole property. Now it would be clear that the conversion of the plaintiff's alleged undivided share in the joint family property into his separate share cannot be easily valued in terms of rupees with any precision or definiteness. That is why legislature has left it to the option of the plaintiff to value his claim for the payment of court fees. It really means that in suits falling under s. 7 (iv)(b) the amount stated by the plaintiff as the value of his claim for partition has ordinarily to be accepted by the court in computing the court fees payable in respect of the said relief. In the circumstances of this case it is unnecessary to consider whether, under the provisions of this section, the plaintiff has been given an absolute right or option to place any valuation whatever on his relief."

27. In the case of Hem Raj (supra) and all other judgments referred to in the impugned judgment, reliance is placed upon the observations from the judgments of Commercial Aviation(supra) and Chettiar (supra) explaining the departure of difference carved out for the categories and suits covered by Section 7(iv) of the Act. They have erroneously proceeded to apply the same to the category of money suits mentioned in Section 7(i) of the Act. Neither in the case of M/s Commercial Aviation (supra) nor in the case of Chettiar (supra), this Court ever laid down that for the purposes of suits covered by clauses other than Section 7(iv), there could be separate valuation for the purposes of court fees and jurisdiction. On a completely erroneous approach, an erroneous interpretation of the judgments in the case of M/s. Commercial Aviation (supra) and Chettiar (supra), several orders were passed by the Punjab & Haryana High Court, which have been relied upon in the impugned judgment. What is important to note here is that this case related to the valuation for the purposes of relief sought.

28. In the present case, the respondent has not given a separate valuation for relief sought and rightly so, as it had no liberty and right to give different valuation than what was being actually claimed. As a matter of fact, in para 11 of the plaint it is clearly stated that the valuation is the same for Court-fees and jurisdiction.

29. The valuation for the purposes of jurisdiction and relief has to be the same in the money suits falling under category 7(i). It was only in category of suits covered by Clause (iv) of Section 7 that there could be two different valuations for the purposes of jurisdiction and for relief sought.

30. Ms Babbar referred to two judgments of the Punjab and Haryana High Court in support of her submissions, namely, Ranjit Kaur (supra) (2006) and Manjeet Singh (supra) (2012). Manjeet Singh (supra) had relied upon Ranjit Kaur (supra) which had clearly held that in a suit for damages, ad valorem Court-fees would be payable on the amount of the damages claimed.

31. Ms. Babbar also pointed out that the judgment in the case of Ranjit Kaur (supra) dealt with the case laws on the point not only of this Court but also of different High Courts. It specifically noted that the judgments in the case of Subhash Chander Goel (supra), Jagdip Singh Chowhan (supra) and Hemraj (supra) did not notice the statutory provisions and other binding precedents.

32. The High Court in the impugned judgment had also placed reliance upon a judgment in the case of Jagdip Singh Chowhan (supra) which again was a case for damages. This was carried to this Court by the State. The said judgment has since been set aside by this Court vide order dated 29.05.2012 passed in Civil Appeal No.3987 of 2006, State of Punjab vs. Jagdip Singh Chowhan. A copy of the said order has been provided by Ms.Babbar, learned counsel for the appellants. This Court observed that there can be no dispute that in a suit for malicious prosecution, ad valorem Court-fees is payable. The Court proceeded to grant liberty to the counsel for the plaintiff- respondent to take appropriate steps for amendment of the plaint or to make good the Court-fees. The said order is reproduced hereunder:

“The present appeal is directed against the order dated 14.10.2004 passed by the learned Single Judge of the High Court of Punjab and Haryana in C.R.No.2933/2004 whereby the High Court has permitted the plaintiffs- (respondent herein) to pay the court fee on the tentative valuation of the suit for the purpose of court fees.

It is worth noting, for the said purpose the suit was valued at Rs.1,43,000/- though a decree was sought for Rs.two crores approximately. There can be no dispute that in a suit for malicious prosecution, ad valorem court fee is payable. Faced with this situation, the learned counsel for the respondent No.1 could only state that he will file an application for amendment before the trial Court either restricting his claim to the amount on which the court fee has been paid or may enhance the claim beyond the said amount and will pay the ad valorem court fee on the same. Recording such statement of respondent No.1, we set aside the order passed by the learned Single Judge and grant him liberty to file the requisite amendment to bring the plaint in order.

The appeal is accordingly disposed of with no order as to costs.”

33. On behalf of the respondent, a submission was raised relating to the final determination of issue No.3 by the Trial Court vide judgment and order dated 28.02.2020 where the Trial Court decided the issue against the defendants and in favour of the plaintiff.

34. The said submission has no legs to stand for two reasons: firstly, the said judgment had come subsequent to the filing of the present appeal @ Special Leave Petition as the judgment of the High Court is dated 11.08.2017 and secondly, the Trial Court had dismissed the suit vide judgment dated 28.02.2020 as such the State was not required to challenge the finding on issue No.3. At the time when Trial Court took the suit for final determination, the subject-matter of issue No.3 was covered by the impugned order of the High Court. As such, no other decision could have been taken by the Trial Court. Moreover, for the reason that the issue was already pending before this Court since

2018, much before the dismissal of the suit as such it was not necessary for the State to challenge the said finding. Any decision taken by the Trial Court would always remain subject to final outcome of the appeal@ Special Leave Petition which was pending since prior in point of time. To say that the decision of present appeal would be purely academic is therefore not acceptable. As such we find no applicability of the two judgments in the case of M.P. Shreevastava (supra) and Shanbhagakannu Bhattar (supra) relied upon by the respondent. Apart from the above, the finding on issue No.3 could also be questioned by the State in its capacity as respondent during the hearing of the appeal.

35. We are not going into the other questions raised by Ms. Babbar regarding the institution of suit being abuse of the process of law and we leave it open for the Appellate Court to decide the said issue, if raised by the State.

36. The High Court, therefore, fell in error in setting aside the order passed by Trial Court whereby it had granted time to the plaintiff-respondent to make good the Court-fees within a particular period failing which the plaint would stand rejected.

37. For all the reasons recorded above, the appeal is allowed. The judgment and order of the High Court dated 11.08.2017 is set aside and that of the Trial Court dated 10.11.2016 is restored. Since the suit itself had been finally dismissed on 28.02.2020, (i) but, court fees was nevertheless payable by the plaintiff-respondent on the valuation, i.e., on Rs. 20 lakhs. Hence, it is directed that the plaintiff-respondent shall make payment of such court fees within four weeks from today; (ii) Moreover, the plaintiff- respondent shall further be required to make payment of court fees in the appeal on the value he shall put on the relief sought to be claimed in appeal. The Appellate Court shall allow the plaintiff (who is appellant therein) to state the valuation and grant him reasonable time to make payment of court fees before proceeding further in appeal.

38. There shall be no order as to costs.

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

.....J. [DINESH MAHESHWARI] .....J. [VIKRAM NATH]  
NEW DELHI MARCH 16, 2022